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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1601

Participants' Choices of TSP Funds

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule, with request for comments.

SUMMARY: The Agency is amending its interfund transfer regulations to provide that the Executive Director may adopt a policy of setting limits on the number of interfund transfer requests. In the near term, this amendment will allow the Executive Director to immediately address and, if necessary, restrict the activity of frequent traders, who have disrupted management of the Funds and whose activity has resulted in increased costs to participants.

DATES: This interim rule is effective January 7, 2008.

ADDRESSES: Comments may be sent to Thomas K. Emswiler, General Counsel, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005. The Agency's Fax number is (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Tracey Ray on (202) 942–1665.

SUPPLEMENTARY INFORMATION: The Agency administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Interfund Transfer Requests

The Agency is amending its regulations pertaining to interfund transfers. While most private-sector defined contribution plans, record keepers and/or investment managers, e.g., Vanguard, Federated, ING, Janus, and Royce, have adopted policies designed to limit frequent trading, the Agency currently places no limit on its participants regarding the number or frequency of interfund transfers.

Recently, however, this policy has been called into question as excessive trading caused costs borne by TSP participants to more than double from 2005 to 2006 (from $6.7 million in 2005 to $15 million in 2006), and this pattern of frequent trading has continued in 2007. These costs, which have resulted largely from the activities of approximately 3,000 of the TSP's 3.8 million participants, increase expenses for all TSP participants. In 2006, the unrestricted trading in the I Fund resulted in trades of $12 billion of securities with associated trading costs of $13.8 million or 8 basis points ($.80 per $1,000); nearly three times the TSP's net administrative expense of 3 basis points ($.30 per $1,000).

Because the Board and Executive Director have a fiduciary duty to manage the TSP prudently, for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Thrift Savings Fund, the Agency must respond to this abusive and costly investment activity. 5 U.S.C. 8477(b).

As mentioned, the Agency studied the policies of other funds as well as regulatory guidance from the Securities and Exchange Commission (SEC). Vanguard, for example, limits its participants to one repurchase every sixty days, and the SEC recommends that, under certain circumstances, plans charge trading fees. Other investment vehicles limit participants to a fixed number of trades per year or charge fees on certain redemptions.

The Agency desires to stop this excessive trading immediately and also, after continued analysis, to design an interfund transfer policy that provides for administrative efficiency, investment flexibility, retirement security, as well as reduced trading costs.

To that end, in the near term, the Agency is adopting a regulation to grant the Executive Director the authority to notify the small percentage of participants who are driving up costs through their excessive trading and request that they cease their practices. Otherwise, these participants will be required to request interfund transfers by mail. It is the Agency's hope that this swift and direct action will inform such participants of the unreasonable expenses associated with their trading and persuade them to voluntarily curb their trading, thereby curtailing the excessive trading costs borne by all participants who hold the C, F, S, I, and L Funds.

Further, upon continued inquiry, including an analysis of the actions that can be taken on an automated basis, the Agency likely will amend its regulations (via a separate publication in the **Federal Register**) to permit two interfund transfers per calendar month with subsequent unlimited interfund transfers only into the G Fund. The Agency believes this policy, when compared to others adopted in the private sector, provides the desired level of administrative simplicity, investment flexibility and security, and control over excessive trading.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information

to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects in 5 CFR Part 1601

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons set forth in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1601—PARTICIPANTS' CHOICES OF TSP FUNDS

■ 1. The authority citation for part 1601 continues to read as follows:

Authority: 5 U.S.C. 8351, 8438, 8474(b)(5) and (c)(1).

■ 2. Amend § 1601.32, by revising paragraph (b) to read as follows:

§ 1601.32 Timing and Posting Dates.

* * * * *

(b) *Limit.* There is no limit on the number of contribution allocation or interfund transfer requests that may be made by a participant. In order to mitigate excessive trading expenses, the Executive Director may write to any participant who engages in excessive trading and ask the participant to stop this practice. If the participant continues to engage in excessive trading, the participant may be required to request interfund transfers by mail.

[FR Doc. E7–25007 Filed 12–26–07; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

RIN 0575–AC59

Single Family Housing Loans, Payment Assistance

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: This Final Rule implements a change in the regulations for the Rural Housing Service (RHS) 502 Direct Single Family Housing Loans by amending the formula that calculates payment assistance for which a borrower qualifies. This action is being taken to improve the distribution of program benefits, simplify the application process and improve customer service. This Final Rule follows the publication of the Proposed Rule on February 17, 2006, and takes into consideration the public comments received in response to the Proposed Rule.

EFFECTIVE DATE: April 1, 2008.

FOR FURTHER INFORMATION CONTACT: Michael S. Feinberg, Chief, Loan Origination Branch, Rural Housing Service, USDA, Ag Box 0783, Room 2214, 1400 Independence Avenue, SW., Washington, DC 20250–0783, Telephone: 202–720–1474.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant by the Office of Management and Budget (OMB) under Executive Order 12866 and has been reviewed by OMB.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not impose any new requirements on Agency applicants and borrowers, and the regulatory changes affect only Agency determination of program benefits for individual loans.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHS that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410, Low Income Housing Loans.

Intergovernmental Consultation

For the reasons set forth in the final rule to 7 CFR part 3015, subpart V, and related notice (48 FR 29115) this program is excluded from the scope of Executive Order (E.O.) 12372, which requires intergovernmental consultation with State and local officials.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with the regulations of the Agency at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by OMB under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575–0172 in accordance with the Paperwork Reduction Act. This rule does not revise or impose any new information collection requirements.

E-Gov Statement

RHS is committed to compliance with the E-Government Act of 2002 (E-Gov), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Economic Impact Analysis

In 2004, USDA Rural Development engaged Bearing Point to study the methodology used to determine the amount of Payment Assistance provided on direct single family housing loans made pursuant to the Housing Act of 1949, as amended. Payment assistance is the subsidy on the interest rate charged to the borrower and reduces the amount of their principal and interest payment to as low as a 1 percent interest rate. The study was done in response to concerns expressed by the program's stakeholders that the use of Area Median Income (AMI) to establish individual borrower subsidy resulted in disparate treatment and was unnecessarily complicated. In addressing the concerns, the Agency wanted to assure that the program would continue to serve the same target market without additional cost to the program.

Payment assistance is the largest component of the subsidy cost for this program, estimated to be 9.37 percent for FY 2008.

Comments on the proposed rule expressed concern about the effect of the changes. As a result, further analysis was performed, again with the assistance of Bearing Point. The concerns focused on the treatment of leveraged loans and the potential adverse impact on the lower income customers within the target market.

The Bearing Point studies are available for public inspection during working hours at Room 2214, 1400 Independence Avenue, SW., Washington, DC 20250–0783. Telephone: 202–720–1474.

The proposed formula eliminated the consideration of AMI addressing the disparity between higher and lower income areas. As a result, borrowers with the same income will receive the same amount of payment assistance based on the same housing costs (Principal, Interest, Taxes, and Insurance) regardless of where they live. The proposed change also required that borrowers pay a minimum of 25% of their income towards repayment of the loan. The current formula bases minimum payment on a range from 22 to 26 percent depending on the borrower's income relative to AMI.

In the final rule, the Agency reduced the minimum payment to 24% of income and also allowed for consideration of a leveraged loan when the loan is based on an affordable housing product. An eligible leveraged loan is a loan with payments amortized over a period of not less than 30 years and an interest rate that does not exceed three percent.

Implementing this revised payment assistance formula directly addresses the concerns expressed in the comments that the proposed new formula will increase the cost burden on very-low income borrowers. While the PITI contribution of some very-low income borrowers will still rise (from 22% to 24%), the impact will not be as great as it would have been with a rise in borrower's PITI contribution from (22% to 25% of AAI) as was originally suggested in the Proposed Rule. Implementation of this payment assistance formula will also address the concerns raised in the comments that the proposed new formula adversely affects the leveraged loan program. This adjustment provides incentives for borrowers who receive affordable leverage loans.

The program will continue to assist very-low and low-income, rural residents to improve their living conditions and economic situation by building equity through homeownership. Based on the new study the payment assistance formula will not have an adverse economic impact on potential borrowers and will provide fair and equitable treatment to all borrowers. In addition, the study also concluded that the new formula will not increase the cost of the program and will continue to serve the same target population.

The methodology for determining payment assistance upon implementation of the Final Rule will have no significant economic impact and will result in a small decrease in the subsidy cost of the program to a level of 9.31% in FY 2008.

I. Background

The U.S. Department of Agriculture's (USDA's) Rural Development is revising the regulations for its Direct Single Family Housing Loans. This Program provides loans to low and very-low income households to purchase homes in rural areas. Rural Development provides rural homeownership credit to those who otherwise could not obtain it. These loans provide financing at reasonable rates and terms with no downpayments required. Since 1995, resultant mortgage payments and payment assistance amounts have been based on a percentage of the participating household's adjusted annual income (AAI). However, in recent years, Rural Development began to gather anecdotal information that suggested the formula implemented in 1995 may be resulting in disparate treatment for some borrowers, especially those located in more rural counties. Additionally, the Agency received complaints that the payment assistance calculation was too complex, relying upon multiple variables that change from year to year, making the formula difficult to explain to both borrowers and other parties involved in the loan origination and servicing processes. As a response, Rural Development contracted for a study of the payment assistance formula, and requested the development of alternative formulas. After extensive analysis, one alternative formula was chosen and proposed in the **Federal Register** on February 17, 2006. This formula differed from the current formula in that it removed the average median income (AMI) component from the payment assistance calculation, reduced the emphasis on the use of leveraged loan funding by applying a single payment assistance formula to all households (versus the current formula, which has different criteria for borrowers who do not use leveraged loans versus borrowers who do) and increased the minimum household's principal, interest, taxes, and insurance (PITI) contribution floor payment from 22% to 25%.

II. New Payment Assistance Formula Proposed in Federal Register on February 17, 2006

Below is the proposed new payment assistance formula for all borrowers:

Payment Assistance = Note Rate PITI − Borrower's PITI Contribution

Regardless of the use of leveraged loans, the borrower's PITI contribution is the higher of:

- 25 percent of borrower's adjusted annual income (''AAI'').
- Principal and Interest (''P&I'') calculated at 1 percent plus Taxes and Insurance (''T&I'').

III. Discussion of Public Comments Received on the February 17, 2006 Proposed Rule

The Agency received 51 comments in response to the Proposed Rule. These comments came predominantly from non-profit organizations, advocacy groups, and community development organizations. Several comments supported the new formula. 14 comments supported the removal of AMI from the current formula, 7

comments supported the increased simplification, and 2 comments supported the consideration of taxes and income. Rural Development also received comments that expressed concern regarding some unintended consequences of the new formula. The three largest concerns included: The impact on the leveraged loan program (36 comments); the impact on very-low income borrowers (21 comments); and the impact on the target market (7 comments). The Agency has examined these three concerns in detail and amended the proposed formula to minimize the unintended consequences arising from the implementation of a new payment assistance formula.

A. Concern #1—The Impact of the Proposed New Formula on the Leveraged Loan Program

Under the current program, state set-asides are established to fund Rural Development loans with leveraged funding based on certain partnership arrangements. This means that applications using leveraged loans do not have to compete with applications that do not use leveraged loans. Additionally, under the current regulations, borrowers who use leveraged loans are not subject to the floor rate portion of the payment assistance formula. Payment assistance for a borrower who uses a leveraged loan is determined using only the effective interest rate (EIR). This provision has, on average, increased the payment assistance for those borrowers who have leveraged loans, providing an incentive for borrowers to seek out leveraged funding. The payment assistance formula, as proposed, will no longer distinguish between the two types of borrowers. All borrowers, regardless of their use of leveraged loans, will be treated equally under the new formula. Many comments opposed this reduced emphasis on the use of leveraged loans.

Agency Response: While it is true that the proposed new formula will reduce the incentive to use leveraged loan funding, this does not necessarily translate into affecting target borrowers in a materially detrimental way. Consider:

1. The leveraged portion of the average borrower's principal is relatively insignificant. Out of 10,502 new borrowers in Fiscal Year 2003, 4,548 (43%) were under the leveraged loan program. However, leveraged loan dollars accounted for only 8.2% of the total loan level.

2. Borrowers who use leveraged loans have, on average, higher adjusted annual incomes than the average income of all borrowers in the Direct Single Family Housing Loan Program.

3. Pursuant to their first lien position and insulation from credit risk, private lenders accrue much of the subsidy benefit, rather than borrowers.

Adjustment made to reflect comment concerns: In light of the strong response against the reduced incentive for leveraged lending, the Agency has amended the proposed payment assistance formula to recognize payments made on leveraged loans that meet certain criteria as part of the borrower's minimum PITI contribution. In order to be recognized under the new formula, leveraged loans must have:

- An interest rate that is equal to or less than 3%, and
- A long-term amortization (not less than 30 years).

This adjustment sustains an incentive for leveraged loan participation, but limits that incentive to housing loans at interest rates reflective of affordable housing products (i.e., rates of 3% or less).

B. Concern #2—The Impact of the Proposed New Formula on the Very-Low Income Households

Another concern expressed in the comments was that the proposed new formula would have a potentially adverse affect on very-low income borrowers. Comments expressed concern that the amount of payment assistance received by very-low income borrowers would decrease as a result of the proposed new formula. Comments also expressed apprehension that the new formula would narrow the window of eligibility for very-low income borrowers by raising the borrower's PITI contribution against fixed underwriting standards. Currently, the maximum front-end ratio (a borrower's contribution toward total housing products as a percentage of AAI) is fixed at 29% for very-low income borrowers and 33% for low income borrowers, and the maximum back-end ratio (total debt as a percentage of AAI) for all borrowers is fixed at 41%. As very-low income borrowers have the tightest underwriting criteria, they have the potential of being the most affected by the new formula.

Agency Response: Rural Development acknowledges that, by definition, the new formula will decrease the amount of payment assistance some very-low income borrowers receive, as their expected borrower's contribution will rise from 22% of AAI to 25%. However, it is important to note that the new formula will alleviate inequitable distribution of Program benefits that has been occurring under the current formula, and therefore will be more beneficial as a whole to the market served by the Direct Single Family Housing Loan Program. Further, the elimination of the stair steps associated with the old formula will have a positive impact on the stability of the borrower's payments, improving their ability to stay current on their loans. The Agency is required by law to maintain that at least 40 percent of appropriated funds for the Program are used to assist families with an annual income of less than 50 percent of area median income to ensure this part of the market continues to receive maximum benefit.

Analysis revealed that using the proposed new formula, when compared to the current formula, only a negligible number of borrowers would be excluded from qualifying for participation in the Direct Single Family Housing Loan Program based on current underwriting criteria.

Adjustment made to reflect comment concerns: Rural Development has amended the proposed formula by lowering the borrower's minimum PITI contribution from 25% of AAI to 24% of AAI. While the PITI contribution of some very-low income borrowers will still rise (from 22% to 24% of AAI), the impact will not be as great as it would have been with a rise in borrower's PITI contribution from 22% to 25% of AAI, as was originally suggested in the Proposed Rule.

C. Concern #3—The Impact of the Proposed New Formula on the Target Market

One of the original objectives in choosing a new payment assistance formula was that the new formula serve the same target market of borrowers. Some comments received in response to the Proposed Rule expressed concern that the proposed new formula would not meet this objective. To address this issue, Rural Development examined three areas to assess whether the proposed new formula would serve the same target market:

- The level of payment assistance received.
- The number of borrowers served.
- The type of borrower served.

Agency Response: Rural Development found that the proposed new payment assistance formula would not significantly alter the average monthly payment assistance received by participating borrowers. It also concluded that the proposed new formula would not increase the number of borrowers who were excluded from participating in the Program as a result of underwriting criteria. However, the

new payment assistance formula would exclude some borrowers because under the new formula, the PITI contributions of these affected borrowers would exceed the monthly payments they would pay at the note rate. In other words, the new formula would increase their expected PITI contributions to a level where they would no longer receive payment assistance from the Agency. It is important to note, however, that these affected borrowers have, on average, relatively higher incomes than the overall average income of all borrowers, and are predominately borrowers who use leveraged loans.

Adjustments made to reflect comment concerns: The two adjustments described above seek to minimize the number of borrowers impacted by this phenomenon—first, by lowering the borrower's PITI contribution, and second, by recognizing payments made toward leveraged loans in the determination of the level of payment assistance a borrower will receive.

IV. Final Payment Assistance Formula

Below is the final payment assistance formula to be implemented in the Direct Single Family Housing Loan Program for all borrowers:

Payment Assistance = Note Rate PITI − Borrower's PITI Contribution

Regardless of the use of leveraged loans, the borrower's PITI contribution is the higher of:

- 24 percent of borrower's adjusted annual income (''AAI'') for the total PITI.
- Principal and Interest (''P&I'') calculated at 1 percent on the Rural Development loan plus Taxes and Insurance (''T&I'').

Rural Development is allowing the recognition of payments made on leveraged loans that meet certain criteria to be included in the calculation of the borrower's minimum PITI contribution of 24% of AAI. These criteria include:

- An interest rate that is equal to or less than 3%; and
- A long-term amortization (not less than 30 years).

This final payment assistance formula preserves some incentive for participating borrowers to retain leveraged loans and reduces the impact the new formula will have on very-low income households. Additionally, it also maintains the objectives of increasing the equitability of program benefits and simplifying the application process, while still serving the same target market.

A borrower who is currently on payment assistance or interest credit will remain on the current formula as long as they continue to qualify. A borrower who never received payment assistance or interest credit or one who stopped receiving said assistance and later qualifies for payment subsidy will receive Payment Assistance 2.

Due to credit reform considerations, a borrower may not voluntarily switch from one method to another.

It should be noted that recapture of payment assistance is not changed by this rule.

List of Subjects in 7 CFR Part 3550

Accounting, Housing, Loan programs—Housing and community development, low and moderate income housing, Manufactured homes, Reporting and recordkeeping requirements, Rural areas, Subsidies.

■ Therefore, Chapter XXXV, title 7, Code of Federal Regulations is amended to read as follows:

PART 3550—DIRECT SINGLE FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3550 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart B—Section 502 Origination

■ 2. Section 3550.10 is amended by revising the definitions for ''leveraged loan'' and ''payment assistance'' to read as follows:

§ 3550.10 Definitions.

* * * * *

Leveraged loan. An affordable housing product loan or grant to an Agency borrower property, closed simultaneously with an RHS loan. Affordable leveraged loans are characterized by long term (not less than 30 years), amortized payments with a note interest rate equal to or less than 3 percent .

* * * * *

Payment assistance. A payment subsidy available to eligible section 502 borrowers that reduces the effective interest rate of a loan (see § 3550.68(c)). Borrowers eligible for a payment subsidy receive payment assistance unless they are currently eligible for and receive interest credit. There are two methods of payment assistance. Payment assistance method 1 is found at 3550.68(c)(2). Payment assistance method 2 is found at 3550.68(c)(1).

* * * * *

■ 3. Section 3550.68 is revised to read as follows:

§ 3550.68 Payment subsidies.

RHS administers three types of payment subsidies: interest credit, payment assistance method 1, and payment assistance method 2. Payment subsidies are subject to recapture when the borrower transfers title or ceases to occupy the property.

(a) *Eligibility for payment subsidy.* (1) Applicants or borrowers who receive loans on program terms are eligible to receive payment subsidy if they personally occupy the property and have adjusted income at or below the applicable moderate-income limit.

(2) Payment subsidy may be granted for initial loans or subsequent loans made in conjunction with an assumption only if the term of the loan is 25 years or more.

(3) Payment subsidy may be granted for subsequent loans not made in conjunction with an assumption if the initial loan was for a term of 25 years or more.

(b) *Determining type of payment subsidy.* (1) A borrower currently receiving interest credit will continue to receive it for the initial loan and for any subsequent loan for as long as the borrower is eligible for and remains on interest credit.

(2) A borrower currently receiving payment assistance using payment assistance method 1 will continue to receive it for the initial loan and for any subsequent loan for as long as the borrower is eligible for and remains on payment assistance method 1.

(3) A borrower who has never received payment subsidy, or who has stopped receiving interest credit or payment assistance method 1, and at a later date again qualifies for a payment subsidy, will receive payment assistance method 2.

(4) A borrower may not opt to change payment assistance methods.

(c) *Calculation of payment assistance.* Regardless of the method used, payment assistance may not exceed the amount necessary if the loan were amortized at an interest rate of one percent.

(1) *Payment Assistance Method 2.* The amount of payment assistance granted is the lesser of the difference between:

(i) The annualized promissory note installments for the combined RHS loan and eligible leveraged loans plus the cost of taxes and insurance less twenty-four percent of the borrower's adjusted income, or

(ii) The annualized promissory note installment for the RHS loan less amount the borrower would pay if the loan were amortized at an interest rate of one percent.

(2) *Payment Assistance Method 1.* The amount of payment assistance granted is the difference between the annualized note rate installment as prescribed on the promissory note and the lesser of:

(i) The floor payment, which is defined as a minimum percentage of adjusted income that the borrower must pay for PITI: 22 percent for very low-income borrowers, 24 percent for low-income borrowers with adjusted income below 65 percent of area adjusted median, and 26 percent for low-income borrowers with adjusted incomes between 65 and 80 percent of area adjusted median; or

(ii) The annualized note rate installment and the payment at the equivalent interest rate, which is determined by a comparison of the borrower's adjusted income to the adjusted median income for the area in which the security property is located. The following chart is used to determine the equivalent interest rate.

When the applicant's adjusted income is:

PERCENTAGE OF MEDIAN INCOME AND THE EQUIVALENT INTEREST RATE

Equal to or more than:	BUT less than:	THEN the equivalent interest rate is*
00%	50.01 of adjusted median income.	1%
50.01%	55 of adjusted median income.	2%
55%	60 of adjusted median income.	3%
60%	65 of adjusted median income.	4%
65%	70 of adjusted median income.	5%
70%	75 of adjusted median income.	6%
75%	80.01 of adjusted median income.	6.5%
80.01%	90 of adjusted median income.	7.5%
90%	100 of adjusted median income.	8.5%
100%	110% of adjusted median income.	9%
110%	Or more than adjusted median income.	9.5%

*Or note rate, whichever is less; in no case will the equivalent interest rate be less than one percent.

(d) *Calculation of interest credit.* The amount of interest credit granted is the difference between the note rate installment as prescribed on the promissory note and the greater of:

(1) Twenty percent of the borrower's adjusted income less the cost of real estate taxes and insurance, or

(2) The amount the borrower would pay if the loan were amortized at an interest rate of 1 percent.

(e) *Annual review.* The borrower's income will be reviewed annually to determine whether the borrower is eligible for continued payment subsidy. The borrower must notify RHS whenever an adult member of the household changes or obtains employment, there is a change in household composition, or if income increases by at least 10 percent so that RHS can determine whether a review of the borrower's circumstances is required.

Dated: December 13, 2007.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. E7–25107 Filed 12–26–07; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20856; Directorate Identifier 2004–NE–25–AD; Amendment 39–15315; AD 2007–26–13]

RIN 2120–AA64

Airworthiness Directives; MT-Propeller Entwicklung GmbH Propellers

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers manufactured before 1995, which had not been overhauled since April 1994. That AD currently requires overhauling the propeller blades and performing initial and repetitive visual inspections of affected propeller blades. That AD also requires removing all propeller blades from service with damaged erosion sheath bonding or loose erosion sheaths and installing any missing or damaged polyurethane protective strips. This AD requires the same actions. This AD results from the need to clarify the population of affected propellers previously listed in AD 2006–05–05. We are issuing this AD to prevent erosion sheath separation leading to damage of the airplane.

DATES: This AD becomes effective January 31, 2008.

ADDRESSES: You can get the service information identified in this AD from MT-Propeller USA, Inc., 1180 Airport Terminal Drive, Deland, FL 32724; telephone (386) 736–7762, fax (386) 736–7696, or visit *http://www.mt-propeller.com.*

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail *terry.fahr@faa.gov;* telephone (781) 238–7155, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to certain MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers manufactured before 1995, which had not been overhauled since April 1994. We published the proposed AD in the **Federal Register** on December 13, 2006 (71 FR 74878). That action proposed to require:

- Overhauling the propeller blades and performing initial and repetitive visual inspections of affected propeller blades.
- Removing all propeller blades from service with damaged erosion sheath bonding or loose erosion sheaths and installing any missing or damaged polyurethane protective strips.

The proposed AD resulted from the need to clarify the population of affected propellers previously listed in AD 2006–05–05. Since AD 2006–05–05 was issued, MT-Propeller Entwicklung GmbH Propellers and EASA have clarified the population of affected propellers. AD 2006–05–05 described the affected propellers as variable pitch and fixed pitch propellers with serial numbers (SNs) below 95000.

Because propellers with SNs starting with 00, 01, 02, 03, 04, 05, and 06, were manufactured in the years 2000, 2001, 2002, 2003, 2004, 2005, and 2006 respectively, some operators are confused as to whether their propeller SN is part of the affected population. For example, propeller SN 00246, manufactured in 2000, would appear to be part of the affected population because the number is below 95000. For clarification, we are identifying the affected population as variable pitch and fixed pitch propellers manufactured before 1995 which had not been overhauled since April 1994.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Comments

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

Request To Include Only Propeller Models That Have U.S. Type Certificates

One commenter, the Modification and Replacement Parts Association, requests that we include only those propeller models that have FAA type certificates, and that only those type certificates dated before 1996 be included in the applicability, or that some alternate applicability scheme be employed that is clear and unambiguous. The commenter is assuming that the AD action should be applicable only to propellers that have an FAA type certificate.

We agree and changed the applicability to include only those propeller models that have FAA type certificates, and only those type certificates dated before 1996.

Conclusion

We have carefully reviewed the available data, including the comment 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

We estimate that 103 of these MT-Propeller Entwicklung GmbH variable pitch and fixed pitch propellers installed on aircraft of U.S. registry will be affected by this AD. We also estimate that it will take about 2 work-hours to inspect and install the polyurethane protective strip of each affected propeller, and about 4 work-hours to remove a propeller requiring overhaul. The average labor rate is $80 per work-hour. Required parts to inspect and install the polyurethane protective strip of each affected propeller will cost about $20. Based on these figures, we estimate the total cost of the AD to U.S. operators to inspect and install protective strips, to be $18,540.

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, 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 removing Amendment 39–14502 (71 FR 11151, March 6, 2006), and by adding a new airworthiness directive, Amendment 39–15315, to read as follows:

2007–26–13 MT-Propeller Entwicklung GmbH: Amendment 39–15315. Docket No. FAA–2005–20856; Directorate Identifier 2004–NE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 31, 2008.

Affected ADs

(b) This AD supersedes AD 2006–05–05, Amendment 39–14502.

Applicability

(c) This AD applies to MT-Propeller Entwicklung GmbH, models MT, MTV–1, MTV–3, MTV–5, MTV–6, MTV–7, MTV–9, MTV–11, MTV–12, MTV–14, MTV–15, MTV–18, and MTV–21 propellers manufactured before 1995, which have not been overhauled since April 1994. These propellers may be installed on, but not limited to, Apex ATL, Apex DR400, EADS Socata Rallye, Extra EA–300, Piper PA–46, Rene Fournier RF4, Sukhoi SU–26, SU–29, and SU–31; Yakovlev YAK–52, YAK–54, and YAK–55; and Technoavia SM–92 airplanes.

Unsafe Condition

(d) This AD results from the need to clarify the population of affected propellers previously listed in AD 2006–05–05. We are issuing this AD to prevent erosion sheath separation leading to damage 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.

Overhaul of Propeller Blades

(f) Overhaul all installed propeller blades of propellers listed in the applicability, within 30 days after the effective date of this AD, unless previously done per AD 2006–05–05.

Initial Visual Inspection of the Propeller Blade

(g) Information about inspection procedures and acceptable limits can be found in Table 1 of this AD.

TABLE 1.—SERVICE INFORMATION

For propeller model . . .	See operation and installation manual . . .
MT	No. E–112, issued Nov. 1993 or later.
MTV–1, MTV–7, MTV–18	No. E–118, issued March 1994 or later.
MTV–5, MTV–6, MTV–9, MTV–11, MTV–12, MTV–14, MTV–15, MTV–21.	No. E–124, issued March 1994 or later.
MTV–3	No. E–148, issued March 1994 or later.

(h) During the next preflight inspection or 100-hour inspection, whichever occurs first, after the effective date of this AD, inspect all MT and MTV propellers by doing the following:

(1) Determine if the erosion sheath of any propeller blade is cracked or loose; and

(2) Determine if any propeller blade has other damage out of acceptable limits.

(3) Before the next flight, remove from service those propeller blades with a cracked or loose erosion sheath, or other damage affecting airworthiness.

Initial Visual Inspection of the Propeller Blade Polyurethane Strip

(i) During the next pilot's preflight inspection after the effective date of this AD, if the polyurethane protective strip on the leading edge of the inner portion of the blade is found to be damaged or missing, the polyurethane protective strip must be replaced or installed within 10-flight hours. If electrical de-icing boots are installed, no polyurethane protective strips are required.

Repetitive Visual Inspection of the Propeller Blade

(j) If after the effective date of this AD, any propeller blade erosion sheath found to be cracked or loose during the pilot's preflight inspection, or 100-hour inspection, or annual inspection, must be repaired, replaced, or overhauled before the next flight.

Repetitive Visual Inspection of the Propeller Blade Polyurethane Strip

(k) If after the effective date of this AD, any propeller blade polyurethane protective strip found to be damaged or missing during the pilot's preflight inspection, or 100-hour inspection, or annual inspection, must be replaced or installed within 10-flight hours. If electrical de-icing boots are installed, polyurethane protective strips are not required.

Alternative Methods of Compliance

(l) The Manager, Boston Aircraft 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.

Special Flight Permits

(m) Special flight permits are not authorized.

Related Information

(n) MT-Propeller Entwicklung GmbH, Service Bulletin No. 8B, dated March 8, 2006, pertains to the subject of this AD. European Aviation Safety Agency AD No. 2006–0345, dated November 14, 2006, also addresses the subject of this AD.

(o) Contact Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail *terry.fahr@faa.gov;* telephone (781) 238–7155, fax (781) 238–7170, for more information about this AD.

Issued in Burlington, Massachusetts, on December 19, 2007.

Peter A. White,

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

[FR Doc. E7–25035 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–0115 Directorate Identifier 2007–CE–080–AD; Amendment 39–15310; AD 2007–26–08]

RIN 2120–AA64

Airworthiness Directives; REIMS AVIATION S.A. Model F406 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

On several occasions, leaks of the landing gear emergency blowdown bottle have been reported. Investigations revealed that the leakage was located on the nut manometer because of a design deficiency in the bottle head.

If left uncorrected, the internal bottle pressure could not be maintained to an adequate level and could result in a malfunction, failing to extend landing gears during emergency situations.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 31, 2008.

On January 31, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 31, 2007 (72 FR 61578). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

On several occasions, leaks of the landing gear emergency blowdown bottle have been reported. Investigations revealed that the leakage was located on the nut manometer because of a design deficiency in the bottle head.

If left uncorrected, the internal bottle pressure could not be maintained to an adequate level and could result in a malfunction, failing to extend landing gears during emergency situations.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 7 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $11,330 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $79,870 or $11,410 per product.

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 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 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 FAA amends § 39.13 by adding the following new AD:

2007–26–08 REIMS AVIATION S.A.: Amendment 39–15310; Docket No. FAA–2007–0115; Directorate Identifier 2007–CE–080–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 31, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to F406 airplanes, all serial numbers, that are:

(1) equipped with landing gear emergency blowdown bottle part number (P/N) 9910154–4; and

(2) certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

On several occasions, leaks of the landing gear emergency blowdown bottle have been reported. Investigations revealed that the leakage was located on the nut manometer because of a design deficiency in the bottle head.

If left uncorrected, the internal bottle pressure could not be maintained to an adequate level and could result in a malfunction, failing to extend landing gears during emergency situations.

The MCAI requires you to replace the old landing gear emergency blowdown bottle with a newly designed landing gear emergency blowdown bottle.

Actions and Compliance

(f) Unless already done, within the next 12 calendar months after January 31, 2008 (the effective date of this AD) remove the emergency blowdown bottle P/N 9910154–4 and install the new emergency blowdown bottle P/N 4063700–1 using the accomplishment instructions of the REIMS AVIATION Industries Service Bulletin No.: F406–66, dated May 7, 2007.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2007–0190, dated July 12, 2007; and REIMS AVIATION INDUSTRIES Service Bulletin No.: F406–66, dated May 7, 2007, for related information.

Material Incorporated by Reference

(i) You must use REIMS AVIATION INDUSTRIES Service Bulletin No.: F406–66, dated May 7, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact REIMS AVIATION INDUSTRIES, Aérodrome de Reims Prunay, 51360 Prunay, France, A l'attention du Support Client; telephone: +33 (0)3.26.48.46.53; fax: +33 (0)3.26.49.18.57.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or 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.*

Issued in Kansas City, Missouri, on December 13, 2007.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–24638 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Docket No. SSA–2007–0009]

RIN 0960–AG36

Private Printing of Prescribed Applications, Forms, and Other Publications

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are issuing these final rules to adopt without change the Notice of Proposed Rulemaking published on August 16, 2007 at 72 FR 45991. These final rules amend the regulation at 20 CFR 422.527, which requires a person, institution, or organization (person) to obtain the Social Security Administration's (SSA's) approval prior to reproducing, duplicating, or privately printing any SSA prescribed application or other form whether or not the person intended to charge a fee. Section 1140(a)(2)(A) of the Social Security Act (the Act) prohibits a person from charging a fee to reproduce, reprint, or distribute any SSA application, form, or publication unless he/she obtains the authorization of the Commissioner of Social Security in accordance with such regulations as he may prescribe. (42 U.S.C. 1320b–10(a)(2)(A)).

EFFECTIVE DATE: January 28, 2008.

FOR FURTHER INFORMATION CONTACT: You may contact Renee Williams, Forms Management Team, Office of Publications and Logistics Management, 6401 Security Boulevard, P.O. Box 7703, Baltimore, Maryland 21235–7703, (410) 965–4163, for information about this regulation. For information on eligibility or claiming benefits, please call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, SSA Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Background

The current regulation at 20 CFR 422.527 requires any person who wishes to reproduce, duplicate, or privately print any application or other form prescribed by SSA to obtain prior approval of such use from SSA. Consistent with the requirements of 20 CFR 422.527, in 1992, SSA began approving requests from the public to duplicate or privately print the Administration's applications or other forms. The requirement to obtain SSA approval applied whether or not the person intended to charge a fee.

Section 312(a) of the Social Security Independence and Program Improvement Act (SSIPA) amended the Social Security Act (the Act) and, among other things, added section 1140(a)(2)(A) to the Act. Pub. L. 103–296, Sec. 312(a) (codified as 42 U.S.C. 1320b-10(a)(2)(A)). This section prohibits any person from charging a fee to reproduce, reprint, or distribute SSA's official applications, forms, or publications unless the Commissioner grants the person specific written authorization in accordance with regulations which the Commissioner shall prescribe. These final rules will implement section 312(a) of the SSIPA by adding SSA publications to § 422.527 and by providing for SSA's prior approval of requests to reproduce, reprint, and/or distribute its applications, forms, or publications when the person intends to charge a fee. Furthermore, this final rule will implement section 312(a) by establishing the procedure any person who intends to charge a fee for reproducing, reprinting, or distributing SSA materials must follow to obtain SSA's prior approval. The requirement to obtain SSA's prior approval will apply regardless of the means the person uses to transmit the document, *e.g.*, Internet or direct mail. These final rules will help to ensure that consumers obtain accurate and current materials and information regarding the Administration's programs. Nothing in this rule alters or affects the requirement to submit the forms and applications prescribed by SSA or otherwise permits any modifications of SSA's prescribed forms and applications.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as amended.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

In these final rules at 20 CFR 422.527, we are implementing the following provisions: (1) SSA's publications will be added to the list of items which require the Administration's pre-authorization to reprint privately; (2) SSA's authorization to reprint applications, forms, or publications will only be required if the person or company intends to charge a fee to for the reprinted item(s); and (3) the procedures a person who intends to charge a fee must follow to obtain SSA's authorization.

These final rules contain information collection requirements that need Office of Management and Budget clearance under the Paperwork Reduction Act of 1995 (PRA). As required by the PRA, SSA has submitted a clearance request for the regulation section and for form SSA–1010 (''Request to Reproduce, Duplicate, or Distribute SSA Forms, Applications, or Publications''). SSA will use Form SSA–1010 to collect the required information described in these final rules. SSA will publish the OMB number and expiration date upon approval.

As required by the PRA, SSA published a Notice of Proposed

Rulemaking on August 16, 2007, at 72 FR 45991. In this Notice, SSA solicited comments under the PRA on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. We did not receive any comments from the public.

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social Security, Reporting and recordkeeping requirements.

Dated: December 13, 2007.

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, we are amending part 422 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart F—[Amended]

■ 1. The authority citation for subpart F of part 422 is revised to read as follows:

Authority: Sec. 1140(a)(2)(A) of the Social Security Act. 42 U.S.C. 1320b–10(a)(2)(A) (Pub. L. 103–296, Sec. 312(a)).

■ 2. Section 422.527 is revised to read as follows:

§ 422.527 Private printing and modification of prescribed applications, forms, and other publications.

Any person, institution, or organization wishing to reproduce, reprint, or distribute any application, form, or publication prescribed by the Administration must obtain prior approval if he or she intends to charge a fee. Requests for approval must be in writing and include the reason or need for the reproduction, reprinting, or distribution; the intended users of the application, form, or publication; the fee to be charged; any proposed modification; the proposed format; the type of machinery (*e.g.*, printer, burster, mail handling), if any, for which the application, form, or publication is being designed; estimated printing quantity; estimated printing cost per thousand; estimated annual usage; and any other pertinent information required by the Administration. Forward all requests for prior approval to: Office of Publications Management, 6401 Security Boulevard, Baltimore, MD 21235–6401.

[FR Doc. E7–24915 Filed 12–26–07; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9372]

RIN 1545–BE08

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation relating to the list of items of return information disclosed to the Bureau of the Census (Bureau). The regulation adds two items of return information for use in producing demographic statistics programs, including the Bureau's Small Area Income and Poverty Estimates (SAIPE). The final regulation also removes four items that the Bureau has indicated are no longer necessary. This regulation facilitates the assistance of the IRS to the Bureau in its statistics programs and requires no action by taxpayers and has no effect on their tax liabilities.

DATES: *Effective Date:* This regulation is effective on December 27, 2007.

Applicability Date: For dates of applicability, see § 301.6103(j)(1)–1.

FOR FURTHER INFORMATION CONTACT: Glenn Melcher, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Treasury Secretary is to furnish to the Bureau of the Census (Bureau) return information as may be prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations further defines such purposes by reference to 13 U.S.C. chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes.

This document adopts a final regulation that authorizes the IRS to disclose the additional items of return information that have been requested by the Secretary of Commerce in developing and preparing demographic statistics, including statutorily mandated Small Area Income and Poverty Estimates (SAIPE). The final regulation also removes certain items of return information that are authorized to be disclosed in the existing regulation but that the Secretary of Commerce has indicated are no longer needed.

The final regulation in this issue of the **Federal Register** amends the Procedure and Administration Regulations (26 CFR part 301) relating to Internal Revenue Code (Code) section 6103(j)(1). The final regulation contains rules relating to the disclosure of return information reflected on returns to officers and employees of the Department of Commerce for structuring censuses and conducting related statistical activities authorized by law.

A notice of proposed rulemaking (REG–147195–04, 2005–1 CB 888 [70 FR 12166–01]) was published in the **Federal Register** on March 11, 2005. No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulation is adopted by this Treasury decision.

Explanation of Provisions

As duly requested by the Secretary of Commerce and set forth in the proposed regulation, this final regulation permits disclosure to the Bureau of earned income and the number of Earned Income Credit-eligible qualifying children.

The regulation also removes four items of return information that the Bureau indicated it no longer requires. These items are: (1) End-of-year code; (2) months actively operated; (3) total number of documents and the total amount reported on the Form 1096 (Annual Summary and Transmittal of U.S. Information Returns) transmitting Forms 1099–MISC (Miscellaneous Income); and (4) Form 941 (Employer's Quarterly Federal Tax Return) indicator and business address on Schedule C (Profit or Loss From Business) of Form 1040. Accordingly, the regulation has removed these items of return information from those that may be disclosed to the Bureau.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the

regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of this regulation is Glenn Melcher, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6103(j)(1)–1 is amended by:

■ 1. Revising paragraphs (b)(1) introductory text and (b)(3) introductory text, (b)(3)(xvii), (b)(3)(xviii), (b)(3)(xix), (b)(3)(xx), (b)(3)(xxi), (b)(3)(xxii), (b)(3)(xxiii), (b)(3)(xxiv), and (e).

■ 2. Adding paragraphs (b)(1)(xvi) and (b)(1)(xvii).

■ 3. Removing and reserving paragraph (b)(3)(xxv).

The revisions and additions read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) *Disclosure of return information reflected on returns to officers and employees of the Bureau of the Census.* (1) Officers or employees of the Internal Revenue Service will disclose the following return information reflected on returns of individual taxpayers to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, intercensal estimates of population and income for all geographic areas included in the population estimates program and demographic statistics programs, censuses, and related program evaluation:

* * * * *

(xvi) Earned Income (as defined in section 32(c)(2)).

(xvii) Number of Earned Income Tax Credit-eligible qualifying children.

* * * * *

(b)(3) Officers or employees of the Internal Revenue Service will disclose the following business-related return information reflected on returns of taxpayers to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of title 13, United States Code, demographic and economic statistics programs, censuses, and surveys. (The ''returns of taxpayers'' include, but are not limited to: Form 941; Form 990 series; Form 1040 series and Schedules C and SE; Form 1065 and all attending schedules and Form 8825; Form 1120 series and all attending schedules and Form 8825; Form 851; Form 1096; and other business returns, schedules and forms that the Internal Revenue Service may issue.):

* * * * *

(xvii) Principal industrial activity code, including the business description.

(xviii) Consolidated return indicator.

(xix) Wages, tips, and other compensation.

(xx) Social Security wages.

(xxi) Deferred wages.

(xxii) Social Security tip income.

(xxiii) Total Social Security taxable earnings.

(xxiv) Gross distributions from employer-sponsored and individual retirement plans from Form 1099–R.

(xxv) [Reserved].

* * * * *

(e) *Effective/applicability date.* This section is applicable to disclosures to the Bureau of the Census on or after December 27, 2007.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: December 18, 2007.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E7–25014 Filed 12–26–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2007–0168]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), at Scotts Hill, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved an additional temporary deviation from the regulations governing the operation of the Figure Eight Swing Bridge, at AIWW mile 278.1, at Scotts Hill, NC. From February 1, 2008 at 6 p.m., until February 29, 2008 at 5:30 p.m., this added deviation allows the drawbridge to remain closed-to-navigation each day from 6 p.m. to 9:30 a.m., from 10 a.m. to 1:30 p.m., and from 2 p.m. to 5:30 p.m., to complete sandblasting and painting operations. In addition, commercial vessel openings will be provided at night if at least three hours notice is given by calling (910) 686–0635 or via marine radio on Channel 13.

DATES: This deviation is effective from 6 p.m. on February 1, 2008 to 5:30 p.m. on February 29, 2008.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629.

SUPPLEMENTARY INFORMATION: The Figure Eight Swing Bridge has a vertical clearance in the closed position to vessels of 20 feet, above mean high water (MHW). Also, the vertical clearance in this location is limited to 85 feet, above MHW, by the overhead power line.

On October 2, 2007, we published a notice of temporary deviation from regulations entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), at

Scotts Hill, NC'' in the **Federal Register** (72 FR 56013).

Contractors, on behalf of the Figure Eight Homeowners Association (the bridge owner), have requested an extension of the abovementioned temporary deviation with new dates and times to complete sandblasting, cleaning and painting of the bridge superstructure.

To finish this operation, the Figure Eight Swing Bridge will be further maintained in the closed-to-navigation position each day from February 1, 2008, until February 29, 2008, from 6 p.m. to 9:30 a.m., from 10 a.m. to 1:30 p.m., and from 2 p.m. to 5:30 p.m. In addition, commercial vessel openings will be provided at night if at least three hours notice is given by calling (910) 686–0635 or via marine radio on Channel 13. At all other times, the drawbridge will operate in accordance with 33 CFR 117.821(a)(3).

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

We have analyzed this temporary deviation under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The environmental impact that this temporary deviation will have is minimal because of the drawbridge being closed to vessels to perform routine repair and maintenance will not result in a change in functional use, or an impact on a historically significant element or setting.

Dated: December 14, 2007.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch, Fifth Coast Guard District.

[FR Doc. E7–24977 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–133]

RIN 1625–AB17

Regulated Navigation Area; Buzzards Bay, Massachusetts; Navigable Waterways Within the First Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is making a technical correction to a Final Rule published in the **Federal Register** on December 13, 2007. (72 FR 70780.) The Final Rule titled ''Regulated Navigation Area; Buzzards Bay, Massachusetts; Navigable Waterways within the First Coast Guard District'' contained an inaccurate amendatory instruction to revise an imprecise and potentially confusing cross references regarding the applicability of certain regulations implemented by the rule. The revised amendatory instruction provided in this correction is intended to implement the revision to Part 165 found in 72 FR 70780.

DATES: This correction is effective as of December 27, 2007.

ADDRESSES: Comments and material received from the public concerning this correction will be made part of the docket for the underlying rule and will be available for inspection and copying at the offices of Commander, Coast Guard Sector Southeastern New England, East Providence Office, 20 Risho Avenue, East Providence, RI 02914, between 8 a.m. and 3 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England, East Providence, RI, 401–435–2351.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2008, the Coast Guard published a Final Rule titled ''Regulated Navigation Area; Buzzards Bay, Massachusetts; Navigable Waterways within the First Coast Guard District'' to correct an existing Regulated Navigation Area (RNA) within the waters of the First Coast Guard District. (72 FR 70780). Specifically, the Final Rule corrected erroneous references to ''Subpart B of this chapter'' and ''Subpart B of this part'' in Part 161 and Part 165, respectively. The references should have instead referred to ''Subpart B of Part 161'' in the revisions of both Part 161 and Part 165. The correction to Part 161 has been made. However, the reference in Part 165 was not made due to an inaccurate amendatory instruction. The substantive requirements of the rule are not altered by this technical correction.

Need for Correction

The Final Rule published on December 13, 2007 amended Parts 161 and 165 of Title 33 of the Code of Regulations. (72 FR 70780.) As explained in the preamble, the Final Rule revised a previously published erroneous reference to ''Subpart B of this chapter'' and ''Subpart B of this part'' in Part 161 and Part 165, respectively, instead of referring to ''Subpart B of Part 161'' in the revisions of both Part 161 and Part 165. The amendatory instruction for the Part 165 correction erroneously directed the deletion of 33 CFR 165.100(d)(5)(iv)(A)–(B) instead of only correcting the introductory text of 33 CFR 165.100(d)(5)(iv). This Final Rule corrects amendatory instruction 4 to revise the introductory text of 33 CFR 165.100(d)(5)(iv) without deleting subparagraphs (A) and (B), which was the intent of the December 13, 2007 Final Rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—WATERWAYS SAFETY; REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

In the December 13, 2007 **Federal Register**, page 70780, amendatory instruction 4 is corrected to read as follows:

''4. In § 165.100, revise (d)(5)(iv) introductory text to read as follows:''

Dated: December 17, 2007.

Steve Venckus,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. E7–24978 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2007–0384; FRL–8510–9]

RIN 2060–AO28

Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to extend the global laboratory and analytical use exemption for the production and import of class I ozone-depleting substances through December 31, 2011, consistent with the recent actions by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The exemption allows persons in the United States to produce and import controlled substances for laboratory and analytical uses that have not been already identified by EPA as nonessential. The final rule also extends the applicability of the global laboratory and analytical use exemption to the production and import of methyl bromide for specific laboratory uses. Finally, this action eliminates the testing of organic matter in coal from the global laboratory and analytical use exemption.

DATES: This final rule is effective on December 27, 2007.

ADDRESSES: EPA has established a docket for this action identified under Docket ID No. EPA–HQ–OAR–2007–0384. All documents in the docket are listed on the *http://www.regulations.gov* site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available only through *www.regulations.gov* or in hard copy. To obtain copies of materials in hard copy, please call the EPA Docket Center at (202) 564–1744 between the hours of 8:30 a.m.–4:30 p.m. E.S.T., Monday–Friday, excluding legal holidays, to schedule an appointment. The EPA Docket Center's Public Reading Room address is EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Staci Gatica by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; by courier service or overnight express: 1301 L Street, NW., Washington DC 20005, Workstation 1047B, by telephone: 202–343–9469; or by e-mail: *gatica.staci@epa.gov.* You may also visit the EPA's Ozone Depletion Web site at *www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION: Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d) of the Clean Air Act, which states: ''The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies.'' CAA section 307(d)(1). Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on January 1, 2008. APA section 553(d) authorizes an earlier effective date ''as otherwise provided by the agency upon good cause found and published with the rule.'' Because, absent today's action, the exemption from the phaseout of Class I substances used for laboratory and analytical uses will expire as of the end of 2007, it is important to assure that today's action will take effect at the beginning of 2008.

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I. Background on the Montreal Protocol and the Global Laboratory and Analytical Use Exemption

The Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) is the international agreement to reduce and eventually eliminate the production and consumption [1] of all ozone-depleting substances (ODSs). The elimination of production and consumption of ODSs has been accomplished through adherence to phaseout schedules for specific ODSs. Section 604 of the Clean Air Act, as amended in 1990 and 1998, requires EPA to promulgate regulations implementing the Montreal Protocol's phaseout schedules in the United States. Those regulations are codified at 40 CFR Part 82, Subpart A. As of January 1, 1996, production and import of most class I ODSs—including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform [2]—were phased out in developed countries, including the United States.

However, the Montreal Protocol provides exemptions that allow for the continued import and/or production of ODSs for specific uses. Under the Montreal Protocol, for most class I ODSs, the Parties may collectively grant exemptions to the ban on production and import of ODSs for uses that they determine to be ''essential.'' For example, with respect to CFCs, Article 2A(4) provides that the phaseout will apply ''save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.'' Similar language appears in the control provisions for halons (Art. 2B), carbon tetrachloride (Art. 2D), methyl chloroform (Art. 2E), hydrobromofluorocarbons (Art. 2G), and chlorobromomethane (Art. 2I). As defined by Decision IV/25 of the Parties,

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act).

[2] Class I ozone depleting substances are listed at 40 CFR Part 82, Subpart A, Appendix A.

use of a controlled substance is essential only if (1) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects), and (2) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.

Decision X/19 (taken in 1998) allowed a general exemption for essential laboratory and analytical uses through December 31, 2005. EPA codified this exemption at 40 CFR part 82, Subpart A. While the Clean Air Act does not specifically provide for this exemption, EPA determined that an exemption for essential laboratory and analytical uses was allowable under the Act as a *de minimis* exemption. EPA addressed the *de minimis* exemption in the final rule of March 13, 2001 (66 FR 14760–14770).

Decision X/19 also requested the Montreal Protocol's Technology and Economic Assessment Panel (TEAP), a group of technical experts from various Parties, to report annually to the Parties to the Montreal Protocol on procedures that could be performed without the use of controlled substances. It further stated that at future Meetings of the Parties (MOPs), the Parties would decide whether such procedures should no longer be eligible for exemptions. Based on the TEAP's recommendation, the Parties to the Montreal Protocol decided in 1999 (Decision XI/15) that the general exemption no longer applied to the following uses: testing of oil and grease and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

At the 18th MOP the Parties acknowledged the need for methyl bromide for laboratory and analytical procedures, and added methyl bromide to the approved ODSs under the essential laboratory and analytical use exemption. Decision XVIII/15 outlines specific uses and exclusions for methyl bromide under the exemption. Section II. B of this preamble provides further discussion of the inclusion of methyl bromide in the essential laboratory and analytical use exemption.

Most recently in September 2007, at the 19th MOP, the Parties in Decision XIX/18 extended the global laboratory and analytical use exemption through December 31, 2011. Decision XIX/18 also eliminates the testing of organic matter in coal from the global exemption for laboratory and analytical uses of controlled substances and requests the Technology and Economic Assessment Panel (TEAP) and its Chemical Technical Options Committee (CTOC) to provide, by the Twenty-first Meeting of the Parties, a list of laboratory analytical uses of ozone-depleting substances, indicating those for which alternatives exist and therefore no longer need exemption for use of class I ODS (p. 43, Air Docket EPA–HQ–OAR–2007–0384).

EPA's regulations regarding this exemption at 40 CFR 82.8(b) currently state, ''A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2007 subject to the restrictions in appendix G of this subpart, and subject to the record keeping and reporting requirements at § 82.13(u) through (x). There is no amount specified for this exemption.'' Because certain laboratory procedures continue to require the use of class I substances in the United States, because non-ODS replacements for the class I substances have not been identified for all uses, and because the Parties, via Decision XIX/18, extended this exemption through December 31, 2011, EPA is revising 40 CFR 82.8(b) to reflect the extension of the exemption to December 31, 2011. For a more detailed discussion of the reasons for the exemption, refer to the March 13, 2001, final rule (66 FR 14760). As discussed in the March 2001 rule, the controls in place for laboratory and analytical uses provide adequate assurance that very little, if any, environmental damage will result from the handling and disposal of the small amounts of class I ODS used in such applications. In addition, the 2006 CTOC Assessment Report shows a general decrease from 2002 through 2005 in the amount of phased-out class I substances being supplied to laboratories under this exemption (p. 33, EPA–HQ–OAR–2007–0384).

EPA proposed to extend the date through December 31, 2015 but clearly explained that at the time the proposed rule was issued the Parties had not yet taken a decision regarding extension of the global laboratory and analytical use exemption and that the final rule would reflect the date decided by the Parties at the 18th MOP.

II. This Action

Today, EPA takes final action to (1) extend the laboratory and analytical use exemption from December 31, 2007, to December 31, 2011, for specific laboratory uses, (2) apply the laboratory and analytical use exemption to the production and import of methyl bromide, (3) eliminate the testing of organic matter in coal from the laboratory and analytical use exemption, and (4) make technical corrections to regulatory text.

A. Extension of the Global Laboratory and Analytical Use Exemption

EPA received three comments on the proposed rule (72 FR 52332). Two comments supported the proposal. A third commenter provided general comments stating that chemicals that deplete the ozone should not be used any longer and questioned whether any use of such chemicals is essential. As discussed above, the Montreal Protocol specifically provides for exemptions for essential uses, and Decisions of the Parties—including Decision XIX/18 taken in 2007, specifically provide for an exemption for global laboratory and analytical uses. EPA notes that uses addressed under this exemption are typically for niche applications or for experimental work of importance to society. For example, some Federal and State laws, including regulations issued under the Clean Air Act and the Clean Water Act, require testing of water, soil, or air to measure compliance with environmental standards. A pure sample of an ODS may be necessary to properly calibrate the testing equipment and effectively monitor the presence of chemicals of interest in the environment. A fuller description of laboratory and analytical uses may be found in EPA's March 2001 final rule (66 FR 14760).

B. Applicability of the Global Laboratory and Analytical Use Exemption to Methyl Bromide

As of January 1, 2005, production and import of methyl bromide has been phased out in the United States, except for limited exemptions (40 CFR 82.4(d)). Methyl bromide is a class I controlled substance used chiefly as a fumigant for soil treatment and pest control. EPA created a system of allowances to permit continued production and import of methyl bromide for critical uses after January 1, 2005 (see 69 FR 76982, December 23, 2004). This critical use exemption does not include provisions for continued production of methyl bromide to supply laboratories. However, the phaseout of methyl bromide production and import does not currently restrict inventories of methyl bromide produced prior to January 1, 2005, from being used for laboratory and analytical applications, as described in the December 23, 2004 final rule.

Methyl bromide (also known as bromomethane) has laboratory uses, for example, as a chemical intermediate and methylating agent. EPA regulations allow for methyl bromide to be

produced after the January 1, 2005, phaseout date if production is covered by ''unexpended critical use allowances'' (40 CFR 82.4(b)(1)). The regulations also provide for a ''global exemption for class I controlled substances for essential laboratory and analytical uses,'' subject to the restrictions in Appendix G (40 CFR 82.4(n)(1)(iii), 82.8(b)). EPA did not address the issue of whether the lab use exemption should apply to methyl bromide when promulgating the initial exemption, but EPA did propose to include methyl bromide in the 2005 rulemaking that extended the exemption through December 31, 2007 (see 70 FR 25727). EPA received one comment on the proposed inclusion of methyl bromide and it was general in nature. Nonetheless, EPA recognized that further discussion of whether the global laboratory exemption should include methyl bromide might occur at a future MOP and deferred final action on the issue.

In November of 2006, during the 18th Meeting of the Parties to the Montreal Protocol, the Parties included methyl bromide in the essential laboratory and analytical use exemption via Decision XVIII/15. Specifically, Decision XVIII/15 allows methyl bromide to be used: (1) As a reference or standard (a) to calibrate equipment which uses methyl bromide; (b) to monitor methyl bromide emission levels; (c) to determine methyl bromide residue levels in goods, plants, and commodities; (2) in laboratory toxicological studies; (3) to compare the efficacy of methyl bromide and its alternatives inside a laboratory; and (4) as a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock. Furthermore, Decision XVIII/15 specifically notes that the Montreal Protocol's technical review bodies were not in favor of classifying field trials using methyl bromide as essential laboratory and analytical uses and indicates that Parties wishing to carry out such field trials could submit critical use nominations for that purpose (p. 43, EPA–HQ–OAR–2007–0384).

EPA sought comment on whether the global laboratory and analytical use exemption should specifically include methyl bromide. The three comments received were general in nature and did not discuss methyl bromide specifically. Because EPA did not receive any adverse comment regarding the inclusion of methyl bromide in the laboratory and analytical use exemption, the Agency is extending the exemption to the methyl bromide uses listed in the proposed rule.

C. Eliminating the Testing of Organic Matter in Coal From the Global Exemption for Laboratory and Analytical Use

Decision X/19, paragraph 2, requests the Technology and Economic Assessment Panel (TEAP), a group of technical experts from various Parties, to report annually on the development and availability of laboratory and analytical procedures that can be performed without using class I controlled substances and that Parties, in subsequent decisions, would decide whether such procedures would no longer be eligible for exemptions. Decision XIX/18 eliminates the testing of organic matter in coal from the global laboratory and analytical use exemption.

In the proposed rule, EPA indicated its overall intention to mirror in this final rule, the decisions taken at the 19th MOP in September of 2007. Therefore, this action eliminates the testing of organic matter in coal from the global laboratory and analytical use exemption. EPA highly regards technical recommendations made by the TEAP and routinely amends domestic regulations to mirror decisions taken by the Parties based on TEAP recommendations.

D. Minor Technical Corrections

EPA proposed to revise three paragraphs in the reporting requirements at 40 CFR 82.13 to correct two sets of minor typographical errors. EPA received no specific comments on these corrections, and is finalizing them today.

The first set addresses incorrect paragraph references. Under 40 CFR 82.13(v), distributors of laboratory supplies who purchased controlled substances under the essential global laboratory and analytical use exemption must report on a quarterly basis the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor, and refers to the provisions of paragraph (y). The reference to paragraph (y) is erroneous and should instead be a reference to paragraph (w), which describes annual certifications provided by laboratory customers. Paragraph (v) also refers to § 82.4(z), but should actually reference § 82.13(x).

Similarly, § 82.13(x) (applicable to distributors who only sell controlled substances as reference standards for calibrating laboratory analytical equipment) incorrectly refers to paragraph (y) and should instead refer to paragraph (w). Further, the reference to reports required under paragraph (x) should be corrected to refer to reports required under (v).

The second set of corrections addresses the inaccurate terminology that is used to refer to the essential laboratory and analytical use exemption. In § 82.13(v), (w), and (x), the exemption is referred to as the ''global laboratory essential-use exemption.'' This is not consistent with the rest of the regulation. EPA is replacing the reference to ''global laboratory essential-use exemption'' with the term ''global essential laboratory and analytical use exemption,'' in § 82.13(v), (w), and (x). EPA received no specific comments on these corrections.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This final action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This final action does not propose any new information collection burden. The recordkeeping and reporting requirements included in this action are already included in an existing information collection burden analysis and this action does not propose any changes that would affect the burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 82.8(a) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* and has assigned OMB control number 2060–0170, EPA ICR number 1432.25. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any

previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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. The OMB control numbers for EPA's regulations in 40 CFR part 82 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final rule on small entities, small entity is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action provides an otherwise unavailable benefit to those companies that obtain ozone-depleting substances under the essential laboratory and analytical use exemption. Therefore today's action will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative, if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides an essential laboratory and analytical use exemption from the 1996 and 2005 phaseouts of class I ODSs (including methyl bromide). Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely extends the essential laboratory and analytical use exemption.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects 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.''

This final rule does not have federalism implications. It will not have substantial direct effects 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, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175 as it merely provides an essential laboratory and analytical use exemption from the 1996 and 2005 phaseouts of class I ODSs (including methyl bromide). Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned

regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such as the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 as it merely provides an essential laboratory and analytical use exemption from the 1996 and 2005 phaseouts of class I ODSs (including methyl bromide).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule 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. The rule merely provides an essential laboratory and analytical use exemption from the 1996 and 2005 phaseouts of class I ODSs (including methyl bromide).

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The controls in place for laboratory and analytical uses provide adequate assurance that very little, if any, environmental impact will result from the handling and disposal of the small amounts of class I ODS used in such applications.

Furthermore, the 2006 CTOC Assessment Report shows a general decrease from 2002 through 2005 in the amount of phased-out class I substances being supplied to laboratories under this exemption.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 27, 2007.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Imports, Methyl chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: December 19, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Section 82.8 is amended by revising paragraph (b) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(b) A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2011, subject to the restrictions in appendix G of this subpart, and subject to the record-keeping and reporting requirements at § 82.13(u) through (x). There is no amount specified for this exemption.

* * * * *

■ 3. Section 82.13 is amended by revising paragraphs (v), (w) introductory text, and (x) to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(v) Any distributor of laboratory supplies who purchased controlled substances under the global essential laboratory and analytical use exemption must submit quarterly (except distributors following procedures in paragraph (x) of this section) the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor pursuant to paragraph (w) of this section.

(w) A laboratory customer purchasing a controlled substance under the global essential laboratory and analytical use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and not be resold or used in manufacturing.

* * * * *

(x) Any distributor of laboratory supplies who purchased class I controlled substances under the global essential laboratory and analytical use exemption, and who only sells the class I controlled substances as reference standards for calibrating laboratory analytical equipment, may write a letter to the Administrator requesting

permission to submit the reports required under paragraph (v) of this section annually rather than quarterly. The Administrator will review the request and issue a notification of permission to file annual reports if, in the Administrator's judgment, the distributor meets the requirements of this paragraph. Upon receipt of a notification of extension from the Administrator, the distributor must submit annually the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor pursuant to paragraph (w) of this section.

* * * * *

■ 4. Appendix G to subpart A of part 82 is amended by adding item paragraph 1. (d) and by adding paragraph 5. to read as follows:

Appendix G to Subpart A of Part 82—UNEP Recommendations for Conditions Applied to Exemptions and Essential Laboratory and Analytical Uses

1. * * *

d. Testing of organic matter in coal.

* * * * *

5. Pursuant to Decision XVIII/15 of the Parties to the Montreal Protocol, methyl bromide is exempted for the following approved essential laboratory and analytical purposes listed in following items (a) through (d). Use of methyl bromide for field trials is not an approved use under the global laboratory and analytical use exemption. The provisions of Appendix G, paragraphs (1), (2), (3), and (4), regarding purity, mixing, container, and reporting requirements for other exempt ODSs, also apply to the use of methyl bromide under this exemption.

a. Methyl bromide is exempted as an approved essential laboratory and analytical use as a reference or standard to calibrate equipment which uses methyl bromide, to monitor methyl bromide emission levels, or to determine methyl bromide residue levels in goods, plants and commodities;

b. Methyl bromide is exempted as an approved essential laboratory and analytical when used in laboratory toxicological studies;

c. Methyl bromide is exempted as an approved essential laboratory and analytical use to compare the efficacy of methyl bromide and its alternatives inside a laboratory; and

d. Methyl bromide is exempted as an approved essential laboratory and analytical use as a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock.

[FR Doc. E7–25091 Filed 12–26–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XE53

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

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

ACTION: Temporary rule; trip limit reduction.

SUMMARY: NMFS reduces the trip limit in the commercial hook-and-line fishery for king mackerel in the northern Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, December 27, 2007, through June 30, 2008, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone 727–824–5305, fax 727–824–5308, e-mail *susan.gerhart@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 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.

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 for the northern Florida west coast subzone is 168,750 lb (76,544 kg)(50 CFR 622.42(c)(1)(i)(A)(*2*)(*ii*)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B)(*2*), from the date that 75 percent of the northern Florida west coast subzone's quota has been harvested until a closure of the subzone's fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the quota for Gulf group king mackerel from the northern Florida west coast subzone has been reached. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial fishery for king mackerel in or from the EEZ in the northern Florida west coast subzone effective 12:01 a.m., local time, December 27, 2007. The 500–lb (227–kg) trip limit will remain in effect until the fishery closes or until the end of the current fishing year (June 30, 2008), whichever occurs first.

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 northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87°31′06″; W. long. (a line directly south from the Alabama/Florida boundary).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, 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, if warranted.

NMFS also finds good cause that the implementation of this action cannot be delayed for 30 days. There is a need to implement this measure in a timely fashion to prevent an overrun of the commercial quota of Gulf king mackerel in the northern Florida west coast subzone, given the capacity of the fishing fleet to harvest the quota quickly. Any delay in implementing this action would be contrary to the Magnuson-Stevens Act and the FMP. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is waived.

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: December 20, 2007.

Galen R. Tromble,

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

[FR Doc. 07–6200 Filed 12–20–07; 2:16 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No.070719385–7574–02]

RIN 0648–AV59

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Revision of Vessel Monitoring System (VMS) Requirements for Commercial Gulf Reef Fish Vessels

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise VMS requirements applicable to the commercial reef fish fishery in the Gulf of Mexico (Gulf) and to revise the allowable methods for complying with the advance notification of landing requirement in the Gulf red snapper individual fishing quota (IFQ) program. Regarding the VMS program, this final rule allows commercial reef fish vessel owners or operators to reduce the frequency of VMS transmissions while in port; extends the existing power-down exemption to include reef fish vessels while in port; and adds a grandfather clause to address VMS units approved for use in the Gulf reef fish fishery. Regarding the IFQ program, this final rule expands the allowable methods for communicating the required advance notification of landing. The intended effects of this final rule are to resolve an unanticipated technological problem with the VMS draining power from vessels that are in port without access to external power sources; provide a grandfather clause for previously approved Gulf reef fish VMS units; and facilitate compliance with the advance notification of landing requirement in the IFQ program. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

DATES: This rule is effective January 28, 2008.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) may be obtained from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *peter.hood@noaa.gov*.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, OMB, by e-mail at *David__Rostker@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone 727–824–5305; fax 727–824–5308; e-mail *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On August 6, 2007, NMFS published the proposed rule to revise VMS requirements applicable to the commercial Gulf reef fish fishery and revise the allowable methods for complying with the advance notification of landing requirement in the Gulf red snapper IFQ program and requested public comment (72 FR 43583). The rationale for the measures contained in this final rule is provided in the preamble to the proposed rule and is not repeated here.

Comments and Responses

Comment 1: Several commenters indicated the 4–hour in port reporting exemption, while it would reduce the overall power consumption by VMS units, was insufficient to address the VMS power drain issue addressed in this final rule. Commenters suggested reducing in-port reporting to less than once every 4 hours, for example, once every 12 hours. Other suggestions included using a vessel's ignition switch to power VMS units on and off, or tying VMS units to global positioning systems (GPS), so VMS only power on when vessels are in motion.

Response: The 4–hour in port reporting exemption is designed to reduce battery power drain when vessels have returned from fishing activities. If the vessel is not used for an extended period of time, batteries could be drained while in port creating safety problems for vessels. Vendors of VMS units have indicated a 4–hour reporting interval, while in port and without access to external power sources, should reduce the battery drain sufficiently to solve this issue. However, for vessel owners/operators who anticipate their vessels to be inactive for longer periods, this rule also provides the ability for them to power down their VMS unit if in port or continuously out of the water for more than 72 hours. This can be accomplished through the power-down exemption from NMFS OLE. Once an owner/operator is authorized to use this exemption, they need only send a report via their vessel's VMS terminal to the NMFS OLE VMS program each time they meet the power-down exemption criteria and wish to power down their VMS unit.

Revising the in port reporting interval to time periods longer than 4 hours would require VMS vendors to reconfigure their units to a time period longer than they recommend is needed to solve this problem. The power-down exemption provides owners/operators an alternative to the 4–hour in port reporting exemption to conserve battery power. Currently VMS units are tied to GPS such that if a vessel enters or leaves a port, the vessel's VMS unit recognizes this movement and activates the VMS accordingly (i.e., once every 4 hours in port or once every hour out of port). The rationale for requiring 1–hour position reports once a vessel is out of port, even when the vessel is not moving, is to ensure that vessel owners/operators are not engaging in illegal activities, such as anchoring in closed areas, or fishing during closed seasons. NMFS OLE currently does not allow VMS units to be powered on or off through the ignition system, and is not considering this as an allowable capability at this time. This could create another safety issue by draining battery power should the ignition switch be left on when the engine is not running.

Comment 2: One commenter expressed concern about who will pay for VMS units to be reconfigured to allow in-port reporting, power-down exemption requests, trip declarations, and red snapper IFQ program 3–hour notifications. The commenter also expressed concern about the cost of the actual transmission of these reports through the VMS terminal.

Response: Configuring VMS units to allow 4–hour in port reporting, as well as placing and upgrading OLE required forms on the VMS units, is paid for by NMFS. This includes forms for trip declarations, power-down exemptions, and red snapper IFQ 3–hour notifications. Actual notifications and power-down requests sent by owners/operators to NMFS OLE through their VMS units are paid by vessel owners/operators to their respective VMS communication provider. The cost of the transmission depends on the type of VMS unit and communication provider plan purchased by the vessel owner/operator. Forms developed by NMFS to transmit the required information are designed to minimize costs to the fishermen. Estimated cost per transmission of the NMFS-based forms is estimated to range between approximately 13 and 24 cents, based on the type of form. Trip declarations and IFQ 3–hour notifications may also be transmitted via phone and IFQ 3–hour notifications may be transmitted through the internet, on the red snapper IFQ website. For the power-down exemption, requests to power-down the VMS unit would require a report sent through the VMS unit. Depending on which VMS communication provider an owner/operator uses, powering down the VMS unit could result in a cost savings because position reports would not be sent during this time.

Comment 3: One commenter expressed concern regarding how often power-down exemptions need to be requested. The commenter asked if power-downs could only be requested through the VMS unit, and how much time was required to approve an exemption request.

Response: Power-down exemptions need only be applied for once and the letter authorizing the exemption is required to remain on the vessel when the VMS unit is powered down. Power-down exemption applications are available online at *http://sero.nmfs.noaa.gov/vms/vms.htm* or from OLE at NOAA Fisheries Service, Office for Law Enforcement, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701. Approval for a power-down exemption should take no more than 5 days. Once a power-down exemption letter has been authorized for a vessel, an owner/operator will only need to successfully send a report via their VMS unit to NMFS OLE, containing the required information, prior to each power down.

Comment 4: Two commenters suggested vessels having both a for-hire and commercial reef fish permit should be allowed to power down their VMS unit when fishing as a for-hire vessel in order to save power.

Response: Current regulations state an owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit, even when under charter, must ensure that such vessel has an operating VMS unit approved by NMFS for use in the Gulf reef fish fishery on board at all times, regardless of whether the vessel is underway or in port, unless exempted by NMFS under the power down exemptions.

Comment 5: Three commenters expressed concern that repairs to VMS units can be time consuming. Two of these commenters requested VMS vendors or fleet owners be allowed to carry ''loaner'' units to replace VMS units being serviced.

Response: The time needed for a vendor to install a ''loaner'' VMS unit and for NMFS OLE to verify the unit is working properly will likely take more time than repairing a VMS unit. Current operating agreements with VMS vendors require vendors to state their operating procedures for VMS unit repairs. These repairs should be completed in a timely manner. If an owner or operator of a vessel experiences delays in the repair of their unit, they should report the details of the needed repair and problems encountered immediately to NMFS OLE. NMFS OLE will investigate the incident and work with the vendor and owner or operator of the VMS unit to rectify the problem.

Comment 6: Several commenters expressed that VMS units are an unnecessary burden on commercial reef fish fishermen, creating both economic and social hardships. Additionally, several people commented that VMS units are not practical for smaller vessels, stating that these vessels rarely venture far enough offshore to enter closed areas and have little room to safely house the VMS units.

Response: These comments fall outside the scope of this rule which only addresses VMS reporting requirements, VMS power-down exemptions, and red snapper IFQ 3–hour notification reporting methods. However, regulations implementing the Reef Fish FMP contains several area-specific measures in which fishing is restricted or prohibited to protect habitat, protect spawning aggregations, or reduce fishing pressure. Unlike size, bag, and trip limits, where the catch can be monitored when a vessel returns to port, area restrictions require at-sea enforcement. Because of the sizes of these areas and their distances from shore, the effectiveness of enforcement through over flights and at-sea interception is limited. VMS allows a more effective means to monitor vessels for intrusions into restricted areas, and could be an important component of a possible future electronic logbook system.

VMS units were required on all commercial reef fish vessels rather than just larger vessels, such as longliners, because most of the area restrictions in the Gulf of Mexico, with the exception of the longline/buoy gear boundary and the stressed area boundary, apply to all gear types. The size of VMS units should not be a factor. The size of the computer and monitor of the system is no larger than other commonly used electronic equipment such as radios and fish-finders.

Comment 7: Several commenters expressed concern about the security of vessel location data.

Response: This comment falls outside the scope of this rule. Vessel location data may be disclosed to fishery managers and enforcement agents, or when required by a court order. Computers and monitors showing vessel location data are maintained in secure rooms, and access to these rooms is restricted to authorized personnel. Individuals may request vessel location data for their own permitted vessel(s). NMFS will respond to any other request for vessel location data consistent with the confidentiality provisions of the Magnuson-Stevens Act and the Freedom of Information Act, particularly Exemption (b)(4) pertaining to trade secrets or other confidential business information.

Changes from the Proposed Rule

In § 622.9(a)(2)(iv)(D), the requirement for an e-mail confirmation of a power-down authorization from NMFS OLE has been removed, and revised language has been added to require only that the person requesting the power-down exemption receive a confirmation, through the VMS terminal, that the power-down report was successfully delivered. NMFS believes that this revision will result in more timely and efficient processing of power-down exemption requests without compromising enforceability.

Classification

The Regional Administrator, Southeast Region, NMFS determined that this rule is necessary for the conservation and management of the commercial Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

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

NMFS prepared a FRFA for this final rule. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant economic issues raised by public comments, NMFS responses to those comments, and a summary of the analyses completed to support the action. A copy of the full analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This rule will allow vessels ''in port'' to send a VMS position report once every 4 hours, rather than every hour, and extend the VMS power-down exemption to vessels that are ''in port,'' subject to obtaining a letter of exemption and following OLE notification and confirmation procedures, rather than require removal of the vessel from the water (dry-docking) for the exemption. This rule will also allow continued use of a VMS unit that was previously approved for the Gulf reef fish fishery if that unit is subsequently removed from the approved list. This grandfathering is limited to the life of the grandfathered VMS unit. Once the grandfathered unit is no longer functional, a VMS unit from the approved list is required. Finally, this rule will broaden allowable methods for advance notification of landing in the commercial red snapper fishery.

The objectives of this rule are to address an unanticipated technological problem in the VMS requirements for the Gulf of Mexico commercial reef fish fishery that could result in power drainage of vessels ''in port'' that lack an external power source, include a grandfather clause in the VMS requirements, and expand the methods for advance notification of landing in the commercial red snapper IFQ fishery.

No significant economic issues were raised by public comments. Therefore, no changes were made in the final rule as a result of such comments.

The VMS components of the rule will apply to all vessels permitted to operate in the Gulf of Mexico commercial reef fish fishery. Some for-hire vessels also participate in the commercial reef fish fishery, and this sector is included in the following description of affected entities. The advance notification of landing component of the rule will apply to only that subset of the commercial reef fish fishery vessels that also operate in the commercial red snapper IFQ fishery.

The Small Business Administration (SBA) has established size criteria for all major industry sectors in the U.S. including fish harvesters, for-hire operations, fish processors, and fish dealers. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined average annual total receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all affiliated operations worldwide. For for-hire operations, the other qualifiers apply and the average annual receipts threshold is $6.5 million (NAICS code 713990, recreational industries).

Approximately 1,145 vessels are estimated to be permitted to operate in the Gulf of Mexico commercial reef fish fishery. Over the period 2001–2003, an average of 1,050 vessels per year landed an average total of 19.2 million lb (8.7 million kg) gutted weight (GW) of Gulf reef fish per year with an ex-vessel value of $50.75 million (2006 dollars). Median annual reef fish landings were 5,705 lb (2,588 kg) per vessel. The median vessel took 12 trips per year, spent approximately 31 days at sea annually, and derived approximately 98 percent of its gross revenues from reef fish harvests. Median gross revenues from all species harvested by these vessels, which includes non-reef fish species, were approximately $19,000 (2006 dollars) for each of the 3 years.

The commercial reef fish fishery is conducted using two primary gears, longlines and hand or vertical lines. Within the longline fleet, over the same period (2001–2003), an average of 166 vessels per year landed an average total of approximately 6.5 million lb (3.0 million kg) GW of reef fish per year with an ex-vessel value of approximately $17.64 million (2006 dollars). The median vessel took 14 trips per year, spent 113–121 days at sea annually, and derived approximately 97 percent of its gross revenues from reef fish harvests. Median gross revenues per year from all species harvested by these vessels ranged from approximately $109,000 (2006 dollars) to $115,000 (2006 dollars).

Within the vertical-line fleet, over the same period (2001–2003), an average of 899 vessels per year landed an average total of approximately 11.6 million lb (5.3 million kg) GW of reef fish per year with an ex-vessel value of approximately $30.44 million (2006 dollars). The median vessel took 14 trips per year, spent 33–35 days at sea annually, and derived approximately 97 percent of its gross revenues from reef fish harvests. Median gross revenues from all species harvested by these vessels were approximately $15,000 (2006 dollars) for each of the 3 years.

Alternative estimates derived from 1994 fishery data of the performance of vessels in this fishery show annual average gross and net revenues per vessel range from approximately $27,000 (2006 dollars) in gross revenues and $5,000 (2006 dollars) in net revenues for low-volume handline vessels to approximately $133,000 (2006 dollars) ($25,000 net) for high-volume longline vessels. These values are comparable to the more recent estimates of ex-vessel revenues and provide insight to net revenue estimates, which are not available from the more recent data.

Vessels that operate in the commercial red snapper fishery are part of the commercial reef fish fishery and are included in the description of the reef fish vessels provided above. With the implementation of the two-class license system in the red snapper fishery in 1998, 764 vessels were licensed to participate in the commercial red snapper fishery, though only 616 vessels recorded landings through 2004. Summary statistics specific to the red snapper fishery comparable to those of the reef fish fishery as a whole are not available. Further, substantial changes in the composition and characteristics of the commercial red snapper fleet are anticipated to develop under the IFQ program implemented in January 2007. Projections of fleet size under the IFQ program, which are expected to result from consolidation of quota shares, do not exceed 100 vessels. Total fleet-wide net revenues to owners, captain and crew from all species harvested by vessels operating in the red snapper fishery are estimated to range from approximately $14.5 million (2006 dollars) to approximately $26 million (2006 dollars) under annual total allowable catch (TAC) levels for harvest from all sectors of 5.0 million lb (2.3 million kg) and 9.12 million lb (4.14 million kg), respectively, of which the commercial fishery is allocated 51 percent of the TAC. Based on these revenue projections, the average net revenue per vessel would range from $145,000 to $260,000 (2006 dollars) if the fleet consolidates to 100 vessels, or $290,000 to $520,000 (2006 dollars) if the fleet consolidates to 50 vessels.

Approximately 237 vessels permitted to participate as for-hire vessels (charterboats or headboats) also possess commercial reef fish permits. While these vessels are included in the description of commercial vessels provided above, in general, for-hire vessels would be expected to have

different production profiles than vessels that operate exclusively as commercial vessels. Production characteristics likely vary by the extent to which a vessel operated primarily as a commercial vessel or a for-hire vessel. However, information is only available on the for-hire fleet as a whole, and production characteristics for vessels that operate in both commercial fisheries and the for-hire fishery are unknown. On average, charterboats, which charge a fee on a boat-wide basis, generate approximately $82,000 (2006 dollars) in annual revenues and approximately $39,000 in annual operating profits. The average headboat, which charges a fee on the individual passenger (head) basis, generates approximately $431,000 (2006 dollars) in annual revenues and approximately $361,000 in annual operating profits.

Some fleet activity exists in the commercial red snapper fishery and in the commercial finfish fisheries in general, but the extent of such activity is unknown. The maximum number of reef fish permits reported owned by the same entity is six permits. Additional affiliation may exist between permits (and the revenues associated with those permits) and an entity, but cannot be identified using existing data. Given the average economic performance provided above, NMFS determines that all entities operating in the Gulf of Mexico commercial reef fish fishery are, for purposes of this analysis, to be small business entities.

This rule will reduce current electronic reporting requirements when a vessel is ''in port'' and simplify conditions for power-down exemptions. The requirement for these vessels to have a type-approved VMS unit would remain, and the operation of these units does not require specialized skill. The email notification requirements and power-down exemption application procedures will remain and do not require special skills. The expansion of landing notification methods will encompass other electronic means. The commercial red snapper IFQ program was designed around and requires an electronic environment in order to set up accounts and manage transactions. Therefore, the new methods are unlikely to require new or special skills by fishery participants. Further, no single method will be required, such that a participant could select the method that best fits his skills and circumstances.

All Gulf of Mexico commercial reef fish permitted vessels will be affected by this rule. Since all of these vessels have been determined for the purpose of this analysis to be small business entities, it is determined that this rule is expected to affect a substantial number of small entities. Since all entities that will be affected by this rule have been determined to be small business entities, the issue of disproportionality of impacts between large and small entities does not arise.

No direct or indirect adverse economic effects on any affected entities are expected to occur as a result of this rule. Therefore, no reductions in profitability for any entities are expected. This rule will reduce the frequency with which the required VMS units will be required to send an electronic location signal when vessels are ''in port'' and not actively fishing. This is expected to reduce the power requirements for vessel operation, reducing the likelihood of battery drainage and compromised vessel operation and safety. This rule will also expand qualification conditions for vessels seeking power-down exemptions to the VMS operating requirements to apply to vessels being ''in port'' and not require removal of the vessel from the water (dry-docking). This is expected to further reduce the power requirements and compliance costs to qualify for exemption, since vessels could remain on the water. Allowing the continued use of a VMS unit that is removed from the list of type-approved units is expected to reduce the need to replace units before the end of their service life, allowing vessels to receive the full economic benefits of their unit. Finally, expanding the methods that vessels in the commercial red snapper fishery can use to satisfy the advance landing notification requirements is expected to reduce the likelihood that unloading and sale of their harvests would be delayed, thereby avoiding the costs of such delay and increasing the profitability of their operation.

The alternative considered to the rule was the status quo, or no action. The status quo would maintain current VMS program requirements, maintain the current unanticipated technological problem associated with potential power drainage, require vessels to replace VMS units that were previously type-approved but are removed from the approved list, and limit vessels in the commercial red snapper fishery to a single method of satisfying the advance landing notification requirement. Thus, the status quo would not achieve the NMFS objectives.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under Control Number 0648–0544 for VMS reporting requirements and Control Number 0648–0551 for Gulf red snapper IFQ reporting requirements. Public reporting for the VMS-related requirements is estimated to average 24 seconds for transmission of position reports and 10 minutes for submission of requests for power-down exemptions. Public reporting for the IFQ-related advance notification of landing is estimated to average 3 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing burden hours, to NMFS (see **ADDRESSES**) and by email to *David__Rostker@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: December 20, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.9, paragraph (a)(2) is revised to read as follows:

§ 622.9 Vessel monitoring systems (VMSs).

(a) * * *

(2) *Gulf reef fish.* The VMS requirements of this paragraph (a)(2) apply throughout the Gulf of Mexico and adjacent states.

(i) *General VMS requirement.* An owner or operator of a vessel that has been issued a commercial vessel permit for Gulf reef fish, including a charter vessel/headboat issued such a permit even when under charter, must ensure that such vessel has an operating VMS approved by NMFS for use in the Gulf reef fish fishery on board at all times

whether or not the vessel is underway, unless exempted by NMFS under the power-down exemptions specified in paragraph (a)(2)(iv) of this section and in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This NOAA Enforcement Vessel Monitoring System Requirements document is available from NMFS, Office for Law Enforcement (OLE), Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701; phone: 800–758–4833. An operating VMS includes an operating mobile transmitting unit on the vessel and a functioning communication link between the unit and NMFS as provided by a NMFS-approved communication service provider. NMFS OLE maintains a current list of approved VMS units and communication providers which is available from the VMS Support Center, NMFS OLE, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910 or by calling toll free 888–219–9228. If a VMS unit approved for the Gulf reef fish fishery is removed from the approved list by NMFS OLE, a vessel owner who purchased and installed such a VMS unit prior to its removal from the approved list will be considered to be in compliance with the requirement to have an approved unit, unless otherwise notified by NMFS OLE. At the end of a VMS unit's service life, it must be replaced with a currently approved unit for the fishery.

(ii) *Hourly reporting requirement.* An owner or operator of a vessel subject to the requirements of paragraph (a)(2) of this section must ensure that the required VMS unit transmits a signal indicating the vessel's accurate position at least once an hour, 24 hours a day every day unless exempted under paragraphs (a)(2)(iii) or (iv) of this section.

(iii) *In-port exemption.* While in port, an owner or operator of a vessel with a type-approved VMS unit configured with the 4–hour reporting feature may utilize the 4–hour reporting feature rather than comply with the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section. Once the vessel is no longer in port, the hourly reporting requirement specified in paragraph (a)(2)(ii) of this section applies. For the purposes of this paragraph (a)(2) of this section, ''in port'' means secured at a land-based facility, or moored or anchored after the return to a dock, berth, beach, seawall, or ramp.

(iv) *Power-down exemptions.* An owner or operator of a vessel subject to the requirement to have a VMS operating at all times as specified in paragraph (a)(2)(i) of this section can be exempted from that requirement and may power down the required VMS unit if--

(A) The vessel will be continuously out of the water or in port, as defined in paragraph (a)(2)(iii) of this section, for more than 72 consecutive hours;

(B) The owner or operator of the vessel applies for and obtains a valid letter of exemption from NMFS OLE VMS personnel as specified in the NOAA Enforcement Vessel Monitoring System Requirements for the Reef Fish Fishery of the Gulf of Mexico. This is a one-time requirement. The letter of exemption must be maintained on board the vessel and remains valid for all subsequent power-down requests conducted consistent with the provisions of paragraphs (a)(2)(iv)(C) and (D) of this section.

(C) Prior to each power-down, the owner or operator of the vessel files a report to NMFS OLE VMS program personnel, using the VMS unit's e-mail, that includes the name of the person filing the report, vessel name, vessel U.S. Coast Guard documentation number or state registration number, commercial vessel reef fish permit number, vessel port location during VMS power down, estimated duration of the power down exemption, and reason for power down; and

(D) The owner or operator enters the power-down code through the use of the VMS Declaration form on the terminal and, prior to powering down the VMS, receives a confirmation, through the VMS terminal, that the form was successfully delivered.

(v) *Declaration of fishing trip and gear.* Prior to departure for each trip, a vessel owner or operator must report to NMFS any fishery the vessel will participate in on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. This information may be reported to NMFS using the toll-free number, 888–219–9228, or via an attached VMS terminal.

* * * * *

■ 3. In § 622.16, paragraph (c)(3)(i) is revised to read as follows:

§ 622.16 Gulf red snapper individual fishing quota (IFQ) program.

* * * * *

(c) * * *

(3) * * *

(i) *Advance notice of landing.* For the purpose of this paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The owner or operator of a vessel landing IFQ red snapper is responsible for ensuring that NMFS is contacted at least 3 hours, but no more than 12 hours, in advance of landing to report the time and location of landing and the name of the IFQ dealer where the red snapper are to be received. Authorized methods for contacting NMFS and submitting the report include calling NMFS Office for Law Enforcement at 1–866–425–7627, completing and submitting to NMFS the notification form provided through the VMS unit, or providing the required information to NMFS through the web-based form available on the IFQ website at ifq.sero.nmfs.noaa.gov. As new technology becomes available, NMFS will add other authorized methods for complying with the advance notification requirement, via appropriate rulemaking. Failure to comply with this advance notice of landing requirement is unlawful and will preclude authorization to complete the landing transaction report required in paragraph (c)(1)(iii) of this section and, thus, will preclude issuance of the required transaction approval code.

* * * * *

[FR Doc. E7–25068 Filed 12–26–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 070809451–7644–02]

RIN 0648–AV79

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 42

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

ACTION: Final rule.

SUMMARY: This rule corrects and clarifies a number of inadvertent errors, omissions, and ambiguities in the regulations implemented by recent actions taken under the Northeast (NE) Multispecies Fisheries Management Plan (FMP), including Amendment 5, Framework Adjustment (FW) 38, Amendment 13, FW 40–A, FW 41, and FW 42. The measures corrected or clarified by this rule ensure that the current regulations maintain consistency with, and accurately reflect, the intent of measures adopted by the New England Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce (Secretary).

DATES: Effective January 28, 2008.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) prepared for this action are available upon request from the Regional Administrator at the above address. Copies of the environmental assessments (EAs) prepared for FW 38, 40–A, FW 41, FW 40–A, and FW 42; and the supplemental environmental impact statements (SEIS) prepared for Amendments 5 and 13 may be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. The FSEIS/RIR for Amendment 13 and the EA/RIRs for FW 42, FW 41, and FW 40–A are also accessible via the Internet at *http://www.nefmc.org*.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to David Rostker, Office of Management and Budget (OMB), by e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Upon review of regulations implemented by the FW 42 final rule (October 23, 2006; 71 FR 62156), NMFS found that the current regulations contained several inadvertent errors, omissions, and ambiguities that appear to be inconsistent with the measures adopted by the Council and approved by the Secretary. Errors were found not only in the regulations implemented by the FW 42 final rule, but also in regulations implemented by other recent management actions under the FMP, including final rules implementing Amendments 5 (March 1, 1994; 59 FR 9872) and 13 (April 27, 2004; 69 FR 22906), FW 38 (July 9, 2003; 68 FR 40808), FW 40–A (November 19, 2004; 69 FR 67780), and FW 41 (September 14, 2005; 70 FR 54302).

Pursuant to section 305(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS proposed measures intended to correct errors identified in the current regulations, revise specific measures to facilitate administration of such measures, and clarify or modify the current regulations to maintain consistency with FW 42 and other previous actions under the FMP. Accordingly, NMFS published a proposed rule in the **Federal Register** on October 16, 2007 (72 FR 58622) with public comments accepted through October 31, 2007.

Measures Revised by this Rule

The details of the rationale behind the need for the corrections/clarifications to the measures revised by this action were included in the preamble to the proposed rule for this action and are not repeated here. A description of these revisions follows.

1. Definitions for Lessee, Lessor, Transferee, and Tranferor

This rule inserts definitions for the terms ''lessee,'' ''lessor,'' ''transferee,'' and ''transferor,'' into the current regulations at 50 CFR 648.2 to clarify the applicability of the Days-at-Sea (DAS) Leasing and Transfer Program provisions.

2. Vessel Monitoring System (VMS) Notification Requirements

This rule modifies the VMS notification requirements at § 648.10(b)(2) to specify that NMFS will send letters specifying the procedures pertaining to VMS purchase, installation, and use to all affected permit holders, as necessary. For example, NMFS would send letters specifying VMS procedures if declaration menus or reporting requirements change as a result of a regulatory action, or as a reminder of current requirements to clarify observed operator errors and increase compliance with VMS requirements. In addition, this rule specifies that vessels required, or electing, to use VMS are subject to the VMS usage requirements outlined in any previous and future permit holder letter. Finally, this action inserts a new provision at § 648.10(b)(5) to clarify that vessels using VMS must declare the vessel's intended fishing activity via VMS prior to leaving port before each fishing trip. These revisions are made to help eliminate any ambiguity in the current regulations regarding the applicability of the VMS notification requirements.

3. Gulf of Maine (GOM) Grate Raised Footrope Trawl Exempted Whiting Fishery Prohibitions

This action inserts a reference to the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery at § 648.80(a)(16) to the prohibitions at § 648.14(a)(35) and (a)(43).

4. In-season Action Prohibition

This action implements a provision at § 648.14(a)(78) prohibiting vessels from violating the requirements of an in-season action to increase the ability to enforce measures implemented by an in-season action.

5. Georges Bank (GB) Seasonal Closure Area Applicability

The exemption from the GB Seasonal Closure Area for vessels participating in the Eastern U.S./Canada Haddock Special Access Program (SAP) specified at § 648.81(g)(2)(iv) is removed, as it is no longer necessary now that the Eastern U.S./Canada Haddock SAP opens after the GB Seasonal Closure Area expires on May 31.

6. DAS Leasing Program Application Requirements

This action reinserts the DAS Leasing Program application requirements and the authority of the Regional Administrator to approve or disapprove DAS leasing applications specified at § 648.82(k)(3)(i) through (iii) that were inadvertently removed by the FW 42 final rule.

7. VMS Positional Polling Rates for U.S./Canada Management Area

This action removes references to an increased VMS positional polling rate for vessels participating in the U.S./Canada Management Area at §§ 648.9(c)(1)(ii), 648.10(b)(2)(iii), and 648.85(a)(3)(i) because NMFS does not have the technical capacity to automatically change a vessel's VMS positional polling rate based on its intended fishing activity, and the Council did not specifically recommend that NE multispecies vessels must pay for a higher VMS polling rate while fishing in the U.S./Canada Management Area.

8. Haddock Total Allowable Catch (TAC) in the Closed Area (CA) I Hook Gear Haddock SAP

To accurately reflect the provisions adopted by the Council and implemented under the FW 41 final rule and to effectively administer the Closed Area I Hook Gear Haddock SAP, this action reinserts the FW 41 provisions at § 648.85(b)(7)(iv)(F) that were inadvertently removed by the FW 42 final rule. These provisions distribute the haddock TAC between the two seasons of the SAP and allow the Regional Administrator to adjust the quota to each season to account for under- or over-harvest of the haddock TAC during the first season of the SAP.

9. White Hake Trip Limits

This action corrects the white hake trip limit found at § 648.86(e) to accurately reflect the 1,000–lb (453.6–kg)/DAS, up to 10,000–lb (4,536–kg)/

trip white hake trip limit adopted by the Council in FW 42.

10. Approval of Sector Applications

This action revises the existing sector approval regulations at § 648.87(c)(1) and (2) by removing the absolute requirement to develop a proposed rule, but indicates that sectors would be approved ''consistent with applicable law.'' This would allow NMFS to waive opportunity for public comment in very limited circumstances, consistent with the requirements of the Administrative Procedure Act.

11. Recreational Fish Size Restrictions

This action applies the skin-on provision outlined for commercial vessels at § 648.83(a)(2) to both party/charter and recreational vessels by inserting a similar provision at § 648.89(b)(4). This clarifies the minimum fish size restrictions applicable to party/charter and private recreational vessels, as intended in Amendment 5.

12. Additional Corrections

In addition to the changes specified above, the following changes to the regulations, as amended by the final rule implementing FW 42, are implemented to correct inaccurate references and to further clarify the intent of FW 42 and previous actions. The changes listed below are in the order in which they appear in the regulations.

In § 648.4(c)(2)(iii)(A), the reference to the annual designation as either a Day or Trip gillnet vessel at ''§ 648.82(k)'' is corrected to read ''§ 648.82(j).''

In § 648.14, the reference to ''§ 648.81(d)'' in paragraph (a)(38) is corrected to reference the transiting provision at § 648.81(i); the reference to ''§ 648.81(b)(2)(i)'' in paragraph (a)(39) is corrected to reference the transiting provision at § 648.81(i); the reference to ''§ 648.51(a)(2)(ii) and (e)(2)'' in paragraph (a)(53) is corrected to reference the gear stowage provisions at § 648.23(b); the reference to ''§ 648.85(b)(6)'' in paragraph (a)(153) is corrected to read ''§ 648.85(b)(4);'' the reference to ''§ 648.86(g)(1)(i) or (g)(2)(i)'' in paragraph (b)(3) is revised to read ''§ 648.86(g)(1);'' the reference to ''§ 648.86(g)(1)(i) or (g)(2)(i)'' and ''§ 648.81(g)(1)(ii) and (g)(2)(ii)'' in paragraph (b)(4) is corrected to read ''§ 648.86(g)(1);'' the reference to ''§ 648.86(b)(1)(i)'' in paragraph (c)(24) is corrected to read ''§ 648.86(b)(1);'' and the reference to ''§ 648.86(b)(2)(ii) or (iii)'' in paragraph (c)(26) is corrected to read ''§ 648.86(b)(2).''

In § 648.80(b)(2)(vi), the reference to ''(a)(11)(i)(A) and (B)'' in the introductory text is corrected to read ''(b)(11)(i)(A) and (B).''

In § 648.82(e)(1), the reference to ''§ 648.10(c)(5)'' is corrected to read ''§ 648.10.''

In § 648.85, the reference to ''§ 648.94(b)(7)'' in paragraph (b)(6)(iv)(D) is revised to read ''§ 648.94(b)(3);'' and the references to ''§ 648.85(b)(7)(iv)(G)'' in paragraphs (b)(7)(iii), (b)(7)(v)(D), and (b)(7)(vi)(D) are corrected to read ''§ 648.85(b)(7)(iv)(F).'' In addition, reference to specific stock areas at § 648.85(b)(6)(v) is added to § 648.85(b)(6)(iv)(D) to clarify that the landing limits specified in this paragraph apply to particular stock areas. Further, reference to § 648.10 is inserted at § 648.85(b)(7)(iv)(A) to clarify how DAS would be counted in the Closed Area I Hook Gear Haddock SAP. Finally, § 648.85(b)(7)(vi)(G) through (I) are removed.

In § 648.86(i), the references to ''§ 648.85(a)(3)(iv)'' and ''§ 648.85(a)(6)(iv)(D)'' are corrected to read ''§ 648.85.''

In § 648.92, paragraph (b)(2)(iii) is deleted, as this repeats the regulations at § 648.92(b)(2)(ii) and is not necessary.

Comments and Responses

One comment with three issues regarding the proposed action was received from one industry group during the comment period. A summary of the issues raised by the commenter and the associated NMFS response follows.

GB seasonal Closure Area Applicability

Comment 1: The commenter supported removal of the exemption to the GB Seasonal Closure Area, provided access to the Eastern U.S./Canada Haddock SAP Area is allowed prior to August 1 for approved gears, including hook gear.

Response: As explained in the preamble to the proposed rule for this action, the exemption from the seasonal closure is no longer necessary, as the SAP currently opens after the seasonal closure expires. No vessels are allowed into the Eastern U.S./Canada Haddock SAP Area prior to the opening date of the SAP on August 1. Therefore, because Council action is required to further revise the opening date of the SAP, NMFS cannot allow any vessels, including those using gear approved for use in the SAP, into the SAP Area before August 1. Further, hook gear is not considered an approved gear for this SAP at this time and cannot be used in the SAP Area under the SAP provisions. However, a vessel may fish with hook gear in the Eastern U.S./Canada Area, an area that includes all of the SAP Area except a portion of the Area contained within Closed Area II, beginning May 1 of each fishing year under the provisions of the Regular B DAS Program (if fishing under a Regular B DAS) and/or the U.S./Canada Resource Sharing Understanding, unless otherwise notified. As a result, this action removes the exemption to the GB Seasonal Closure Area, but does not allow vessels fishing with hook gear or any other gear into the SAP Area prior to August 1.

Haddock TAC in the Closed Area I Hook Gear Haddock SAP

Comment 2: The commenter supported reinserting the Closed Area I Hook Gear Haddock SAP provisions that were inadvertently removed.

Response: This action reinserts the SAP measures that were inadvertently removed.

Approval of Sector Applications

Comment 3: The commenter noted the impacts of delays in the approval of sector operations during previous fishing years and supports efforts to streamline the process, including the pursuit of notice action rather than proposed rulemaking, especially if sector measures do not change between fishing years. However, this group suggested that public comment is warranted for new sectors or substantive exemptions.

Response: As specified in the preamble to the proposed rule for this action, the Administrative Procedure Act allows public comment to be waived in very limited circumstances. Regulations at § 648.87(c)(1) require NMFS to solicit public comment on a sector operations plan. To increase the likelihood that sector operations plans will be approved in a timely manner under unforeseen circumstances precluding opportunity for comment, this action eliminates the absolute requirement publish a proposed rule.

Changes from the Proposed Rule

One change to the proposed rule has been made to further clarify a measure originally implemented by a December 27, 2005, final rule (70 FR 76422). That rule implemented a provision clarifing that NE multispecies vessels must offload species regulated by a daily landing limit (i.e., lbs per DAS) prior to leaving port to begin a subsequent fishing trip. That provision was necessary to effectively enforce such landing limits by prohibiting a vessel from beginning a trip while possessing

more than 1-day's worth of a species regulated by a daily landing limit at the start of a subsequent fishing trip. Although this intent was clearly reflected in the January 17, 2006, permit holder letter describing the measures corrected by that correction rule, the corresponding regulation failed to specify that a vessel may retain up to 1-day's worth of a species regulated by a daily landing limit. Accordingly, this final rule revises the regulations at § 648.86(i) to indicate that a vessel must offload species in excess of the daily landing limit prior to leaving port and beginning a subsequent fishing trip and may retain on board up to 1-day's worth of a species regulated by a daily landing limit, provided the vessel abides by the overall trip limit for such species during the subsequent trip.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the Assistant Administrator for Fisheries, NOAA, has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the measures outlined in the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The proposed action would correct/clarify the existing regulations to ensure that the current regulations accurately reflect measures adopted by the New England Fishery Management Council and approved by the Secretary of Commerce. This action would ensure that the economic impacts analyzed in previous actions would be realized, but would not impose any additional economic impacts on affected entities. The proposed action would not significantly reduce profit for affected vessels, as the proposed measures are either administrative in nature and would not affect vessel operations, or would have no economic impact beyond that previously analyzed. For example, FW 42 indicated that declarations of a vessel's intended activity via VMS prior to each trip would cost groundfish vessels approximately $0.50 per declaration, or about $15,000 per year. In addition, Amendment 13 indicated that the U.S./Canada Management Area gear requirements would cost participating vessels $7,500 for a modified flounder net, or $747 to comply with the haddock separator trawl requirement. This action would simply clarify or reinstate such requirements, respectively, but would not increase costs associated with these measures. Other measures corrected or clarified by this action would ensure that unnecessary costs, such as the costs for higher VMS positional polling rates, are eliminated or that vessels would be able to fully realize the economic benefits of special management programs by correctly distributing the available haddock resources in the Closed Area I Hook Gear Haddock SAP.

As a result, neither an initial, nor a final, regulatory flexibility analysis was required and none have been prepared.

This final rule contains a number of collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which have been approved by OMB as follows:

1. VMS purchase and installation, OMB #0648–0202, (1 hr/response);
2. VMS proof of installation, OMB #0648–0202, (1 hr/response);
3. Automated VMS polling of vessel position, OMB #0648–0202, (5 sec/response);
4. Area and DAS declarations via VMS, OMB #0648–0549 (5 min/response);
5. Standardized catch reporting requirements, OMB #0648–0212 (15 min/response);
6. Sector manager daily reports for CA I Hook Gear Haddock SAP, OMB #0648–0212, (2 hr/response);
7. DAS Leasing Program application, OMB #0648–0202, (5 min/response);
8. Annual declaration to participate in the CA I Hook Gear Haddock SAP, OMB #0648–0202, (2 min/response);
9. Sector allocation proposal, OMB #0648–0202, (50 hr/response); and
10. Sector operations plan submission, OMB #0648–0202, (50 hr/response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This action does not create new information collections or modify the response time associated with any of the information collection referenced above. Instead, this action revises the regulations underlying these information collections to correct inadvertent errors, omissions, and ambiguities in the current regulations, as described in the preamble of this rule.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting.

Dated: December 19, 2007

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, definitions for ''lessee,'' ''lessor,'' ''transferee,'' and ''transferor'' are added, in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

Lessee means a vessel owner who receives temporarily transferred NE multispecies DAS from another vessel through the DAS Leasing Program specified at § 648.82(k).

Lessor means a vessel owner who temporarily transfers NE multispecies DAS to another vessel through the DAS Leasing Program specified at § 648.82(k).

* * * * *

Transferee means a vessel owner who receives permanently transferred NE multispecies DAS and potentially other permits from another vessel through the DAS Transfer Program specified at § 648.82(l).

Transferor means a vessel owner who permanently transfers NE multispecies DAS and potentially other permits to another vessel through the DAS Transfer Program specified at § 648.82(l).

* * * * *

■ 3. In § 648.4, paragraph (c)(2)(iii)(A) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(c) * * *

(2) * * *

(iii) * * *

(A) For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(j). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting, and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel, informing

him/her of the costs associated with this tagging requirement and providing directions for obtaining tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

§ 648.9 [Amended]

■ 4. In § 648.9, remove and reserve paragraph (c)(1)(ii).

■ 5. In § 648.10, the introductory text of paragraph (b)(2), and paragraph (b)(2)(iii) are revised; and paragraph (b)(5) is added to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section, with the exception of a vessel issued a limited access NE multispecies permit as specified in paragraph (b)(1)(vi) of this section, must provide documentation to the Regional Administrator at the time of application for a limited access permit that the vessel has an operational VMS unit installed on board that meets the minimum performance criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. The owner of a vessel issued a limited access NE multispecies permit that fishes or intends to fish under a Category A or B DAS as specified in paragraph (b)(1)(vi) of this section must provide documentation to the Regional Administrator that the vessel has an operational VMS unit installed on board that meets those criteria prior to fishing under a groundfish DAS. NMFS shall send letters to all affected permit holders providing detailed information on the procedures pertaining to VMS purchase, installation, and use.

* * * * *

(iii) DAS counting for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish exclusively in the Eastern U.S./Canada Area on a particular trip, as described in this paragraph (b), begins with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS counting ends with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish exclusively in the Eastern U.S./Canada Area pursuant to § 648.85(a)(3)(ii), the requirements of this paragraph (b) begin with the first location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port, unless the vessel elects to also fish outside the Eastern U.S./Canada Area on the same trip, in accordance with § 648.85(a)(3)(ii)(A).

* * * * *

(5) VMS notification requirements for other fisheries. Unless otherwise specified in this part, or via letters sent to affected permit holders under paragraph (b)(2) of this section, the owner or authorized representative of a vessel that is required to use VMS, as specified in paragraph (b)(1) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip. Notification of a vessel's intended fishing activity includes, but is not limited to, gear and DAS type to be used; area to be fished; and whether the vessel will be declared out of the DAS fishery, or will participate in the NE multispecies and monkfish DAS fisheries, including approved special management programs. A vessel cannot change any aspect of its VMS activity code outside of port, except that NE multispecies vessels are authorized to change the category of DAS used (i.e., flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A). VMS activity codes and declaration instructions are available from the Regional Administrator upon request.

* * * * *

■ 6. In § 648.14, paragraphs (a)(35), (a)(38), (a)(39), (a)(43), (a)(53), (a)(153), (b)(3), (b)(4), (c)(24), and (c)(26) are revised and paragraph (a)(78) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(35) Fish with, use, or have on board, within the areas described in § 648.80(a)(1) and (2), nets with mesh size smaller than the minimum mesh size specified in § 648.80(a)(3) and (4), except as provided in § 648.80(a)(5) through (8), (a)(9), (a)(10), (a)(15), (a)(16), (d), (e), and (i), unless the vessel has not been issued a NE multispecies permit and fishes for NE multispecies exclusively in state waters, or unless otherwise specified in § 648.17.

* * * * *

(38) Enter or be in the area described in § 648.81(a)(1) on a fishing vessel, except as provided in § 648.81(a)(2) and (i).

(39) Enter or be in the area described in § 648.81(b)(1) on a fishing vessel, except as provided in § 648.81(b)(2) and (i).

* * * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the Small-mesh Northern Shrimp Fishery Exemption Area; (a)(6), the Cultivator Shoal Whiting Fishery Exemption Area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals Dogfish Fishery Exemption Area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals Mussel and Sea Urchin Dredge Exemption Area; (a)(13), the GOM/GB Monkfish Gillnet Exemption Area; (a)(14), the GOM/GB Dogfish Gillnet Exemption Area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(16) the GOM Grate Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5); the SNE Monkfish and Skate Trawl Exemption Area; (b)(6), the SNE Monkfish and Skate Gillnet Exemption Area; (b)(8), the SNE Mussel and Sea Urchin Dredge Exemption Area; (b)(9), the SNE Little Tunny Gillnet Exemption Area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

(53) Possess, land, or fish for regulated species, except winter flounder as provided for in accordance with § 648.80(i) from or within the areas described in § 648.80(i), while in possession of scallop dredge gear on a vessel not fishing under the scallop DAS program as described in § 648.53, or fishing under a general scallop permit, unless the vessel and the dredge gear conform with the stowage requirements of § 648.23(b), or unless the vessel has

not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

* * * * *

(78) Violate any provision of an in-season action to adjust trip limits, gear usage, season, area access and/or closure, or any other measure authorized by this part.

* * * * *

(153) If fishing under the SNE/MA Winter Flounder SAP described in § 648.85(b)(4), fail to comply with the restrictions and conditions under § 648.85(b)(4)(i) through (iv).

* * * * *

(b) * * *

(3) While fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, possess yellowtail flounder in excess of the limits specified under § 648.86(g)(1), unless fishing under the recreational or charter/party regulations, or transiting in accordance with § 648.23(b).

(4) If fishing in the areas specified in § 648.86(g)(1) with a NE multispecies Handgear A permit, or under the NE multispecies DAS program, or under the limited access monkfish Category C or D permit provisions, fail to comply with the requirements specified in § 648.81(g)(1).

(c) * * *

(24) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1), unless the vessel is fishing under the cod exemption specified in § 648.86(b)(4).

* * * * *

(26) Enter port, while on a NE multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(2).

* * * * *

■ 7. In § 648.80, paragraph (b)(2)(vi) is revised to read as follows:

§ 648.80 NE multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(2) * * *

(vi) *Other restrictions and exemptions.* Vessels are prohibited from fishing in the SNE Exemption Area, as defined in paragraph (b)(10) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (b)(3), (b)(5) through (9), (b)(11), (c), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS, if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(b)(5) and (b)(6), respectively; or if fishing under a scallop state waters exemption specified in § 648.54; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing under a General Category scallop permit in accordance with paragraphs (b)(11)(i)(A) and (B) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit; or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

§ 648.81 [Amended]

■ 8. In § 648.81, remove paragraph (g)(2)(iv).

■ 9. In § 648.82, paragraph (e)(1) is revised and paragraphs (k)(3)(i) through (iii) are added to read as follows:

§ 648.82 Effort-control program for NE multispecies limited access vessels.

* * * * *

(e) * * *

(1) When a vessel is participating in the DAS program, as required by the regulations, DAS shall accrue to the nearest minute and, with the exceptions described under this paragraph (e) and paragraph (j)(1)(iii) of this section, shall be counted as actual time called, or logged into the DAS program, consistent with the DAS notification requirements specified at § 648.10.

* * * * *

(k) * * *

(3) * * *

(i) *Application information requirements.* An application to lease Category A DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; Lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of Lessor and Lessee; and date form was completed. Information obtained from the lease application will be held confidential, according to applicable Federal law. Aggregate data may be used in the analysis of the DAS Leasing Program.

(ii) *Approval of lease application.* Unless an application to lease Category A DAS is denied according to paragraph (k)(3)(iii) of this section, the Regional Administrator shall issue confirmation of application approval to both Lessor and Lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may deny an application to lease Category A DAS for any of the following reasons, including, but not limited to: The application is incomplete or submitted past the March 1 deadline; the Lessor or Lessee has not been issued a valid limited access NE multispecies permit or is otherwise not eligible; the Lessor's or Lessee's DAS are under sanction pursuant to an enforcement proceeding; the Lessor's or Lessee's vessel is prohibited from fishing; the Lessor's or Lessee's limited access NE multispecies permit is sanctioned pursuant to an enforcement proceeding; the Lessor or Lessee vessel is determined not in compliance with the conditions, restrictions, and requirements of this part; or the Lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator is the final agency decision.

* * * * *

■ 10. In § 648.85, paragraphs (b)(7)(vi)(G) through (I) are removed, and paragraphs (a)(3)(i), (b)(6)(iv)(D), (b)(7)(iii), (b)(7)(iv)(A) and (F), (b)(7)(v)(D), and (b)(7)(vi)(D) are revised to read as follows:

§ 648.85 Special management programs.

(a) * * *

(3) * * *

(i) *VMS requirement.* A NE multispecies DAS vessel in the U.S./Canada Management Areas described in paragraph (a)(1) of this section must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

* * * * *

(b) * * *

(6) * * *

(iv) * * *

(D) *Landing limits.* Unless otherwise specified in this paragraph (b)(6)(iv)(D), a NE multispecies vessel fishing in the Regular B DAS Program described in this paragraph (b)(6), and fishing under a Regular B DAS, may not land more than 100 lb (45.5 kg) per DAS, or any part of a DAS, up to a maximum of 1,000 lb (454 kg) per trip, of any of the following species/stocks from the areas specified in paragraph (b)(6)(v) of this section: Cod, American plaice, white

hake, witch flounder, SNE/MA winter flounder, GB winter flounder, GB yellowtail flounder, southern windowpane flounder, and ocean pout; and may not land more than 25 lb (11.3 kg) per DAS, or any part of a DAS, up to a maximum of 250 lb (113 kg) per trip of CC/GOM or SNE/MA yellowtail flounder. In addition, trawl vessels, which are required to fish with a haddock separator trawl as specified under paragraph (b)(6)(iv)(J) of this section, and other gear that may be required in order to reduce catches of stocks of concern as described under paragraph (b)(6)(iv)(J) of this section, are restricted to the following trip limits: 500 lb (227 kg) of all flatfish species (American plaice, witch flounder, winter flounder, windowpane flounder, and GB yellowtail flounder), combined; 500 lb (227 kg) of monkfish (whole weight); 500 lb (227 kg) of skates (whole weight); and zero possession of lobsters, unless otherwise restricted by § 648.94(b)(3).

* * * * *

(7) * * *

(iii) *Season*. The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2006 fishing year and beyond, the participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15, and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(F) of this section is harvested prior to November 15.

(iv) * * *

(A) *DAS use restrictions*. A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section. DAS will be charged as described in § 648.10.

* * * * *

(F) *Haddock TAC*—(*1*) *Allocation and Distribution*. The maximum total amount of haddock that may be caught (landings and discards) in the Closed Area I Hook Gear SAP Area in any fishing year is based upon the size of the TAC allocated for the 2004 fishing year (1,130 mt live weight), adjusted according to the growth or decline of the western GB (WGB) haddock exploitable biomass (in relationship to its size in 2004), according to the following formula: $Biomass_{YEAR\ X}$= (1,130 mt live weight) x (Projected WGB Haddock Exploitable $_{BiomassYEAR\ X}$/WGB Haddock Exploitable $Biomass_{2004}$). The size of the western component of the stock is considered to be 35 percent of the total stock size, unless modified by a stock assessment. The maximum amount of haddock that may be caught in this SAP during each fishing year is divided evenly between the two participation periods of October 1 - November 15 and November 16 - December 31, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator shall specify the haddock TAC for the SAP, in a manner consistent with applicable law.

(*2*) *Adjustments to the haddock TAC*. The Regional Administrator may adjust the portion of the haddock TAC specified for the second participation period to account for under- or over-harvest of the portion of the haddock TAC (landings and discards) that was harvested during the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

* * * * *

(v) * * *

(D) *Reporting requirements*. The owner or operator of a Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The Sector Manager shall provide daily reports to NMFS, including at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

* * * * *

(vi) * * *

(D) *Reporting requirements*. The owner or operator of a non-Sector vessel declared into the Closed Area I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the Closed Area I Hook Gear Haddock SAP Area. The reports must be submitted in 24–hr intervals for each day fished, beginning at 0000 hr local time and ending at 2400 hr local time. The reports must be submitted by 0900 hr local time of the day following fishing. The reports must include at least the following information: Total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake kept; total pounds of haddock, cod, yellowtail flounder, winter flounder, witch flounder, American plaice, and white hake discarded; date fish were caught; and VTR serial number, as instructed by the Regional Administrator. Daily reporting must continue even if the vessel operator is required to exit the SAP as required under paragraph (b)(7)(iv)(F) of this section.

* * * * *

■ 11. In § 648.86, paragraphs (e) and (i) are revised to read as follows:

§ 648.86 NE Multispecies possession restrictions.

* * * * *

(e) *White hake*. Unless otherwise restricted under this part, a vessel issued a NE multispecies DAS permit, a limited access Handgear A permit, an open access Handgear B permit, or a monkfish limited access permit and fishing under the monkfish Category C or D permit provisions may land up to 1,000 lb (453.6 kg) of white hake per DAS, or any part of a DAS, up to 10,000 lb (4,536 kg) per trip.

* * * * *

(i) *Offloading requirement for vessels possessing species regulated by a daily possession limit*. A vessel that has ended a trip as specified in § 648.10(b)(2)(iii) or (c)(3) that possesses on board species regulated by a daily possession limit (i.e., pounds per DAS), as specified at § 648.85 or § 648.86, must offload species in excess of the daily landing limit prior to leaving port on a subsequent trip. A vessel may retain on board up to one day's worth of such species prior to the start of a subsequent trip. Other species regulated by an overall trip limit may be retained on board for a subsequent trip. For example, a vessel that possesses cod and winter flounder harvested from Georges Bank is subject to a daily possession limit for cod of 1,000 lb (453 kg)/DAS and an overall trip limit of 5,000 lb (2,267 kg)/trip for winter flounder. In this example, the vessel would be required to offload any cod harvested in excess of 1,000 lb (453 kg) (i.e., the vessel may retain up to 1,000 lb (453 kg) of Georges Bank cod, but must offload any additional cod), but may retain on

board winter flounder up to the maximum trip limit prior to leaving port and crossing the VMS demarcation line to begin a subsequent trip.

* * * * *

■ 12. In § 648.87, paragraphs (b)(1)(ix), (b)(1)(xv) and (xvi), (b)(2)(x), and (c) are revised to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(1) * * *

(ix) Unless exempted through a Letter of Authorization specified in paragraph (c)(2) of this section, each vessel operator and/or vessel owner fishing under an approved Sector must comply with all NE multispecies management measures of this part and other applicable law. Each vessel and vessel operator and/or vessel owner participating in a Sector must also comply with all applicable requirements and conditions of the Operating Plan specified in paragraph (b)(2) of this section and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements and each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for violations of such conditions and requirements and any other applicable Federal regulations, resulting in an assessment of civil penalties and permit sanctions pursuant 15 CFR part 904.

* * * * *

(xv) All vessel operators and/or vessel owners fishing in an approved Sector must be issued and have on board the vessel, a Letter of Authorization (LOA) issued by NMFS pursuant to paragraph (c)(2) of this section.

(xvi) The Regional Administrator may exempt participants in the Sector, pursuant to paragraph (c)(2) of this section, from any Federal fishing regulations necessary to allow such participants to fish in accordance with the Operations Plan, with the exception of regulations addressing the following measures for Sectors based on a hard TAC: Year-round closure areas, permitting restrictions (e.g., vessel upgrades, etc.), gear restrictions designed to minimize habitat impacts (e.g., roller gear restrictions, etc.), and reporting requirements (not including DAS reporting requirements). A framework adjustment, as specified in § 648.90, may be submitted to exempt Sector participants from regulations not authorized to be exempted pursuant to paragraph (c)(2) of this section.

* * * * *

(2) * * *

(x) Each vessel and vessel operator and/or vessel owner participating in a Sector must comply with all applicable requirements and conditions of the Operations Plan specified in this paragraph (b)(2) and the Letter of Authorization issued pursuant to paragraph (c)(2) of this section. It shall be unlawful to violate any such conditions and requirements unless such conditions or restrictions are identified as administrative only in an approved Operations Plan. Each Sector, vessel, and vessel operator and/or vessel owner participating in the Sector may be charged jointly and severally for violations of Sector Operations Plan requirements as well as any other applicable Federal regulations, resulting in an assessment of civil penalties and permit sanctions pursuant to 15 CFR part 904.

(c) *Approval of a Sector and granting of exemptions by the Regional Administrator.* (1) Once the submission documents specified under paragraphs (a)(1) and (b)(2) of this section have been determined to comply with the requirements of this section, NMFS may consult with the Council and shall approve or disapprove Sector operations consistent with applicable law.

(2) If a Sector is approved, the Regional Administrator shall issue a Letter of Authorization to each vessel operator and/or vessel owner belonging to the Sector. The Letter of Authorization shall authorize participation in the Sector operations and may exempt participating vessels from any Federal fishing regulation, except those specified in paragraph (b)(1)(xvi) of this section, in order to allow vessels to fish in accordance with an approved Operations Plan, provided such exemptions are consistent with the goals and objectives of the NE Multispecies FMP. The Letter of Authorization may also include requirements and conditions deemed necessary to ensure effective administration of, and compliance with, the Operations Plan and the Sector allocation. Solicitation of public comment on, and NMFS final determination on such exemptions shall be consistent with paragraphs (c)(1) and (2) of this section.

(3) The Regional Administrator may withdraw approval of a Sector, after consultation with the Council, at any time if it is determined that Sector participants are not complying with the requirements of an approved Operations Plan or that the continuation of the Operations Plan will undermine achievement of fishing mortality objectives of the NE Multispecies FMP. Withdrawal of approval of a Sector may only be done after notice and comment rulemaking consistent with applicable law.

* * * * *

■ 13. In § 648.89, paragraph (b)(4) is added to read as follows:

§ 648.89 Recreational and charter/party vessel restrictions.

* * * * *

(b) * * *

(4) The minimum fish size applies to whole fish or to any part of a fish while possessed on board either a charter/party or a private recreational vessel, or at the time of landing. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. ''Skin on'' means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

* * * * *

§ 648.92 [Amended]

■ 14. In § 648.92, remove paragraph (b)(2)(iii).

[FR Doc. E7–25073 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 247
Thursday, December 27, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 339

RIN 3206–AL14

Medical Qualification Determinations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a revision of its regulations regarding medical qualification determinations. The proposed revisions add four authorities, separate and move two definitions, add three definitions, clarify coverage and applicability, update to reflect current references and language, and address the need for medical testing/examination or medical documentation of an employee whose job has no physical standards or physical requirements.

DATES: We will consider comments received on or before February 25, 2008.

ADDRESSES: Send, deliver, or fax comments to Mark Doboga, Deputy Associate Director, Center for Talent and Capacity Policy, Strategic Human Resources Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail *employ@opm.gov;* FAX: (202) 606–2329. Comments may also be sent through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

FOR FURTHER INFORMATION CONTACT: J. C. Phillip Spottswood, J.D., M.P.H., by telephone at (202) 606–1389, by TTY at (202) 418–3134; by fax at (202) 606–0864; or by e-mail at *phil.spottswood@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed revised regulations on medical qualification determinations. Details of the proposed revisions are discussed under the applicable subpart.

OPM has replaced the verb ''shall'' with ''must'' in this part for added clarity and readability. OPM intends that any provisions in this part using the verb ''must'' has the same meaning and effect as previous provisions in this part using ''shall.''

The proposed revised regulations add four authority citations to clarify the scope of applicability: (1) 5 U.S.C. 3312 Preference eligibles; physical qualifications; waiver; (2) 5 U.S.C. 3318 Competitive service; selection from certificates; (3) 5 U.S.C. 3320 Excepted service; government of the District of Columbia; selection; and (4) 5 U.S.C. 3504 Preference eligibles; retention; physical qualifications; waiver.

Subpart A

Subpart A covers General information. The proposed subpart A adds wording to clarify applicability of this regulation to excepted service positions; updates references to the Rehabilitation Act of 1973, as amended, and to portions of the Americans with Disabilities Act of 1992 that are applicable to the Federal government through the Rehabilitation Act; adds examples to the definition in § 339.104 for ''medical evaluation program,'' separates and moves definitions for ''subtle incapacitation'' and ''sudden incapacitation;'' and adds definitions for ''medical restriction,'' ''physical fitness standard,'' and ''physical fitness test.''

Subpart B

Subpart B governs Medical Standards, Physical Requirements, and Medical Evaluation Programs. The title of proposed subpart B is changed to clarify application of this part to physical requirements and medical evaluation programs. The proposed subpart B incorporates physical fitness standards into § 339.203, and adds language to clarify application of this part to arbitrary disqualification; adds ''medical surveillance'' to policies agencies may establish to safeguard employee health; provides an example of an immunization program and changes ''incumbents'' to ''employees'' to clarify § 339.205.

Subpart C

Subpart C governs Medical Examinations. The proposed subpart C incorporates minor corrections in references, spelling and punctuation; adds wording to clarify examinations the agency may require and examples of ''benefits'' in § 339.304; and adds wording to clarify applicability of this regulation to excepted service positions when requesting a medical disqualification or a pass over of a preference eligible in § 339.306.

For the convenience of the reader, the proposed part 339 is published in its entirety.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 339

Equal employment opportunity, Government employees, Health, Individuals with disabilities.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, OPM proposes to revise 5 CFR part 339 to read as follows:

PART 339—MEDICAL QUALIFICATION DETERMINATIONS

Subpart A—General

Sec.
339.101 Coverage.
339.102 Purpose and effect.
339.103 Compliance with disability laws and regulations.
339.104 Definitions.

Subpart B—Medical Standards, Physical Requirements, and Medical Evaluation Programs

339.201 Disqualification by OPM.
339.202 Medical standards.
339.203 Physical requirements and/or physical fitness requirements.
339.204 Waiver of standards and requirements.
339.205 Medical evaluation programs.
339.206 Disqualification on the basis of medical history.

Subpart C—Medical Examinations

339.301 Authority to require an examination.
339.302 Authority to offer examinations.
339.303 Examination procedures.

339.304 Payment for examination.
339.305 Records and reports.
339.306 Processing medical eligibility determinations.

Authority: 5 U.S.C. 1104(a), 1302(a) 3301, 3302, 3304, 3312, 3318, 3320, 3504, 5112; 39 U.S.C. 1005; Executive Order 10577, Rule II, codified as amended in 5 CFR 2.1(a).

Subpart A—General

§ 339.101 Coverage.

This part applies to all applicants for and employees in competitive service positions; and to applicants for and employees in positions excepted from the competitive service, by statute or executive order, when medical issues arise in connection with an OPM regulation that governs a particular personnel decision.

§ 339.102 Purpose and effect.

(a) This part defines the circumstances under which medical documentation may be required and examinations and evaluations conducted to determine the nature of a medical condition that may affect safe and efficient performance.

(b) Personnel decisions based wholly or in part on the review of medical documentation and the results of medical examinations and evaluations must be made in accordance with appropriate parts of this title.

(c) Failure to meet a properly established medical standard or physical requirement under this part means that the individual is not qualified for the position unless a waiver or reasonable accommodation is suitable, as described in §§ 339.103 and 339.204. An employee's refusal to be examined and provide medical documentation in accordance with a proper agency order authorized under this part constitutes a basis for appropriate disciplinary or adverse action.

§ 339.103 Compliance with disability laws and regulations.

Actions under this part must be consistent with the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA) of 1992, as it applies to the Federal government through the Rehabilitation Act. In addition, the Equal Employment Opportunity Commission (EEOC) has issued regulations covering the equal employment provisions of the ADA in 29 CFR part 1630, which must be followed to the extent consistent with the Rehabilitation Act. Particularly relevant to medical qualification determinations are 29 CFR 1630.2(o) (requiring reasonable accommodation of individuals with disabilities); 29 CFR 1630.10 (prohibiting use of employment criteria that screen out individuals with disabilities unless shown to be related to the job in question); and 29 CFR 1630.13 (prohibiting pre-employment examination or inquiry related to the existence or nature of a disability and pre-employment medical examination or inquiry of employees, except under specified circumstances). In addition, use of the term ''qualified'' in this part must be interpreted consistently with 29 CFR 1630.2(m), which provides that a ''qualified individual with a disability'' means an individual with a disability ''who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others.''

§ 339.104 Definitions.

For purposes of this part—

Accommodation means *reasonable accommodation* as described in 29 CFR 1630.2(o).

Arduous or hazardous positions means positions that are dangerous or physically demanding to such a degree that an employee's medical and/or physical condition is necessarily an important consideration in determining ability to perform safely and efficiently.

Medical condition means a health impairment which results from birth, injury, or disease, including psychiatric disease.

Medical documentation or *documentation of a medical condition* means a statement from a licensed physician or other appropriate practitioner who provides information the agency considers necessary to enable it to make an employment decision. To be acceptable, the diagnosis or clinical impression must be justified according to established diagnostic criteria and the conclusions and recommendations must not be inconsistent with generally accepted professional standards. The determination that the diagnosis meets these criteria is made by or in coordination with a licensed physician or, if appropriate, a practitioner of the same discipline as the one who issued the statement. An acceptable diagnosis must include the following information, or parts identified by the agency as necessary and relevant:

(1) The history of the medical condition(s), including references to findings from previous examinations, treatment, and responses to treatment;

(2) Clinical findings from the most recent medical evaluation, including any of the following which have been obtained: Findings of physical examination; results of laboratory tests; X-rays; EKG's and other special evaluations or diagnostic procedures; and, in the case of psychiatric examination or psychological assessment, the findings of a mental status examination and the results of psychological tests, if appropriate;

(3) Diagnosis, including the current clinical status;

(4) Prognosis, including plans for future treatment and an estimate of the expected date of full or partial recovery;

(5) An explanation of the impact of the medical condition(s) on overall health and activities, including the basis for any conclusion that restrictions or accommodations are or are not warranted, and if warranted, an explanation of their therapeutic or risk avoiding value;

(6) An explanation of the medical basis for any conclusion that indicates the likelihood that the individual is or is not expected to suffer sudden or subtle incapacitation by carrying out, with or without accommodation, the tasks or duties of a specific position; and

(7) Narrative explanation of the medical basis for any conclusion that the medical condition has or has not become static or well-stabilized and the likelihood that the individual may experience sudden or subtle incapacitation as a result of the medical condition. In this context, ''static or well-stabilized'' medical condition means a medical condition which is not likely to change as a consequence of the natural progression of the condition, specifically as a result of the normal aging process, or in response to the work environment or the work itself.

Medical evaluation program means a program of recurring medical examinations (e.g., age adjusted periodic medical examinations) or tests established by written agency policy or directive, to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands. For example, an agency policy or directive may include but is not limited to medical clearances and medical surveillance to test for occupational exposure to biological, chemical, and/or radiological hazardous agents, occupational diseases, and occupational risk.

Medical restriction is an operative event that limits, modifies, or prevents an individual from performing certain physical requirements (e.g., lifting, pushing, and standing) because of a particular medical condition(s) or physical limitation(s). The purpose of a medical restriction is to ensure that the

medical condition(s) is not aggravated, accelerated, exacerbated, or made permanently worse.

Medical standard is a written description of the medical requirements for a particular occupation based on a determination that a certain level of fitness or health status is required for successful performance.

Physical fitness standard(s) is a documented and validated evaluation of identified essential common duties of similar positions, job task simulation scenarios, and results of testing.

Physical fitness test(s) is a measure of the minimum level of physical fitness (e.g., running or lifting) consistent with validated physical fitness standards that must be met in order to perform the essential duties of the position (e.g. law enforcement or wildland firefighter duties that regularly involve dangerous and stressful situations and physical hazards).

Physical requirement is a written description of job-related physical abilities which are normally considered essential for successful performance in a specific position.

Physician means a licensed Doctor of Medicine or Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated by the uniformed service to conduct examinations under this part.

Practitioner means a person providing health service(s) who is not a medical doctor, but who is certified by a National organization and licensed by a State to provide the health service in question.

Subtle incapacitation means gradual, initially imperceptible impairment of physical or mental function whether reversible or not which is likely to result in performance or conduct deficiencies.

Sudden incapacitation means abrupt onset of loss of control of physical or mental function(s).

Subpart B—Medical Standards, Physical Requirements, and Medical Evaluation Programs

§ 339.201 Disqualification by OPM.

Under subpart C of part 731 of this chapter, OPM may deny an applicant examination, deny an eligible appointment, and/or instruct an agency to remove an appointee by reason of physical or mental unfitness for the position for which he or she has applied, or to which he or she has been appointed. An OPM decision under this section is separate and distinct from a determination of disability pursuant to statutory provisions for CSRS and FERS disability retirement.

§ 339.202 Medical standards.

OPM may establish or approve medical standards for a Governmentwide occupation (i.e., an occupation common to more than one agency) or approve revisions to its established medical qualification standards. An agency may establish medical standards for position(s) that predominate in that agency (i.e., where the agency has 50 percent or more of the position(s) in a particular occupation). Such standards must be justified on the basis that the duties of the position(s) are arduous or hazardous, or require a certain level of health status or physical fitness because, for reasons including the nature of the position(s) involves a high degree of responsibility toward the public or sensitive national security concerns. The rationale for establishing the standard must be documented. Standards established by OPM or an agency must be:

(a) Established by written directive and uniformly applied, and

(b) Directly related to the actual requirements of the position.

§ 339.203 Physical requirements and physical fitness standards.

Agencies are authorized to establish physical requirements for individual positions without OPM approval when such requirements are considered essential for successful job performance. This includes development and implementation of validated physical fitness standards including but not limited to aerobic capacity. The requirements or standards must be clearly supported by the actual duties of the position, documented in the position description and by job analysis. Applicants and employees cannot be disqualified arbitrarily on the basis of physical requirements, fitness tests, or other criteria that do not relate specifically to job performance.

§ 339.204 Waiver of standards and requirements.

An agency must waive a medical standard or physical requirement established under this part when an applicant or employee unable to meet that standard or requirements presents sufficient evidence that he or she, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of him or herself or others. Additional information obtained by the agency may be considered in determining whether a waiver is appropriate.

§ 339.205 Medical evaluation programs.

Agencies may establish periodic medical examinations, medical surveillance, or immunization programs by written policies or directives to safeguard the health of employees whose work may subject them or others to significant health or safety risks due to occupational or environmental exposure or demands. This may include but is not limited to the requirement to undergo mandatory Food and Drug Administration approved vaccines (e.g., for national security reasons or in order to safely carry out an agency program). The need for a medical evaluation program must be clearly supported by the nature of the work. The specific positions covered must be identified and the applicants or employees notified in writing of the reasons for including the positions in the program.

§ 339.206 Disqualification on the basis of medical history.

A candidate may not be disqualified for any position solely on the basis of medical history. For positions with medical standards or physical requirements, or positions under medical evaluation programs, a history of a particular medical condition(s) may result in medical disqualification only if the condition(s) at issue is itself disqualifying, recurrence is a reasonable probability, and the duties of the position are such that a recurrence would pose a reasonable probability of substantial harm to the individual or others.

Subpart C—Medical Examinations

§ 339.301 Authority to require an examination.

(a) A routine pre-employment medical examination is appropriate only for a position with specific medical standards, physical requirements, or validated physical fitness standards, or is covered by a medical evaluation program established under this part.

(b) Subject to § 339.103, an agency may require an individual who has applied for or occupies a position which has medical standards, physical requirements, physical fitness standards, or is covered by a medical evaluation program established under this part, to report for a medical examination:

(1) Prior to appointment or selection (including reemployment on the basis of full or partial recovery from a medical condition(s));

(2) On a regularly recurring, periodic basis after appointment; or

(3) Whenever there is a direct question about an employee's continued capacity to meet the physical or medical or physical fitness requirements of a position.

(c) An agency may require an employee who has applied for or is receiving continuation of pay or compensation as a result of an on-the-job injury or disease to report for an examination under 5 U.S.C. 8123 to determine medical limitations that may affect placement decisions.

(d) An agency may require an employee who is released from his or her competitive level in a reduction in force under part 351 of this chapter to undergo a relevant medical evaluation if the position to which the employee has assignment rights has medical standards or physical requirements that are different from those required in the employee's current position.

(e)(1) An agency may order a psychiatric examination (including a psychological assessment) only when:

(i) The result of a current general medical examination that the agency has the authority to order under this section indicates no physical explanation for behavior or actions that may affect the safe and efficient performance of the individual or the safety of others, or

(ii) A psychiatric examination or psychological assessment is specifically called for in a position having medical standards or under a medical evaluation program established under this part.

(2) A psychiatric examination or psychological assessment authorized under paragraphs (e)(1)(i) or (ii) of this section must be conducted in accordance with accepted professional standards, by a licensed physician or practitioner authorized to conduct such examinations, and may only be used to make inquiry into a person's mental fitness as it directly relates to successfully performing the duties of the position without undue hazard to the individual or others.

§ 339.302 Authority to offer examinations.

An agency may, at its option, offer a medical examination (including a psychiatric examination or psychological assessment) in any situation where the agency needs additional medical documentation to make an informed management decision. This may include situations where an individual requests for medical reasons a change in duty status, assignment, working conditions, or any other different treatment (including reasonable accommodation or reemployment on the basis of full or partial recovery from a medical condition) or where the individual has a performance or conduct problem that may require agency action. Reasons for offering an examination must be documented. An offer of an examination must be carried out and used in accordance with 29 CFR 1630.

§ 339.303 Examination procedures.

(a) When an agency orders or offers a medical or psychiatric examination or psychological assessment under this subpart, it must inform the applicant or employee in writing of its reasons for doing so, the consequences of failure to cooperate, and the right to submit medical information from his or her personal physician or practitioner. A refusal or failure to report for a medical examination ordered by the agency may be a basis for the agency to determine that the employee is not qualified for the position. A single notification is sufficient to cover a series of regularly recurring or periodic examinations ordered under this subpart.

(b) The agency designates the examining physician or other appropriate practitioner, but must offer the individual an opportunity to submit medical documentation from his or her personal physician or practitioner. The agency must review and consider all such documentation supplied by the individual's personal physician or practitioner.

§ 339.304 Payment for examination.

Agencies must pay for all examinations ordered or offered under this subpart, whether conducted by the agency's physician or the applicant's or employee's own physician or practitioner. This includes special evaluations or diagnostic procedures required by an agency. Applicants and employees must pay for a medical examination conducted by his or her own physician or practitioner where the purpose of the examination is to secure a change sought by an employee (e.g., a request for change in duty status, reasonable accommodation, and job modification).

§ 339.305 Records and reports.

(a) Agencies will receive and maintain all medical documentation and records of examinations obtained under this part in accordance with part 293, subpart E of this chapter.

(b) The report of an examination conducted under this subpart must be made available to the applicant or employee under the provisions of part 297 of this chapter.

(c) Agencies must forward to the Office of Workers' Compensation Programs (OWCP), Employment Standards Administration, Department of Labor, a copy of all medical documentation and reports of examinations of individuals who are receiving or have applied for injury compensation benefits under 5 U.S.C. 81, including continuation of pay. The agency must also report to the OWCP the failure of such individuals to report for examinations that the agency orders under this subpart. When the individual has applied for disability retirement, this information and any medical documentation or reports of examination must be forwarded to OPM.

§ 339.306 Processing medical eligibility determinations.

(a) In accordance with the provisions of this part, agencies are authorized to medically disqualify a nonpreference eligible. A nonpreference eligible so disqualified has a right to a higher level review of the determination within the agency.

(b) OPM must approve the sufficiency of the agency's reasons to:

(1) Medically disqualify or pass over a preference eligible in order to select a nonpreference eligible for:

(A) competitive service positions under part 332 of this chapter; and

(B) excepted service positions in the executive branch subject to title 5, U.S.C. by statute or executive order;

(2) Medically disqualify or pass over a 30 percent or more compensably disabled veteran for a position in the U.S. Postal Service in favor of a nonpreference eligible;

(3) Medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a reduction in force under § 351.702(d) of this chapter; or

(4) Medically disqualify a 30 percent or more disabled veteran for noncompetitive appointment, for example, under § 316.302(b)(4) of this chapter.

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SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 127, and 134

RIN 3245–AF40

Women-Owned Small Business Federal Contract Assistance Procedures

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations governing small business contracting procedures. This proposed rule would add a new part that would implement procedures to increase procurement opportunities for

Women-Owned Small Business Concerns, as authorized under the Small Business Act. It would also make the relevant conforming amendments to SBA's current procurement regulations.

DATES: Comments must be received on or before February 25, 2008.

ADDRESSES: You may submit comments, identified by 3245–AF40, by any of the following methods:

• *Federal eRulemaking Portal: http://www.reglations.gov*. Follow the instructions for submitting comments.

• *Mail, Hand Delivery/Courier:* Robert C. Taylor, Office of Contract Assistance, Office of Government Contracting, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

All comments will be posted on *http://www.reglations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.reglations.gov*, please submit the comments to Robert C. Taylor and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

FOR FURTHER INFORMATION CONTACT: Robert C. Taylor, Office of Contract Assistance, Office of Government Contracting, *WOSBProposedRegulation@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Women-owned businesses have been regarded as the fastest growing segment of the business community in the United States. Although between 1997 and 2002 the growth rate in the number of women-owned small businesses (WOSBs) was almost twice that of all firms, WOSBs have not generally received a commensurate increase in their share of Federal contracting dollars.

Several congressional and executive efforts over the years to increase Federal contracting with WOSBs have not enhanced the WOSB share of Federal contracting dollars as much as anticipated. For example, in 1979, when Executive Order 12138 charged Federal agencies with responsibility for providing procurement assistance to women-owned businesses, WOSBs received only 0.2 percent of all Federal procurements. More than 9 years later, the percentage of WOSB Federal procurements had grown to only one percent. Similarly, in 1988, the Women's Business Ownership Act, Public Law 100–588 (Oct. 25, 1988), was enacted to assist women in starting, managing and growing small businesses. This program has been successful in assisting thousands of women in obtaining business financing and in business formation, but has enjoyed less success in the Federal procurement arena.

Section 7106 of the Federal Acquisition Streamlining Act (FASA), Public Law 103–355 (Oct. 13, 1994), amended the Small Business Act (the Act) by establishing a target that would result in greater opportunities for women to compete for Federal contracts. FASA, among other things, established a government-wide goal for participation by WOSBs in procurement contracts of not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year. FASA also directed that WOSBs, like other small businesses and small disadvantaged businesses (SDBs), have the maximum practicable opportunity to become subcontractors for Federal contracts exceeding $100,000, and it mandated that WOSBs be included in subcontracting plans required under Section 8(d) of the Act, 15 U.S.C. 637(d).

Federal Procurement Data System (FPDS) data indicates that since fiscal year (FY) 1996, Federal agencies have not met the separate 5 percent government-wide WOSB goal for prime contracts and subcontracts. However, the share of Federal prime contracting dollars to WOSBs has increased over the years. For example, in FY 2000, WOSBs received 2.3 percent of the approximately $200 billion in Federal prime contract awards. The share of WOSB prime contract awards increased to 2.49 percent in FY 2001, and again to 2.90, 2.98, and 3.03 percent in FYs 2002, 2003 and 2004, respectively. In FY 2005, WOSB prime contract awards increased to 3.18 percent and in FY 2006, increased again to 3.41 percent of prime contract awards. Nonetheless, the total percent of WOSB prime contract awards stills falls short of the statutory goal of 5 percent.

The Government Accountability Office (GAO) published a report in February 2001 discussing the trends and obstacles in Federal contracting with WOSBs since FY 1996. *See Trends and Challenges in Contracting With Women-Owned Small Businesses,* GAO–01–346. In that report, GAO noted that contracting officials complain that one of the primary obstacles in achieving the statutory five percent WOSB goal was the absence of a ''targeted government program for contracting with WOSBs.''

Section 811 of the Small Business Reauthorization Act of 2000, Public Law 106–554, provided such a mechanism. Section 811, enacted on December 21, 2000, amended the Act by adding a new section 8(m), 15 U.S.C. 637(m), authorizing contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in certain industries. Due to an apparent drafting error in the cross-reference and the inter-relationships between subparagraphs (2)(C), (3) and (4) of 15 U.S.C. 637(m), subparagraph (2)(C) literally appears to authorize set-asides for Federal contracts only in industries in which WOSBs are determined to be *substantially* underrepresented. However, if the statute were construed by SBA not to authorize set-asides in industries in which WOSBs were underrepresented, the provision in the statute requiring SBA to conduct a study to determine industries in which WOSBs are underrepresented, as well as the section's waiver provision, would arguably be rendered inoperative or contradictory. Accordingly, SBA has drafted the proposed rule to account for this apparent drafting error based on its best understanding of the meaning and intent of section 8(m) read as a whole and has interpreted the statute to authorize set asides for industries in which WOSBs are determined to be underrepresented or substantially underrepresented in Federal procurement. In the absence of corrective legislation clarifying the confusing cross-references among these provisions, however, some degree of uncertainty will remain with respect to the question of whether section 8(m) effectively authorizes appropriate set-asides in industries where WOSBs are merely underrepresented rather than substantially underrepresented.

The new section 8(m) of the Act explicitly limits the contracting officer's authority to restrict competition to contracts not exceeding $3 million ($5 million for manufacturing). Furthermore, to be eligible as a WOSB under section 8(m) of the Act, the firm must be a ''small business concern owned and controlled by women'' as defined in section 3(n) of the Act, 15 U.S.C. 632(n). Section 8(m) also requires that such concerns be at least 51 percent owned by one or more women who are economically disadvantaged, except with respect to procurements in industries in which SBA has determined that WOSBs are substantially underrepresented in Federal contracting and has waived the economically disadvantaged requirement.

Moreover, section 8(m) of the Act requires SBA to establish standards for determining the eligibility of a concern as a WOSB or economically disadvantaged WOSB (EDWOSB). It also

charges SBA with responsibility for verifying a concern's eligibility and provides the penalties for a concern's misrepresentation of its status as an EDWOSB or WOSB.

Lastly, section 8(m) requires SBA to conduct a study to identify the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement and requires the head of any department or agency to provide SBA with any information that SBA deems necessary to conduct the study. SBA initially completed the legislatively mandated study in September 2001. However, in March 2005, the National Academy of Science (NAS) issued an independent evaluation determining that SBA's original study was ''fatally flawed.'' In response to the NAS's findings, SBA issued a solicitation in October 2005 seeking a contractor to perform a revised study in accordance with the NAS report. In February 2006, SBA awarded a contract to the *Kauffman-RAND Institute for Entrepreneurship Public Policy (RAND)* to complete a revised study of the availability and utilization of WOSBs in prime contracts. The RAND report was published in April 2007 and is available to the public at *http://www.RAND.org/pubs/technical_reports/TR442*.

On June 15, 2006, the SBA published in the **Federal Register**, 71 FR 34550, a proposed rule, with request for comments, to amend its regulations in accordance with § 8(m) of the Small Business Act. Based on SBA's evaluation of the public and inter-agency comments received, discussions with the Department of Justice (DOJ) and the Office of Federal Procurement Policy (OFPP), and further examination of Section 8(m), it has been determined that the June 15, 2006, proposed rule requires significant changes that warrant further public comment and consideration. In addition, rather than propose a separate rulemaking, SBA believes it would be expeditious to include in this proposed rule implementation of the RAND study results which identified the industries in which WOSBs are underrepresented and substantially underrepresented in Federal procurement.

Whether SBA went forward with a final rule on WOSB status and procedures and simultaneously proposed a rule to implement the RAND Study results or combined the two rules into one comprehensive rule, any potential set-asides under the procedures could not be made until the RAND report rule had been finalized. Therefore, SBA's action of combining the RAND report rule with this re-proposed June 15, 2006 rule not only obviates the need for a separate rulemaking but significantly, will not delay the implementation of the WOSB procedures.

II. RAND Report Results

The RAND report outlined several approaches to identify underrepresentation of WOSBs in Federal procurement, each of which yields a different result. SBA has preliminarily adopted the approach set forth below.

RAND's report identifies 28 different approaches to determine underrepresentation and substantial underrepresentation. Twenty of these approaches compare FY 2006 Central Contractor Registration (CCR) registration data to FY 2005 Federal Procurement Data System/Next Generation (FPDS/NG) procurement data, while eight (8) compare the 2002 Survey of Business Owners (SBO) from the five-year Economic Census to FYs 2002/2003 FPDS/NG procurement data.

SBA eliminated the eight approaches based on a comparison of the 2002 SBO data to FYs 2002/2003 FPDS/NG procurement data for the following reasons: (1) The SBO does not distinguish between WOSBs and women-owned businesses (large and small), while the procedures authorized by Congress are specifically targeted towards WOSBs (only small businesses); (2) since the SBO is generally not available for two years after the survey is completed, the SBO is never current; and lastly (3) the SBO cannot fine-tune the industry groupings beyond the two-digit NAICS level.

In its 2005 report examining SBA's 2001 methodology, the NAS criticized SBA's use of the two-digit Major Group Standard Industrial Classification (SIC) industry classification as inadequate. The two-digit Major Group SIC designation corresponds to the current three-digit Subsector NAICS designation. Thus, while the NAS criticized SBA's use of two-digit SIC information, the SBO two-digit NAICS data is even less precise than the two-digit SIC data. Both the CCR and FPDS-NG, on the other hand, provide the capability to use four-digit NAICS classifications. For this reason, SBA also eliminated 16 approaches based on CCR comparisons to FPDS/NG 2005 procurement data which used two and three-digit NAICS codes.

As a result, four approaches were left as possibly viable, all based on 2004 CCR and 2005 procurement data and four-digit NAICS codes. Two of the four approaches were based on the dollar value of contracts awarded and the other two were based on the number of contracts awarded. SBA eliminated the two approaches based on the number of the contracts awarded. When discussing whether to use dollars or numbers as the measure of underrepresentation, it was necessary to evaluate the benefits and limitations of either choice. After careful analysis, it was decided to adopt an approach consistent with Congressional measures, which use dollars. Congress appropriates Federal funding in dollars, the Federal budget is divided in dollars, all Federal government contracts are awarded in dollars, and the accounting and auditing processes focus on how these dollars are spent. Dollar amounts can easily be compared across agencies, programs and NAICS codes. Tracking dollar amounts also avoids problems that arise from the contracting nuances of the individual agencies. Contract actions do not allow for an accurate accounting of the financial benefits and business development that occur when small businesses receive a Federal contract.

Finally and perhaps most importantly, Congress, through the Small Business Act, has given direction only in dollars. Section 15(g)(1) is the section in the Act that provides direction on counting small business goals. All of those goals are aimed at achieving a dollar amount (total value) relative to all dollars expended in Federal procurement. In particular, the goal for small business concerns owned and controlled by women states that: ''The Government-wide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.'' Congress authorized the contracting assistance procedures in Section 8(m) as a result of the Federal Government's persistent deficiencies in achieving this goal. Thus, the disparity measure based on contract dollars is consistent with the five percent goal, which is also based on contract dollars.

Accordingly, two approaches remained available for SBA to use to determine underrepresentation. Of these two approaches, one was based on a full sample, and the other was based on a trimmed sample (eliminating the top and bottom 0.5 percent of the data). RAND stated in its report that it found little benefit to trimming the sample and that it puts more weight on the full-sample results (Chapter 4, Results, page 22). Accordingly, SBA eliminated the trimmed-sample results.

The four industries identified using the adopted approach from the RAND

report (NAICS codes 9281—National Security and International Affairs, 3328—Coating, Engraving, Heat Treating, and Allied Activities, 3371—Household and Institutional Furniture and Kitchen Cabinet Manufacturing, and 4412—Other Motor Vehicle Dealers) are those industries in which WOSBs are underrepresented or substantially underrepresented in government-wide Federal procurement. The RAND report does not, however, expressly find discrimination in the identified industries. The equal protection requirements of the Fifth Amendment prohibit Federal agencies from discriminating on the basis of sex in awarding contracts unless the preference furthers important governmental objectives and the means employed are substantially related to the achievement of those objectives. *See United States* v. *Virginia*, 518 U.S. 515, 533 (1996). This standard, which requires an ''exceedingly persuasive justification,'' id., is commonly referred to as ''intermediate scrutiny.'' In applying this standard, Federal courts have generally required that the government establish probative evidence of discrimination in the relevant industry in order to justify sex-based contracting preferences. *See, e.g., Engineering Contractors Ass'n of South Florida* v. *Metropolitan Dade County*, 122 F.3d 895, 910 (11th Cir. 1998). Based on these precedents, the Department of Justice has advised SBA that before a contracting officer may restrict competition to WOSBs under section 8(m), the concerned agency must determine through appropriate analysis (including analysis of its own procurement history) that the set-aside will be consistent with the foregoing constitutional standards. In particular, to ensure uniformity, SBA proposes that the agency must determine whether the set-aside is substantially related to remedying sex discrimination in that industry.

III. Summary of Regulations

To implement the new section 8(m) of the Act, this proposed rule would establish procedures that will assist WOSBs in procuring contracting opportunities with the Federal Government. Although these procedures would be considered part of SBA's government contracting programs set forth under part 125 of title 13 of the Code of Federal Regulations (CFR), for ease of reference, the proposed WOSB procedures would be contained in a new part 127 of title 13. As proposed, the regulations provide the general definitions and clarifications of the procedures and eligibility requirements under subparts A and B of this rule. The regulations also provide the certification procedures and the process for appealing WOSB status protest determinations to SBA's Office of Hearings and Appeals (OHA). These proposed regulations also provide the specific eligibility requirements for qualification as an EDWOSB or WOSB and state the requirement for each agency to conduct the appropriate analysis (including analysis of its own procurement history) to ensure that the set-aside will be consistent with constitutional standards.

This rule would also modify the process for reserving contract opportunities in industries in which SBA and agencies determine that WOSBs are substantially underrepresented in Federal procurement. To provide procuring activities greater flexibility in structuring their procurements to achieve WOSB Federal contracting goals, this rule would grant contracting officers the discretion to waive the requirement for competition by EDWOSBs in those industries in which WOSBs are determined to be substantially underrepresented. The rule also provides conforming amendments necessary to integrate these proposed procedures into SBA's size and government contracting regulations.

SBA invites comment on all aspects of this proposed rule.

IV. Section-by-Section Analysis

The following is a section-by-section analysis of the proposed rule.

A. Conforming Amendments to Parts 121 and 125

The authority citation for 13 CFR part 121 would be revised to include 15 U.S.C. 637(m), since part 121 would be amended to include references to the WOSB Procurement Opportunity Procedures (Procedures) Section 121.401 would be amended to add the procedures governing women-owned contracting requirements to the list of government procurement programs subject to size determinations. This would subject EDWOSBs and WOSBs to size protests and determinations under part 121 of title 13.

Section 121.1001 would be amended by adding a new paragraph (a)(9) to describe who may initiate a size protest in connection with a particular requirement set-aside for women-owned small business concerns. That section would provide that any concern that submits an offer for a specific requirement set-aside under the authority of § 8(m) of the Act, the contracting officer, SBA Government Contracting Area Director and the Director for Government Contracting or designee, may protest the size of another offeror for the particular requirement.

Section 121.1008 would be amended by adding a sentence that requires the SBA Government Contracting Area Director, or designee, to notify SBA's Director, Office of Government Contracting, of receipt of a size protest involving a concern that is designated in the Central Contractor Registration (CCR) as a certified EDWOSB or WOSB.

Section 125.6 would be amended to provide that EDWOSBs and WOSBs awarded a set-aside contract using these procedures must satisfy certain requirements if they intend to subcontract. These subcontracting limitations are the same limitations that are currently in place for an 8(a) contract or an unrestricted procurement where a concern has claimed a small disadvantaged price evaluation preference.

B. Addition of a New Part 127

A new part 127 would be added to title 13 of the CFR to implement the procedures that are required under the statute. Subpart A provides background information concerning contracting opportunities for women-owned small business concerns. Specifically, §§ 127.100 and 127.101 describe the purpose, legal basis and assistance available to eligible WOSBs. Section 127.102 defines the relevant terms used in part 127. Many of those definitions are identical to or derived from the definitions provided in parts 121 and 124 of this title, governing SBA's size, 8(a) Business Development (BD) and SDB programs.

The proposed rule also uses several newly defined terms which SBA developed for ease of reference to various statutory requirements. For example, the proposed rule uses the term ''economically disadvantaged WOSB'' or ''EDWOSB'' to refer to the Act's requirement that certain WOSBs be not less than 51 percent owned and controlled by one or more women who are U.S. citizens and economically disadvantaged. This rule also defines what constitutes ''underrepresented'' and ''substantially underrepresented.'' SBA has defined the terms ''underrepresentation'' and ''substantial underrepresentation'' in this proposed rule to be a disparity ratio representing either the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts. If the disparity ratio falls between 0.5 and 0.8, underrepresentation is found. If the disparity ratio falls between 0.0 and 0.5,

substantial underrepresentation is found.

These disparity ratios were found to be reasonable by the NAS in its 2005 report analyzing the preliminary study conducted by SBA in 2001. *See* The National Academies Press, *Analyzing Information on Women-Owned Small Business in Federal Contracting* (2005), available at *http://www.nasonline.com*. SBA adopted the threshold value of 0.8 based in part on the Equal Employment Opportunity Commission's use of that threshold as a rule of thumb for defining underrepresentation in enforcing antidiscrimination employment laws. The threshold value of 0.8 also has the advantage, compared with a higher value, of reducing classification errors due to sampling variability or other sources of errors within the underlying procurement data. SBA adopted the threshold value of 0.5 largely because it is sufficiently below 0.8 and sufficiently higher than zero to distinguish substantial from less than substantial underrepresentation.

Subpart B describes the eligibility requirements for qualification as an EDWOSB or WOSB. Because these qualifications entail similar ownership, control and economic disadvantage criteria as used in the 8(a) BD and SDB programs, this proposed rule similarly requires that the concern be at least 51 percent unconditionally owned and controlled by one or more women who are United States citizens. For reasons of consistency, the economic disadvantage requirement in § 127.203 also has the same $750,000 threshold for personal net worth as does the 8(a) BD program and the SDB program for purposes of determining a program participant's continuing eligibility. In order to qualify as an EDWOSB, the concern must also prove that it is economically disadvantaged. One notable exception is with respect to the application of community property laws. The Act explicitly provides that ownership shall be determined without regard to any community property laws. As a result, § 127.201 precludes the application of community property laws in WOSB ownership determinations.

Subpart C of the proposed rule sets forth the self-certification requirements for concerns that submit offers on procurements set aside. Section 8(m)(2)(F)(i) of the Act authorizes certification by ''a Federal agency, a State government, or a national certifying entity'' approved by SBA. Consistent with that provision, subpart C of this proposed rule establishes the procedures for obtaining EDWOSB or WOSB certification from SBA.

Specifically, proposed § 127.300 provides that at the time a concern submits an offer on a specific contract reserved for competition under these procedures, it must be registered in the CCR and have a current self-certification posted on the Online Representations and Certifications Application (ORCA) indicating that it qualifies as an EDWOSB or WOSB. That section would further detail the specific representations concerns must include as part of their self-certification, including that: (1) The firm is a small business concern under the size standard assigned to the particular procurement; (2) it is at least 51 percent owned and controlled by one or more women who are United States citizens or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and (3) neither SBA nor an SBA-approved certifier has determined that the concern does not currently qualify as an EDWOSB or WOSB. Because ORCA is generally the accepted representations process that concerns currently follow to self-certify other forms of small business status in Federal procurements, using that system for the WOSB self-certification process would minimize interference with the procurement process and the burden on contracting officers.

Sections 127.301 through 127.303 provide the specific procedures for obtaining EDWOSB and WOSB certification. SBA believes that the self-certification process set forth in this rule is consistent with the statutory framework of Section 8(m) and with prevailing Supreme Court precedent. It also would minimize delays and disruption to the contracting process by utilizing the existing system of representations and certifications in Federal procurement and by not requiring contracting officers to review voluminous documents supporting a concern's self-certification.

Proposed § 127.301 describes the circumstances under which a contracting officer may accept a concern's self-certification for the particular procurement for which the self-certification is made. That section would provide that when a contracting officer receives an EDWOSB or WOSB status protest from another offeror, or when the contracting officer has information that calls into question the eligibility of a concern, the contracting officer must refer the matter to SBA for verification of the concern's eligibility pursuant to the WOSB status protest procedures under Subpart F.

To minimize interference with the procurement process, this rule would also recognize a concern's certification as an EDWOSB or WOSB by an entity approved by SBA. In particular, §§ 127.300 and 127.302 would provide that a concern may use a certification by another entity as evidence of its status as a qualified EDWOSB or WOSB in support of its representations in ORCA if the concern: (1) Has a current, valid SBA certification as an 8(a) BD or SDB women-owned concern in good standing under those programs; (2) has a current valid certification as a woman-owned business under DOT's DBE program; or (3) has a current valid certification by an entity designated as an SBA-approved certifier on SBA's Web site located at *http://www.sba.gov/GC*. Sections 127.303 and 127.304 explain how entities are selected and identified as approved certifiers and how concerns may obtain certifications from such entities. Because all certifying entities may not use the same eligibility criteria applicable to EDWOSBs and WOSBs as provided under Subpart B of this rule, SBA does not intend to automatically accept third-party certifications for purposes of contracting with WOSBs. Rather, once SBA has determined that a certifier uses the same criteria and follows appropriate procedures and standards, SBA may designate that entity as an approved certifier. The Agency will maintain a list of all approved certifiers on its Web site.

Section 127.305 would explain the extent to which concerns that are determined not to qualify as an EDWOSB or WOSB may submit a self-certification under § 127.300(b). Specifically, under § 127.305, a concern that SBA or an SBA-approved certifier determines is not a qualified EDWOSB or WOSB would be prohibited from self-certifying unless SBA subsequently determines that the concern qualifies as an EDWOSB or WOSB pursuant to the examination procedures under § 127.405. Those procedures specifically allow concerns determined to be an ineligible EDWOSB or WOSB to request that SBA conduct an examination to determine their eligibility at any time the concern believes in good faith that it satisfies all of the eligibility requirements.

Together, §§ 127.300 through 127.305 describe the streamlined representations concerns must provide to contracting officers to certify eligibility and authorize contracting officers to refer questionable self-certifications to SBA for verification of eligibility pursuant to the protest procedures. Robust protest procedures coupled with the provisions for appropriate examinations to monitor

the eligibility of firms that self-certify their status under Subpart D, will minimize the potential for fraud and abuse. These procedures will also assist in ensuring that only eligible WOSBs receive the benefits consistent with prevailing Supreme Court precedent.

Proposed §§ 127.400 through 127.405 under subpart D discuss the examination process for determining the continuing eligibility of a firm that is designated on CCR as a certified EDWOSB or WOSB. Those sections explain when and how SBA will conduct the examination and the decertification procedures SBA will follow when it is unable to verify that a concern qualifies as an EDWOSB or WOSB.

Proposed § 127.401 also explains the distinctions between the examination process and the EDWOSB and WOSB protest mechanism provided under the proposed subpart F. The proposed § 127.401 makes clear that the examination process is intended to verify the continuing EDWOSB or WOSB eligibility of a concern generally, while an EDWOSB or WOSB status protest is designed to determine the EDWOSB or WOSB eligibility of a concern for a specific procurement. The separate WOSB or EDWOSB examination procedures will assist in maintaining the integrity of the certification process by subjecting certified concerns to examinations of their EDWOSB and WOSB eligibility certifications. Consequently, examinations will serve to supplement the protest mechanism by monitoring the continuing eligibility of firms that claim EDWOSB and WOSB status.

Moreover, § 127.401(a) further provides that if SBA is conducting an examination of a concern that has submitted an offer on a pending EDWOSB or WOSB requirement and SBA has credible information that the concern may not qualify as an EDWOSB or WOSB, SBA may file a protest under § 127.600 to challenge the concern's eligibility for award for the specific requirement.

The provisions governing the available Federal contract assistance for WOSBs and EDWOSBs are set forth in proposed subpart E. Sections 127.500 through 127.502 discuss the industries in which contracting officers are authorized to restrict competition to EDWOSBs and WOSBs. Section 127.500 explains that contracting officers may only restrict competition to EDWOSBs and WOSBs in industries in which (1) SBA has determined that WOSBs are either underrepresented or substantially underrepresented in Federal procurement and (2) the procuring agency has found, through appropriate analysis of its own procurement history, that the set-aside would satisfy the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution. Sections 127.501 and 127.502 indicate how SBA will determine, identify and provide public notice of those industries. Those sections, like section 8(m) of the Act, do not specify how SBA will determine whether WOSBs are underrepresented or substantially underrepresented in a particular industry. Instead, § 127.501 provides generally that at least every five years SBA, or another entity authorized to act on its behalf (*e.g.*, a contractor), will conduct a study to identify the underrepresented or substantially underrepresented industries. The study will include an analysis of the extent of disparity of WOSBs in Federal contracting. Based upon that analysis, SBA will designate by 4-digit NAICS Industry Subsector industries in which WOSBs are underrepresented or substantially underrepresented.

Under § 127.501(b), where an agency seeks to reserve a requirement for WOSBs or EDWOSBs in one of the industries identified by SBA as being an industry in which WOSBs are underrepresented or substantially underrepresented government-wide, the agency must ensure that the set-aside meets the equal protection requirements of the Due Process Clause of the Fifth Amendment to the Constitution. It must conduct an analysis of the agency's past procurement activities and make a finding of discrimination by that agency in that particular industry sufficient to ensure that the set-aside is substantially related to an important governmental objective. As the agency primarily charged with implementing this and other set-aside programs under section 8 of the Act, SBA proposes this requirement on contracting agencies to ensure that this program is implemented uniformly across the government and in a manner that ensures it will be constitutional under the current Supreme Court jurisprudence.

Section 127.502 indicates that SBA will post a list of the designated industries on its Internet Web site. The list of designated industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

Section 127.503 addresses when a contracting officer is authorized to restrict competition to WOSBs or EDWOSBs. It establishes a similar ''rule-of-two'' standard as used in small business set-asides. This standard requires the contracting officer to reasonably expect that at least two eligible companies would bid if the contract is set aside, based on market research. That section further makes clear that a contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless SBA consented to release the requirement from the 8(a) BD program. Because this limitation on the restriction of competition serves to reconcile the ''goal'' requirements of 15 U.S.C. 644(g) with the requirements of section 8(m), it is authorized by the Administrator's general authority to ''make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter'' and is intended to clarify that the implementation of this program does not affect the Administrator's authority or responsibilities under the 8(a) BD program. 15 U.S.C. 634(b)(6). SBA does not intend to imply through lack of mention other programs, such as HUBZone set-asides or service-disabled veteran-owned small business set-asides, that contract requirements currently being fulfilled through other set-aside programs must be brought into this program or that this program should be give preference over other set-aside programs.

Sections 127.504 and 127.505 describe the additional requirements a concern must satisfy to submit an offer on an EDWOSB or WOSB requirement. Section 127.504 indicates that in addition to the certification requirements under subpart C, offerors on EDWOSB or WOSB requirements must also certify that they are small under the size standard for the procurement and that they will comply with the limitations on subcontracting rule set forth in § 125.6 of this title. Section 127.505 explains that an EDWOSB or WOSB that is a non-manufacturer, as defined in § 121.406(b), may submit an offer for an EDWOSB or WOSB requirement if it meets the requirements of § 121.406(b). Proposed § 127.506 governs what is required of joint venture relationships involving WOSBs when submitting an offer on an EDWOSB or WOSB contract.

The proposed Subpart F sets forth the procedures for protesting the status of a concern as an EDWOSB or WOSB, including the procedures for filing protests, for rendering protest determinations and for appealing those determinations to SBA's Office of

Hearings and Appeals (OHA). Sections 127.600 through 127.602 describe who is authorized to file and decide EDWOSB and WOSB status protests and the permissible grounds for filing protests.

Sections 127.603 through 127.606 prescribe format, and applicable deadlines for filing and determining EDWOSB and WOSB protests and for appealing SBA's protest determinations. Unlike eligibility examinations under the proposed subpart D, protests are time-sensitive because they are tied to a particular procurement. As a result, §§ 127.604 and 127.605 prescribe filing and decision deadlines to minimize undue interruptions in the underlying procurement.

The final section of the proposed part 127, subpart G, § 127.700, prescribes the applicable penalties that may be imposed on any person or concern that misrepresents the status of a concern as an EDWOSB or WOSB for purposes of receiving a Federal procurement.

C. Amendments to Part 134

SBA is also proposing to amend Part 134 to include procedures for an EDWOSB or WOSB to appeal a protest determination under Part 127 of this Chapter. Specifically, § 134.102 would be amended to give OHA jurisdiction to hear appeals on WOSB or EDWOSB protests. Further, § 134.515 would be revised to reflect a change in when a judge may reconsider an appeal.

A new subpart, Subpart G, would be added to prescribe the procedures for filing and processing the appeals before OHA. This subpart will only apply to appeals to OHA from formal protest determinations made by the Director, Office of Government Contracting (D/GC) in connection with a WOSB or EDWOSB status protest. Procedures for size determination protests and NAICS code designations are governed by Subpart C of this part.

Proposed § 134.701 outlines the scope of the rules under this subpart. Sections 134.702 and 134.703 describe who may appeal a protest determination and when that person must file an appeal. Under § 134.702, the protested concern, the protestor, or the contracting officer responsible for the procurement affected by the protest determination may file an appeal with OHA. Section 134.703 allows for an appeal petition to be made within 10 business days after the appellant receives the protest determination.

Section 134.704 describes the effects that the appeal will have on the procurement at issue. If OHA determines that a concern is ineligible then the contracting officer may terminate the contract.

Sections 134.705, 134.706 and 134.707 set out the requirements for an appeal petition, what the service and filing requirements are and when the D/GC transmits the protest file and to whom. The standard of review is found in § 134.707. The standard is whether the D/GC's determination was based on clear error of fact or law.

Under § 134.709 the Judge is able to dismiss an appeal if it is untimely filed or has already been adjudicated by a court of competent jurisdiction over such matters. Section 134.710 sets out the requirements of who can file a response to an appeal petition. Sections 134.711–712 discuss discovery and limitations on new evidence. No discovery is permitted and no new evidence will be allowed to be admitted. Sections 134.713 and 134.714 set out the timing for the appeal petition. Under Section 134.713 the record will close when the time to file a response to an appeal petition expires pursuant to 13 CFR 134.710. Under § 134.714, the Judge must issue a decision within 15 business days after close of the record.

Section 134.715 allows for the OHA Judge to reconsider an appeal decision within 20 calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, can request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision.

Compliance with Executive Orders 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612).

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is a ''significant'' regulatory action under Executive Order 12866. The Regulatory Impact Analysis is set forth below.

Regulatory Impact Analysis

1. Necessity of Regulation

This regulatory action implements section 8(m) of the Act, which was enacted as part of section 811 of the Small Business Reauthorization Act of 2000, Public Law 106–554. Section 8(m) authorizes the creation of the set-aside procurement mechanism described in this regulation. Under this regulation contracting officers will be allowed to restrict competition to EDWOSBs or WOSBs in industries in which SBA has determined that WOSBs are underrepresented and when the procuring agency has conducted an appropriate analysis of the agency's procurement history and made a determination that there is sufficient evidence of relevant discrimination in that industry by that agency. This proposed rule will establish the requirements and procedures necessary to administer these restricted competitions.

2. Alternative Approaches to Proposed Rule

In developing this proposed rule, SBA considered the costs and benefits of the alternatives for certification of small business concerns that claim EDWOSB or WOSB status, particularly the alternatives provided by section 8(m) of the Act. Specifically, section 8(m)(2)(F) provides that in order to qualify as a WOSB or EDWOSB, a concern must either be certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, or, alternatively, must certify to the contracting officer that they are a small business concern owned and controlled by women. In light of this provision, SBA considered performing the certifications by requiring each concern to submit a formal application to SBA for a determination of its status. That approach would have entailed the electronic or paper submission of written documentation to support the concern's claim that it meets the eligibility criteria for being designated a WOSB or EDWOSB. SBA decided against utilizing this certification process as the method to establish WOSB or EDWOSB status primarily because of the paperwork burden and other costs that approach would impose on WOSBs.

However, as an additional approach to self-certification, SBA is proposing to permit contracting activities to accept formal certification gained by WOSBs and EDWOSBs as a result of their participation in Federal small business programs. This may be accomplished by designating as WOSB or EDWOSB-certified all those concerns that at the time of procurement: (1) Were SBA certified as 8(a) BD or SDB women-owned concerns in good standing; (2) held a current certification as a disadvantaged business enterprise (DBE) from a certifying entity of a Department of Transportation grant recipient; or (3) were certified by an SBA-approved certifier. SBA has rejected them as primary methods for WOSB or EDWOSB certification in favor of a self-certification process. In the event of a protest SBA will recognize these certifications as evidence of a concern's

representation in ORCA that it is a qualified EDWOSB or WOSB. The standards for meeting this requirement are discussed in more detail in the body of this proposed regulation.

SBA believes that the proposed self-certification process would be the most beneficial and cost-effective approach for the small business concerns because they will not have to submit formal applications to SBA to become eligible for restricted competition for WOSB and EDWOSB procurements. As proposed, the self-certification process is similar to the one that is used in other existing SBA set-aside programs. For example, the SBA programs for small businesses and service-disabled veteran-owned small businesses permit those concerns to self-represent their size and socio-economic status when bidding on Federal contracts. The set-aside program for small businesses has worked well for decades. The set-aside program for service-disabled veteran-owned small businesses, while more recent, is also working well. Both of these set-aside programs are credible because they are supported by robust protest procedures. In other words, when an interested party such as an unsuccessful offeror believes that the apparent successful bidder or offeror on a Federal contract is not a small business, or not a service-disabled veteran-owned small business in the case of a set-aside for service-disabled veteran-owned small businesses, there is a formal process by which the interested party may submit a protest to SBA. This action halts the procurement until SBA investigates the allegations and reaches a decision. The subject proposed rule adopts the same approach, whereby interested parties may submit protests to SBA.

The self-certification alternative will leverage two existing Federal electronic databases, the Central Contractor Registration (CCR) and the On-line Representations and Certifications Application (ORCA), to facilitate the self-certification process. The approach is also consistent with SBA's statutory responsibilities under section 8(m) of the Act to establish certification standards and procedures.

3. What Are the Potential Benefits and Costs of This Regulatory Action?

This rule directs benefits to EDWOSBs and WOSBs at a cost to concerns ineligible for the program and at some cost to the taxpayer through restrictions on competition, resulting in increased contract prices and decreased selection of products and services and new administrative costs of managing a Federal procurement set-aside program and the eligibility determination processes. Generally, the cost of transferring a contract from one business to another has minimal cost to society as a whole, but the loss of efficiency through restrictions in contracting has broader impacts that depend highly on the use of this program by contracting officers and the availability of competition among EDWOSBs and WOSBs.

The most significant effect of this rule will be the transfer of contract dollars to EDWOSBs and WOSBs through the contracting officers' ability to restrict competition to EDWOSBs or WOSBs in industries in which SBA has determined that WOSBs are underrepresented and substantially underrepresented and where certain threshold determinations are made by an agency. It is difficult to estimate the total number of potential beneficiaries or losers that will be eligible for Federal small business assistance as a result of this proposed rule. Based on the four NAICS codes (9281—National Security and International Affairs, 3328—Coating, Engraving, Heat Treating, and Allied Activities, 3371—Household and Institutional Furniture and Kitchen Cabinet Manufacturing, and 4412—Other Motor Vehicle Dealers) identified in the RAND study, utilizing the Dynamic Small Business Search (DSBS) engine in CCR, 1209 women-owned small businesses were identified as recipients of Federal contracts in these 4 NAICS codes. It is expected that the number of awards to EDWOSBs and WOSBs will increase within these NAICS codes, should an agency restrict competition to only those groups in accordance with the procedures in this proposed rule. This estimate is based on an analysis of EDWOSB and WOSB participation in Federal contracting and the industry market share identified in the RAND report. In addition, one purpose of this program is to draw additional EDWOSBs and WOSBs into Federal procurement through restricted competition in the identified NAICS codes. However, any such economic incentive to enter Federal procurement may represent a cost to the taxpayer and society in the form of higher contract prices or fewer choices of quality.

From the point of view of Federal procurement policy, as set by statute, Federal agencies may benefit from the increased availability of EDWOSBs and WOSBs in order to meet their statutory goals. However, in the short term, restriction of competition raises the cost of contracts and limits the selection of products available. As more EDWOSBs and WOSBs enter into the Federal arena, competition will likely increase, lowering the cost of the program and ultimately eliminating underrepresentation within those industries and the industry's participation in the program. In the long run, even with the elimination of underrepresentation in all industries, small business opportunities may be enhanced by the experience gained in Federal contracting through set-asides under this program, but taxpayers ultimately bear the cost of small businesses inexperienced in Federal contracting learning through limited competition set-asides.

Further, large businesses serving the Federal government as prime contractors with small business subcontracting goals may also benefit from a larger pool of WOSBs by enabling them to better achieve their subcontracting goals and at lower prices. No estimate of cost savings from these contracting decisions can be made since data are not available to directly measure price or competitive trends on Federal contracts.

To the extent that additional firms become active in Government programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement programs, additional firms seeking SBA guaranteed lending programs, and additional firms eligible for enrollment in SBA's Dynamic Small Business Search data base. Among businesses in this group seeking SBA assistance, there will be some additional costs associated with compliance and verification associated with certification of small business status and protests of small business status. However, these activities are likely to generate minimal incremental costs since mechanisms are currently in place to handle these administrative requirements. In addition, SBA attempted to calculate the cost to agencies when determining if there has been discrimination against WOSBs or EDWOSBs in the designated industry groups. However, SBA does not have access to agency presolicitation market research or any other agency maintained data that would reveal the extent of an agency's efforts to consider or reject out-of-hand the offers of WOSBs or EDWOSBs in a post-contract award environment. SBA can however, state that the Government-wide study conducted by the Rand Corporation to determine industries where WOSBs were underrepresented cost approximately $250,000.00. SBA estimates that similar studies conducted by agencies in this regard should not exceed that figure, if they must seek outside assistance to make their determinations.

This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, government contracts, and management and technical assistance. Implementation of this proposed rule ensures that the intended beneficiaries have access to small business programs designed to assist them. This proposed rule does not interfere with state, local, and tribal governments in the exercise of their government functions. In a few instances, state and local governments have voluntarily adopted SBA's regulations for their programs to eliminate the need to establish an administrative mechanism for developing their own size standards.

Executive Order 12988

This action meets applicable standards set forth in §§ 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

This rule does not have federalism implications as defined in the Executive Order. It will not have substantial direct effects 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, as specified in Executive Order 13132.

In the event of a protest, this proposed rule will allow a WOSB concern to substantiate its self-certifications by submitting an existing certification from an SBA approved State Government certifier. In order for SBA to accept a State's certification, the State must show that its certification process meets certain standards, including a showing that its process is based on the same criteria for WOSB or EDWOSB eligibility, as set forth in this regulation. However, this proposed rule will not mandate how the States conduct their certification processes, and as such the rule will not have a direct effect on the States. Therefore, for the purposes of Executive Order 13132, SBA determines that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act (PRA)

For purposes of the Paperwork Reduction Act, 44 U.S.C. chapter 35, SBA has determined that this proposed rule does not impose any new reporting or recordkeeping requirements. The certification process described in Subpart C, §§ 127.300 to 127.305, is not an information collection. In general, certifications are not subject to the PRA notice and review requirements unless such certifications are used as a substitute for collecting information. The proposed self-certification process does not require any concern seeking to benefit from Federal contracting opportunities designated for WOSBs or EDWOSBs to submit or maintain any information. Rather, the concerns will use the existing electronic contracting system (*i.e.*, ORCA) to confirm the following statements, under penalty of perjury:

(1) The concern is certified as a EDWOSB or WOSB by a certifying entity approved by SBA and there have been no changes in its circumstances affecting its eligibility since certification; or

(2) The concern meets each of the applicable individual eligibility requirements described in subpart B, including that:

(i) It is a small business concern under the size standard assigned to the particular procurement;

(ii) It is at least 51 percent owned and controlled by one or more women who are United States citizens, or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and

(iii) Neither SBA, in connection with an examination or protest, nor an SBA-approved certifier has issued a decision currently in effect finding that it does not qualify as a EDWOSB or WOSB. The process for the annual recertification is similar in nature and as such also does not require any reporting or recordkeeping.

The only occasion on which concerns would have to submit information to SBA would be in the context of a protest or examination, when SBA might request that a particular WOSB submit documentation to substantiate its claim. This proposed rule does not require the WOSBs to maintain any specific information for this purpose. Further, any request for substantiation would not be standardized but rather would be specific to a WOSB's particular status, and as such are also not subject to the PRA. Nonetheless, SBA would welcome any comments on the process as described.

Regulatory Flexibility Act

SBA has determined that this proposed rule establishing a set-aside mechanism for WOSBs may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq*. Accordingly, SBA has prepared an Initial Regulatory Flexibility Analysis (IRFA) addressing the impact of this Rule in accordance with section 603, title 5, of the United States Code. The IRFA examines the objectives and legal basis for the proposed rule; the kind and number of small entities that may be affected; the projected recordkeeping, reporting, and other requirements; whether there are any Federal rules that may duplicate, overlap, or conflict with the proposed rule; and whether there are any significant alternatives to the proposed rule.

1. What are the Reasons for, and Objectives of, the Proposed Rule?

SBA is establishing procedures whereby Federal procuring agencies may use restricted competition in industries where WOSBs are underrepresented in Federal procurement and when certain other conditions are met. The purpose of the proposed rule is to create an initial framework and infrastructure for implementing these new procedures, thereby providing a tool for Federal agencies to increase Federal contracting to WOSBs.

The objective of this proposed rule is to increase the amount of Federal contract dollars awarded to WOSBs in industries where they are currently underutilized. These procedures will assist Federal agencies in achieving the Federal Government's goal of awarding five percent of Federal contract dollars to WOSBs, as provided in the Federal Acquisition Streamlining Act of 1994. Federal procurement was just over $340 billion in FY 2006, the most recent fiscal year for which procurement data are available, and only $11.6 billion, or barely more than 3.4 percent, was awarded to WOSBs.

2. What is the Legal Basis for the Proposed Rule?

SBA is proposing this regulation pursuant to section 8(m) of the Small Business Act, 15 U.S.C. 637(m), which authorizes the creation and implementation of a new mechanism for Federal contracting with WOSBs.

3. What is SBA's Description and Estimate of the Number of Small Entities to Which the Rule will Apply?

The RFA directs agencies to provide a description, and where feasible, an estimate of the number of small business concerns that may be affected by the rule. This proposed rule will ultimately establish in the Federal

Acquisition Regulation (FAR) a new procurement mechanism to benefit WOSBs. Therefore, WOSBs that compete for Federal contracts are the specific group of small business concerns most directly affected by this rule. The rule may also affect other small businesses to the extent that small businesses not owned and controlled by women may be excluded from competing for certain Federal contracting opportunities.

A survey of WOSBs in the CCR DSBS on September 19, 2007, identified a total of 1,208 WOSBs in the four industries identified by the RAND Corporation as those in which WOSBs are underrepresented or substantially underrepresented. The actual number of WOSBs in these industries may be less than 1,208 since some firms may have appeared under more than one industry search, and there is no simple method of determining how many firms, if any, appeared more than once. In addition, many otherwise-qualified EDWOSBs and WOSBs will not find it advantageous to pursue set-asides for WOSBs, since the industries in which they do business are not one of the four industries that RAND has identified in its study that may eventually be eligible for set-asides. However, the actual number may be more if SBA approves additional industries for set-aside procurements under these procedures.

This proposed rule may also have a substantially adverse impact on small businesses other than WOSBs that are excluded from competition for Federal contracts that are set aside exclusively for WOSBs. Non-WOSB small businesses in the four designated industries identified in the Rand Corporation study may lose contracting opportunities when contracts are re-competed or may be excluded from opportunities from which they would have otherwise benefited. This would be particularly harmful for non-WOSBs in these industries that derive a significant portion of their business from Federal contracting. The number of small businesses that would be excluded under the proposed determination of eligible industries or future such determinations is not known at this time, but it could be a substantial number. SBA is seeking public comment on the adverse effects of this program on non-WOSB small business concerns through this proposed rule.

Additional contracting opportunities identified by Federal agencies as candidates to set aside for WOSBs will come from new contracting requirements and contracts currently performed by small and large businesses. At this time, SBA cannot accurately predict how the existing distribution of contracts by business type may change by this rule. However, SBA does not expect many, if any, contracts awarded through the 8(a), HUBZone, or SDVOSB Programs ($22.6 billion in FY 2006) to be re-competed as WOSB or EDWOSB set-aside contracts because those programs also support other socioeconomic goals that agencies strive to achieve through their contracting activities.

4. What are the Projected Reporting, Recordkeeping, Paperwork Reduction Act and Other Compliance Requirements?

WOSBs are not required to be certified as such in order to contract with the Federal Government. This will still be true if the proposed rule is adopted. However, for a WOSB to be eligible for Federal contracts restricted to WOSBs or EDWOSBs, it will have to self-certify its status as a WOSB. This requirement ensures that participation in certain contracting opportunities is restricted to qualified WOSBs according to the terms of section 8(m) of the Act and the criteria in this proposed rule. Similar eligibility requirements apply to WOSBs desiring to participate in SBA's 8(a) or SDB programs or the Department of Transportation's Disadvantaged Business Enterprise program. Further, SBA proposes to accept for WOSB-restricted contracts, those WOSBs currently certified for those programs.

However, some WOSBs may choose to participate in procurements restricted for competition to WOSBs or EDWOSBs and may decide to pursue formal certification under one of the programs referred to in the previous paragraph to: (1) Obtain the additional benefits afforded to them by those Federal programs; and (2) to use that formal certification as an assurance that they are qualified for participation in procurements restricted to WOSBs and EDWOSBs.

This formal certification requirement will have associated costs, *i.e.*, labor costs, for participating WOSBs. At a minimum, potential participants must complete specific forms and provide adequate documentation of their qualifications. Documents may include what a business would normally have on hand, *e.g.*, ownership records, tax records, etc. Firms applying for certification will have to locate copy and submit supporting documents. SBA estimates that the cost to complete these activities based on similar requirements for other SBA programs, will be approximately $150.00 per hour. After the tax and other business papers for documentation are assembled, completing the process application is estimated to take about 2.5 hours. An estimated 2,000 firms per year are expected to apply using this process and thus, the total cost is estimated to be $750,000 per year. The paperwork burden on the WOSB applying for certification is estimated from SBA's experience with SDB and 8(a) applications that require similar documentation to support the claim of economic disadvantage and 51 percent ownership and control of the firm.

As noted earlier in this rule, WOSBs and EDWOSBs will not be required to submit any information to SBA to participate in restricted competition, or to maintain any additional information as a result of this rule. Therefore, SBA does not anticipate any reporting or recordkeeping burden directly associated with this proposed rule. Any costs associated with the concerns use of CCR or ORCA to complete their self-certifications would be de minimis.

5. What Relevant Federal Rules May Duplicate, Overlap, or Conflict With This Rule?

SBA has not identified any relevant Federal rules currently in effect that duplicate or conflict with this rule. The restricted-competition feature of the set-aside mechanism for WOSBs will be an addition to the existing preference programs that agencies currently administer, such as small business set-asides, HUBZone set-asides, service-disabled veteran-owned small business set-asides, and contracts reserved for the 8(a) Business Development program. For any particular contract, a contracting officer may have a range of set-aside options from which to select. Because any contract awarded to a WOSB will also count towards an agency's small business goal, these procedures may lead a contracting officer to select this program in lieu of another.

Therefore, although there may be some overlap, the addition of the set-aside mechanism for women-owned small business should complement rather than conflict with the goals of existing set-aside programs.

6. What Significant Alternatives Did SBA Consider That Accomplish the Stated Objectives and Minimize Any Significant Economic Impact on Small Entities?

The Regulatory Flexibility Act (RFA) requires agencies to identify alternatives to the rule in an effort to minimize any significant economic impact of the rule on small entities. SBA has determined that the rule may have a significant economic impact on a substantial number of small entities.

This rule will implement the set-aside mechanism for WOSBs, as established by § 8(m) of the Act. All of the provisions of this rule reflect requirements under that statute. The legislation does provide SBA with alternative approaches, however, for the certification of WOSBs. Specifically, a WOSB may be certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator; or, alternatively, a WOSB may self-certify to the contracting officer that it is a small business concern owned and controlled by women, along with adequate documentation in accordance with standards established by the Administration. As discussed earlier, SBA will allow EDWOSBs and WOSBs to self-certify their status in the existing CCR and ORCA databases. An alternative approach would have been to require EDWOSBs and WOSBs to apply to SBA or some other entity for formal certification. For the reasons discussed earlier, SBA has ruled out this approach as unnecessary and too costly. SBA believes that eligibility examinations and protest procedures incorporated into the proposed rule will minimize the likelihood of fraud and misrepresentation of WOSB and EDWOSB status.

In addition, SBA attempted to calculate the cost to agencies when determining if there has been discrimination against WOSBs or EDWOSBs in the designated industry groups. However, SBA does not have access to agency presolicitation market research or any other agency maintained data that would reveal the extent of an agency's efforts to consider or reject out-of-hand the offers of WOSBs or EDWOSBs in a post-contract award environment. SBA can, however, state the Government-wide study conducted by the Rand Corporation to determine industries where WOSBs were underrepresented cost approximately $250,000.00. SBA estimates that similar studies conducted by agencies in this regard should not exceed that figure, if they must seek outside assistance to make their determinations.

SBA estimates that implementation of this regulation will require no additional proposal costs for WOSBs, as compared to submitting proposals under any other small business set-aside program. Moreover, WOSBs currently represent their status for purposes of data collection that is needed to implement 15 U.S.C. 644(g); therefore, the self-certification process of this proposed rule imposes no additional requirement on WOSBs.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

13 CFR Part 127

Government procurement, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 134

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Organization and functions, Rules of practice for appeals, appeals of size determinations, appeals of NAICS code designations, appeals under the 8(a) Program, appeals from service-disabled veteran-owned small business concerns protests.

Accordingly, for the reasons stated in the preamble, SBA amends 13 CFR parts 121, 125, 127 and 134 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR part 121 is revised to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 637, 644, and 662(5); and Public Law 105–135, sec. 401 *et seq.*, 111 Stat. 2592.

§ 121.401 [Amended]

2. Amend § 121.401 by adding the phrase ''the Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures,'' after the phrase ''SBA's HUBZone Program''.

3. Amend § 121.1001 by adding a new paragraph (a)(9) to read as follows:

§ 121.1001 Who may initiate a size protest or request a formal size determination?

(a) * * *

(9) For SBA's WOSB Federal Contracting Assistance Procedures, the following entities may protest:

(i) Any concern that submits an offer for a specific requirement set aside for WOSBs or WOSBs owned by one or more women who are economically disadvantaged (EDWOSB);

(ii) The contracting officer;

(iii) The SBA Government Contracting Area Director; and

(iv) The Director for Government Contracting, or designee.

* * * * *

4. Amend § 121.1008(a) by adding a new sentence after the second sentence to read as follows:

§ 121.1008 What happens after SBA receives a size protest or a request for a formal size determination?

(a) * * * If the protest pertains to a requirement set aside for WOSBs or EDWOSBs, the Area Director will also notify SBA's Director for Government Contracting of the protest. * * *

PART 125—GOVERNMENT CONTRACTING PROGRAMS

5. The authority citation for 13 CFR part 125 continues to read as follows:

Authority: 15 U.S.C. 632(p), (q), 634 (b)(6), 637, 644, and 657f.

6. Amend § 125.6 by revising paragraph (a) introductory text to read as follows:

§ 125.6 Prime contractor performance requirements (limitations on subcontracting).

(a) In order to be awarded a full or partial small business set-aside contract, an 8(a) contract, a WOSB or EDWOSB contract pursuant to part 127 of this chapter, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference, a small business concern must agree that:

* * * * *

7. Add a new part 127 to read as follows:

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT ASSISTANCE PROCEDURES

Subpart A—General Provisions

Sec.

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127.101 What type of assistance is available under this part?
127.102 What are the definitions of the terms used in this part?

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127.600 Who may protest the status of a concern as an EDWOSB or WOSB?
127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?
127.602 What are the grounds for filing an EDWOSB or WOSB status protest?
127.603 What are the requirements for filing an EDWOSB or WOSB protest?
127.604 How will SBA process an EDWOSB or WOSB status protest?
127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

Subpart G—Penalties

127.700 What penalties may be imposed under this part?

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), and 644.

Subpart A—General Provisions

§ 127.100 What is the purpose of this part?

Section 8(m) of the Small Business Act authorizes certain procurement mechanisms to increase Federal contracting opportunities for women-owned small businesses (WOSBs) and to assist agencies in achieving their WOSB participation goals mandated under Section 15(g) of the Small Business Act.

§ 127.101 What type of assistance is available under this part?

This part authorizes contracting officers to restrict competition to eligible WOSBs for certain Federal contracts in industries in which the Small Business Administration (SBA) has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement and the procuring agency has satisfied itself through appropriate analysis (including analysis of its own procurement history), that the set-aside would meet all applicable legal requirements, including the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution.

§ 127.102 What are the definitions of the terms used in this part?

For purposes of this part:

8(a) Business Development (8(a) BD) concern means a concern that SBA has certified as an 8(a) BD program participant.

AA/GC&BD means SBA's Associate Administrator for Government Contracting and Business Development.

Central Contractor Registration (CCR) means the system that functions as the central registration and repository of contractor data for the Federal government. CCR also serves as the single portal for conducting searches of small business contractors. Prospective Federal contractors must be registered in CCR prior to award of a contract or purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998.

Citizen means a person born or naturalized in the United States. Resident aliens and holders of permanent visas are not considered to be citizens.

Concern means a firm that satisfies the requirements in § 121.105 this chapter.

Contracting officer has the meaning given to that term in Section 27(f)(5) of the Office of Federal Procurement Policy Act (codified at 41 U.S.C. 423(f)(5)).

D/GC means SBA's Director for Government Contracting.

Economically disadvantaged WOSB (EDWOSB) means a concern that is small pursuant to part 121 of this title and that is at least 51% owned and controlled by one or more women who are U.S. citizens and who are economically disadvantaged in accordance with §§ 127.200, 127.201, 127.202 and 127.203. An EDWOSB automatically qualifies as a WOSB.

EDWOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to EDWOSBs.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, and daughter-in-law.

Interested party means any concern that submits an offer for a specific EDWOSB or WOSB requirement, the contracting activity's contracting officer, or SBA.

ORCA means the Online Representations and Certifications Application at *https://orca.bpn.gov*, a required registration for contractors interested in bidding on most Federal contracts.

Primary industry classification means the six-digit North American Industry Classification System (NAICS) code designation that best describes the primary business activity of the concern. The NAICS code designations are described in the NAICS manual available via the Internet at *http://www.census.gov/NAICS*. In determining the primary industry in which a concern is engaged, SBA will consider the factors set forth in § 121.107 of this chapter.

Small disadvantaged business (SDB) means a concern that SBA has certified in accordance with subpart B of part 124 of this chapter, and is designated on CCR as an SDB.

Substantial underrepresentation means a disparity ratio between 0.0 and 0.5; *i.e.*, the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

Underrepresentation means a disparity ratio between 0.5 and 0.8; *i.e.*, the ratio representing the WOSB share of Federal prime contract dollars divided by the WOSB share of total business receipts.

WOSB means a concern that is small pursuant to part 121 of this chapter, and that is at least 51% owned and controlled by one or more women in accordance with §§ 127.200, 127.201 and 127.202.

WOSB requirement means a Federal requirement for services or supplies for which a contracting officer has restricted competition to eligible WOSBs.

Subpart B—Eligibility Requirements To Qualify as an EDWOSB or WOSB

§ 127.200 What are the requirements a concern must meet to qualify as an EDWOSB or WOSB?

(a) *Qualification as an EDWOSB.* To qualify as an EDWOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens and are economically disadvantaged.

(b) *Qualification as a WOSB.* To qualify as a WOSB, a concern must be:

(1) A small business as defined in part 121 of this chapter; and

(2) Not less than 51 percent unconditionally and directly owned and controlled by one or more women who are United States citizens.

§ 127.201 What are the requirements for ownership of an EDWOSB and WOSB?

(a) *General.* To qualify as an EDWOSB or WOSB, one or more women must unconditionally and directly own at least 51 percent of the concern. Ownership will be determined without regard to community property laws.

(b) *Requirement for unconditional ownership.* To be considered unconditional, the ownership must not be subject to any conditions, executory agreements, voting trusts, or other arrangements that cause or potentially cause ownership benefits to go to another. The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.

(c) *Requirement for direct ownership.* To be considered direct, the qualifying women must own 51 percent of the concern directly. The 51 percent ownership may not be through another business entity or a trust (including employee stock ownership trusts) that is, in turn, owned and controlled by one or more women or economically disadvantaged women. However, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a woman or economically disadvantaged woman where the trust is revocable, and the woman is the grantor, a trustee, and the sole current beneficiary of the trust.

(d) *Ownership of a partnership.* In the case of a concern that is a partnership, at least 51 percent of each class of partnership interest must be unconditionally owned by one or more women. The ownership must be reflected in the concern's partnership agreement. For purposes of this requirement, general and limited partnership interests are considered different classes of partnership interest.

(e) *Ownership of a limited liability company.* In the case of a concern that is a limited liability company, at least 51 percent of each class of member interest must be unconditionally owned by one or more women.

(f) *Ownership of a corporation.* In the case of a concern that is a corporation, at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding must be unconditionally owned by one or more women. In determining unconditional ownership of the concern, any unexercised stock options or similar agreements held by a woman will be disregarded. However, any unexercised stock option or other agreement, including the right to convert non-voting stock or debentures into voting stock, held by any other individual or entity will be treated as having been exercised.

§ 127.202 What are the requirements for control of an EDWOSB or WOSB?

(a) *General.* To qualify as an EDWOSB or WOSB, the management and daily business operations of the concern must be controlled by one or more women. Control by one or more women means that both the long-term decision making and the day-to-day management and administration of the business operations must be conducted by one or more women.

(b) *Managerial position and experience.* A woman must hold the highest officer position in the concern (usually President or Chief Executive Officer) and must have managerial experience of the extent and complexity needed to run the concern. The woman manager need not have the technical expertise or possess the required license to be found to control the concern if she can demonstrate that she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise. However, if a man possesses the required license and has an equity interest in the concern, he may be found to control the concern.

(c) *Limitation on outside employment.* The woman who holds the highest officer position of the concern may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

(d) *Control over a partnership.* In the case of a partnership, one or more women must serve as general partners, with control over all partnership decisions.

(e) *Control over a limited liability company.* In the case of a limited liability company, one or more women must serve as management members, with control over all decisions of the limited liability company.

(f) *Control over a corporation.* One or more women must control the Board of Directors of the concern. Women are considered to control the Board of Directors when either:

(1) One or more women own at least 51 percent of all voting stock of the concern, are on the Board of Directors and have the percentage of voting stock necessary to overcome any super majority voting requirements; or

(2) Women comprise the majority of voting directors through actual numbers or, where permitted by state law, through weighted voting.

(g) *Involvement in the concern by other individuals or entities.* Men or other entities may be involved in the management of the concern and may be stockholders, partners or limited liability members of the concern. However, no males or other entity may exercise actual control or have the power to control the concern.

§ 127.203 What are the rules governing the requirement that economically disadvantaged women must own EDWOSBs?

(a) *General.* To qualify as an EDWOSB, the concern must be at least 51% owned by one or more women who are economically disadvantaged. A woman is economically disadvantaged if she can demonstrate that her ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business.

(b) *Limitation on personal net worth.* In order to be considered economically disadvantaged, the woman's personal net worth must be less than $750,000, excluding her ownership interest in the concern and equity in her primary personal residence.

(c) *Factors that may be considered.* The personal financial condition of the woman claiming economic disadvantage, including her personal income for the past two years (including bonuses, and the value of company stock given in lieu of cash), her personal net worth and the fair market value of all of her assets, whether encumbered or not, may be considered in determining

whether she is economically disadvantaged.

(d) *Transfers within two years.* Assets that a woman claiming economic disadvantage transferred within two years of the date of the concern's certification will be attributed to the woman claiming economic disadvantage if the assets were transferred to an immediate family member, or to a trust that has as a beneficiary an immediate family member. The transferred assets within the two-year period will not be attributed to the woman if the transfer was:

(1) To or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support; or

(2) To an immediate family member in recognition of a special occasion, such as a birthday, graduation, anniversary, or retirement.

Subpart C—Certification of EDWOSB or WOSB Status

§ 127.300 How is a concern certified as an EDWOSB or WOSB?

(a) *General.* At the time a concern submits an offer on a specific contract reserved for competition under this Part, it must be registered in the Central Contractor Registration (CCR) and have a current self-certification posted on the Online Representations and Certifications Application (ORCA) that it qualifies as an EDWOSB or WOSB.

(b) *Form of certification.* In conjunction with its required registration in the CCR database, the concern must submit a self-certification to the electronic annual representations and certifications at *http://orca.bpn.gov*, that it is a qualified EDWOSB or WOSB. The self-certification must include a representation under the penalty of perjury that:

(1) The concern is certified as a EDWOSB or WOSB by a certifying entity approved by SBA and there have been no changes in its circumstances affecting its eligibility since certification; or

(2) The concern meets each of the applicable individual eligibility requirements described in subpart B of this part, including that:

(i) It is a small business concern under the size standard assigned to the particular procurement;

(ii) It is at least 51 percent owned and controlled by one or more women who are United States citizens, or it is at least 51 percent owned and controlled by one or more women who are United States citizens and are economically disadvantaged; and

(iii) Neither SBA, in connection with an examination or protest, nor an SBA-approved certifier has issued a decision currently in effect finding that it does not qualify as a EDWOSB or WOSB.

(c) *Update of certification.* The concern must update its EDWOSB and WOSB representations and self-certification on ORCA as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and self-certification are effective for a period of one year from the date of submission or update to ORCA.

§ 127.301 When may a contracting officer accept a concern's self-certification?

(a) *General.* A contracting officer may accept a concern's self-certification on ORCA as accurate for a specific procurement reserved for award under this Part in the absence of a protest or other credible information that calls into question the concern's eligibility as a EDWOSB or WOSB. An example of such credible evidence includes information that the concern was determined by SBA or an SBA-approved certifier not to qualify as a EDWOSB or WOSB.

(b) *Referral to SBA.* When the contracting officer has information that calls into question the eligibility of a concern as a EDWOSB or WOSB, the contracting officer must refer the concern's self-certification to SBA for verification of the concern's eligibility by filing an EDWOSB or WOSB status protest pursuant to subpart F of this Part.

§ 127.302 What third-party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?

(a) *General.* In order for a concern to use a certification by another entity as evidence of its status as a qualified EDWOSB or WOSB in support of its representations in ORCA pursuant to § 127.300(b), the concern must have a current, valid certification from:

(1) SBA as an 8(a) BD or SDB women-owned concern in good standing;

(2) The Department of Transportation as a disadvantaged business enterprise (DBE) that is at least 51 percent owned and controlled by one or more women; or

(3) An entity designated as an SBA-approved certifier on SBA's Web site located at *http://www.sba.gov/GC.*

(b) [Reserved]

§ 127.303 How will SBA select and identify approved certifiers?

(a) *General.* SBA may enter into written agreements to accept the EDWOSB or WOSB certification of a Federal agency or national certifying entity if SBA determines that the entity's certification process complies with SBA-approved certification standards and is based upon the same EDWOSB or WOSB eligibility requirements set forth in subpart B of this part. The written agreement will include a provision authorizing SBA to terminate the agreement if SBA subsequently determines that the entity's certification process does not comply with SBA-approved certification standards or is not based on the same EDWOSB or WOSB eligibility requirements as set forth in subpart B of this part.

(b) *Required certification standards.* In order for SBA to enter into an agreement to accept the EDWOSB or WOSB certification of a Federal agency, state government, or national certifying entity, the entity must establish the following:

(1) It will render fair and impartial EDWOSB or WOSB eligibility determinations.

(2) Its certification process will require applicant concerns to pre-register on CCR and submit sufficient information to enable it to determine whether the concern qualifies as an EDWOSB or WOSB. This information must include documentation demonstrating whether the concern is:

(i) A small business concern under SBA's size standards for its primary industry classification;

(ii) At least 51 percent owned and controlled by one or more women who are United States citizens; and

(iii) In the case of a concern applying for EDWOSB certification, at least 51 percent owned and controlled by one or more women who are United States citizens and economically disadvantaged.

(3) It will not decline to accept a concern's application for EDWOSB or WOSB certification on the basis of race, color, national origin, religion, age, disability, sexual orientation, or marital or family status.

(c) *List of SBA-approved certifiers.* SBA will maintain a list of approved certifiers on SBA's Internet Web site at *http://www.sba.gov/GC.* Any interested person may also obtain a copy of the list from the local SBA district office.

§ 127.304 How does a concern obtain certification from an approved certifier?

A concern that seeks EDWOSB or WOSB certification from an SBA-approved certifier must submit its application directly to the approved certifier in accordance with the specific application procedures of the particular certifier. Any interested party may obtain such certification information and application by contacting the approved certifier at the address

provided on SBA's list of approved certifiers.

§ 127.305 May a concern determined not to qualify as an EDWOSB or WOSB submit a self-certification for a particular EDWOSB or WOSB requirement?

A concern that SBA or an SBA-approved certifier determines does not qualify as an EDWOSB or WOSB may not represent itself to be an EDWOSB or WOSB, as applicable, unless SBA subsequently determines that it is an eligible EDWOSB or WOSB pursuant to the examination procedures under § 127.405 of subpart D, and there have been no material changes in its circumstances affecting its eligibility since SBA's eligibility determination. Any concern determined not to be a qualified EDWOSB or WOSB may request that SBA conduct an examination to determine its EDWOSB or WOSB eligibility at any time once it believes in good faith that it satisfies all of the eligibility requirements to qualify as an EDWOSB or WOSB.

Subpart D—Eligibility Examinations

§ 127.400 What is an eligibility examination?

An eligibility examination is an investigation by SBA to verify that a concern meets the EDWOSB or WOSB eligibility requirements at the time of the examination. SBA may, in its sole discretion, perform an examination at any time after a concern self-certifies in CCR or ORCA that it is an EDWOSB or WOSB.

§ 127.401 What is the difference between an eligibility examination and an EDWOSB or WOSB status protest pursuant to subpart F of this part?

(a) *Eligibility examination.* An eligibility examination is the formal process through which SBA verifies and monitors the continuing eligibility of a concern that is designated on CCR or ORCA as an EDWOSB or WOSB. For purposes of an examination, the D/GC will determine the eligibility of a concern as of the date SBA notifies the concern that it will conduct the examination. The D/GC's eligibility decision constitutes the final agency decision and will be effective and apply to all solicitations issued on or after the date of the decision issued pursuant to §§ 127.403, 127.404(b), or 127.405(e). If SBA is conducting an eligibility examination on a concern that has submitted an offer on a pending EDWOSB or WOSB procurement and SBA has credible information that the concern may not qualify as an EDWOSB or WOSB, then SBA may initiate a protest pursuant to § 127.600, to suspend award of the contract for 15 business days pending SBA's determination of the concern's eligibility.

(b) *EDWOSB or WOSB protests.* An EDWOSB or WOSB status protest provides a mechanism for challenging or verifying the EDWOSB or WOSB eligibility of a concern in connection with a specific EDWOSB or WOSB requirement. SBA will process EDWOSB or WOSB protests in accordance with the procedures and timeframe set forth in subpart F, and will determine the EDWOSB or WOSB eligibility of the protested concern as of the date the concern represented its EDWOSB or WOSB status as part of its initial offer including price. SBA's protest determination will apply to the specific procurement to which the protest relates and to future procurements.

§ 127.402 How will SBA conduct an examination?

(a) *Notification.* No less than 5 business days before commencing an examination, SBA will notify the concern in writing that it will conduct an examination to determine the status of the concern as an EDWOSB or WOSB. The notification also will advise the concern that its EDWOSB or WOSB eligibility will be determined based on the status of the concern on the date of the notification.

(b) *Request for information.* SBA may request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility. SBA may draw an adverse inference where a concern fails to cooperate in providing the requested information.

§ 127.403 What happens if SBA verifies the concern's eligibility?

If SBA verifies that the concern satisfies the applicable EDWOSB or WOSB eligibility requirements at the time of the eligibility examination, then the D/GC will send the concern a written decision to that effect and will allow the concern's EDWOSB or WOSB designation in CCR and ORCA to stand.

§ 127.404 What happens if SBA is unable to verify a concern's eligibility?

(a) *Notice of proposed determination of ineligibility.* If SBA is unable to verify that the concern qualifies as an EDWOSB or WOSB at the time of the examination, then the D/GC will send the concern a written notice explaining the reasons SBA believes the concern does not qualify as an EDWOSB or WOSB. The notice will advise the concern that it has 15 calendar days from the date it receives the notice to respond.

(b) *SBA determination.* Following the 15-day response period, the D/GC or designee will consider the reasons of proposed ineligibility and any information the concern submitted in response, and will send the concern a written decision finding that it either qualifies or does not qualify as an EDWOSB or WOSB.

(1) If SBA verifies that the concern qualifies as an EDWOSB or WOSB at the time of the examination, then the D/GC will send the concern a decision to that effect and will allow the concern to continue to self-certify its EDWOSB or WOSB status.

(2) If SBA determines that the concern does not qualify as an EDWOSB or WOSB, then the D/GC will send the concern a written decision explaining the basis of ineligibility, and will require that the concern remove its EDWOSB or WOSB designation in the CCR and ORCA within five business days after the date of the decision.

§ 127.405 What is the process for requesting an eligibility examination?

(a) *General.* A concern may request that SBA conduct an examination to verify its eligibility as an EDWOSB or WOSB at any time after it is determined by SBA or an SBA-approved certifier not to qualify as an EDWOSB or WOSB, if the concern believes in good faith that it satisfies all of the EDWOSB or WOSB eligibility requirements under subpart B of this part.

(b) *Format.* The request for an examination must be in writing and must specify the particular reasons the concern was determined not to qualify as an EDWOSB or WOSB.

(c) *Submission of request.* The concern must submit its request directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–6390, marked ''Attn: Request for Women-Owned Small Business Procedures Examination.''

(d) *Notice of receipt of request.* SBA will immediately notify the concern in writing once SBA receives its request for an examination. The notification will advise the concern that its eligibility will be determined based on the status of the concern on the date of the notification. SBA may request that the concern provide documentation and information related to the concern's EDWOSB or WOSB eligibility and may draw an adverse inference if the concern fails to cooperate in providing the requested information.

(e) *Determination of eligibility.* The D/GC will send the concern a written decision finding that it either qualifies or does not qualify as an EDWOSB or WOSB.

(1) If the D/GC determines that the concern does not qualify as an EDWOSB or WOSB, the decision will explain the specific reasons for the adverse determination and advise the concern that it is prohibited from self-certifying as an EDWOSB or WOSB. If the concern self-certifies as an EDWOSB or WOSB notwithstanding SBA's adverse determination, the concern will be subject to the penalties under subpart F of this part.

(2) If the D/GC determines that the concern qualifies as an EDWOSB or WOSB, then the D/GC will send the concern a written decision to that effect and will advise the concern that it may self-certify as an EDWOSB or WOSB, as applicable.

(f) *Effect of decision.* The D/GC's decision is effective as of the date of the decision and applies to all solicitations issued on or after the effective date.

Subpart E—Federal Contract Assistance

§ 127.500 In what industries is a contracting officer authorized to restrict competition under this part?

A contracting officer may restrict competition under this part only in those industries in which SBA has determined that WOSBs are underrepresented or substantially underrepresented in Federal procurement, as specified in § 127.501(a), and the procuring agency finds that a set-aside in that industry would be in accordance with the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution, as specified in § 127.501(b).

§ 127.501 How will SBA determine the industries that are eligible for EDWOSB or WOSB requirements?

(a) *SBA determination of underrepresented or substantially underrepresented industries.* (1) Approximately every five years, SBA will conduct a study to identify the industries in which WOSBs are underrepresented or substantially underrepresented in Federal contracting. The study will include an analysis of the extent of disparity of WOSBs in Federal contracting.

(2) *Data collection.* In determining the extent of disparity of WOSBs in Federal contracting, SBA may request that the head of any Federal department or agency provide SBA, or other designated entity, data or information necessary to analyze the extent of disparity of WOSBs in Federal contracting.

(3) Based upon its analysis, SBA will designate by 4-digit NAICS Industry Subsector industries in which WOSBs are underrepresented or substantially underrepresented.

(b) *Agency determination of discrimination.* Each agency is responsible for carrying out analysis sufficient to justify a restriction on competition under the equal protection requirements of the Due Process Clause of the Fifth Amendment of the Constitution. Where an agency seeks to reserve a procurement for competition exclusively among WOSBs or EDWOSBs within an industry designated by SBA in paragraph (a)(3) of this section, the agency must conduct an appropriate analysis of the agency's procurement history and make a determination of whether there is evidence of relevant discrimination in that industry by that agency.

§ 127.502 How will SBA identify and provide notice of the designated industries?

SBA will post on its Internet Web site a list of 4-digit NAICS Industry Subsector industries it designates under § 127.501(a). The list of designated industries also may be obtained from the local SBA district office and may be posted on the General Services Administration Internet Web site.

§ 127.503 When is a contracting officer authorized to restrict competition under this part?

(a) *EDWOSB requirements.* For requirements in industries designated by SBA pursuant to § 127.501, a contracting officer may restrict competition to EDWOSBs if the contracting officer has a reasonable expectation based on market research that:

(1) Two or more EDWOSBs will submit offers for the contract;

(2) The anticipated award price of the contract (including options) does not exceed $5,000,000, in the case of a contract assigned an NAICS code for manufacturing; or $3,000,000, in the case of all other contracts; and

(3) Contract award may be made at a fair and reasonable price.

(b) *WOSB requirements.* If market research indicates that the criteria in paragraph (a) are not met for restricting competition to EDWOSBs, then the contracting officer may restrict competition to WOSBs if:

(1) The requirement is in an industry that SBA has designated as substantially underrepresented; and

(2) The contracting officer has a reasonable expectation based on market research that—

(i) Two or more WOSBs will submit offers;

(ii) The anticipated award price of the contract (including options) will not exceed $5,000,000, in the case of a contract assigned an NAICS code for manufacturing, or $3,000,000 in the case of all other contracts; and

(iii) Contract award may be made at a fair and reasonable price.

(c) *8(a) BD requirements.* A contracting officer may not restrict competition to eligible EDWOSBs or WOSBs if an 8(a) BD Participant is currently performing the requirement under the 8(a) BD Program or SBA has accepted the requirement for performance under the authority of the 8(a) BD program, unless SBA consented to release the requirement from the 8(a) BD program.

(d) *Contract file.* When restricting competition to WOSBs in accordance with § 127.503(b), the contracting officer must document the contract file accordingly, including the type and extent of market research and the fact that the NAICS code assigned to the contract is for an industry that SBA has designated as a substantially underrepresented industry.

§ 127.504 What additional requirements must a concern satisfy to submit an offer on an EDWOSB or WOSB requirement?

In order for a concern to submit an offer on a specific EDWOSB or WOSB requirement, the concern must ensure that the appropriate representations and certifications on ORCA are accurate and complete at the time it submits its offer to the contracting officer, including, but not limited to, the fact that:

(a) It is small under the size standard corresponding to the NAICS code assigned to the contract;

(b) It is listed on CCR and ORCA as an EDWOSB or WOSB;

(c) There has been no material change in any of its circumstances affecting its EDWOSB or WOSB eligibility; and

(d) It will meet the applicable percentages of work requirement as set forth in § 125.6 of this chapter (limitations on subcontracting rule).

§ 127.505 May a non-manufacturer submit an offer on an EDWOSB or WOSB requirement for supplies?

An EDWOSB or WOSB that is a non-manufacturer, as defined in § 121.406(b) of this chapter, may submit an offer on an EDWOSB or WOSB contract for supplies, if it meets the requirements under the non-manufacturer rule set forth in § 121.406(b).

§ 127.506 May a joint venture submit an offer on an EDWOSB or WOSB requirement?

A joint venture may submit an offer on an EDWOSB or WOSB contract if the joint venture meets all of the following requirements:

(a) Except as provided in § 121.103(h)(3) of this chapter, the combined annual receipts or employees of the concerns entering into the joint venture must meet the applicable size standard corresponding to the NAICS code assigned to the contract;

(b) The EDWOSB or WOSB participant of the joint venture must be designated on the CCR and the ORCA as an EDWOSB or WOSB;

(c) The EDWOSB or WOSB must be the managing venturer of the joint venture, and an employee of the managing venturer must be the project manager responsible for the performance of the contract;

(d) The joint venture must perform the applicable percentage of work required of the EDWOSB or WOSB offerors in accordance with § 125.6 of this chapter (limitations on subcontracting rule); and

(e) The EDWOSB or WOSB venturer must perform a significant portion of the contract.

Subpart F—Protests

§ 127.600 Who may protest the status of a concern as an EDWOSB or WOSB?

An interested party may protest the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB contract. Any other party or individual may submit information to the contracting officer or SBA in an effort to persuade them to initiate a protest or to persuade SBA to conduct an examination pursuant to subpart D of this part.

§ 127.601 May a protest challenging the size and status of a concern as an EDWOSB or WOSB be filed together?

An interested party seeking to protest both the size and the EDWOSB or WOSB status of an apparent successful offeror on an EDWOSB or WOSB requirement must file two separate protests, one size protest pursuant to part 121 of this chapter and one EDWOSB or WOSB status protest pursuant to this subpart. An interested party seeking to protest only the size of an apparent successful EDWOSB or WOSB offeror must file a size protest to the contracting officer pursuant to part 121 of this chapter.

§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?

SBA will consider a protest challenging the status of a concern as an EDWOSB or WOSB if the protest presents credible evidence that the concern is not owned and controlled by one or more women who are United States citizens and, if the protest is in connection with an EDWOSB contract, that the concern is not at least 51% owned and controlled by one or more women who are economically disadvantaged.

§ 127.603 What are the requirements for filing an EDWOSB or WOSB protest?

(a) *Format.* Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible EDWOSB or WOSB, without setting forth specific facts or allegations, is insufficient.

(b) *Filing.* Protestors may deliver their written protests in person, by facsimile, by express delivery service, or by U.S. mail (postmarked within the applicable time period) to the following:

(1) To the contracting officer, if the protestor is an offeror for the specific contract; or

(2) To the D/GC, if the protest is initiated by the contracting officer or SBA.

(c) *Timeliness.* (1) For negotiated acquisitions, an interested party must submit its protest by the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror or notification of award.

(2) For sealed bid acquisitions, an interested party must submit its protest by close of business on the fifth business day after bid opening.

(3) Any protest submitted after the time limits is untimely, unless it is from SBA or the contracting officer. A contracting officer or SBA may file an EDWOSB or WOSB protest at any time after bid opening or notification of intended awardee, whichever applies.

(4) Any protest received prior to bid opening or notification of intended awardee, whichever applies, is premature.

(5) A timely filed protest applies to the procurement in question even if filed after award.

(d) *Referral to SBA.* The contracting officer must forward to SBA any protest received, notwithstanding whether he or she believes it is premature, sufficiently specific, or timely. The contracting officer must send all protests, along with a referral letter, directly to the Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or by fax to (202) 205–6390, Attn: Women-Owned Small Business Status Protest. The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including: The solicitation number; the name, address, telephone number and facsimile number of the contracting officer; whether the protestor submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer; whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the contracting officer; when the protestor received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded. The D/GC or designee will decide the merits of EDWOSB or WOSB status protests.

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protestor of the date SBA received the protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on nonprotestable allegations, SBA will dismiss the protest and will send the contracting officer and the protestor a notice of dismissal, citing the reason(s) for the dismissal. Notwithstanding SBA's dismissal of the protest, SBA may, in its sole discretion, consider the protest allegations in determining whether to conduct an examination of the protested concern pursuant to subpart D of this part.

(c) *Notice to protested concern.* If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and of its right to submit information responding to the protest within five business days from the date of the notice; and

(2) Forward a copy of the protest to the protested concern.

(d) *Time period for determination.* SBA will determine the EDWOSB or WOSB status of the protested concern within 15 business days after receipt of the protest, or within any extension of that time that the contracting officer may grant SBA. If SBA does not issue its determination within the 15-day

period, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension.

(e) *Notification of determination.* SBA will notify the contracting officer, the protestor, and the protested concern in writing of its determination. If SBA sustains the protest, SBA will issue a decision explaining the basis of its determination and requiring that the concern remove its designation on the CCR and ORCA as an EDWOSB or WOSB, as appropriate.

(f) *Effect of determination.* SBA's determination is effective immediately and is final unless overturned by OHA on appeal pursuant to § 127.605 of this part.

(1) The purpose of the protest process is to ensure that contracts are awarded to, and performed by, eligible WOSB and EDWOSB concerns. A contracting officer shall not award a contract to an ineligible concern, and shall not authorize an ineligible concern to begin performance.

(2) Where award was made and performance commenced before receipt of a negative final agency decision, the contracting officer may terminate the contract, not exercise any option, or not award further task or delivery orders.

(3) Whether or not a contracting officer decides to not allow an ineligible concern to fully perform a contract under paragraph (f)(2) of this section or under § 134.704 of this title, the contracting officer cannot count the award as one to an EDWOSB or WOSB and must update the Federal Procurement Data System-Next Generation (FPDS-NG) and other databases from the date of award accordingly.

(4) A concern that has been found to be ineligible may not represent itself as a WOSB or EDWOSB on another procurement until it cures the reason for its ineligibility. A concern that believes in good faith that it has cured the reason(s) for its ineligibility may request an examination under the procedures set forth in § 127.405.

§ 127.605 What are the procedures for appealing an EDWOSB or WOSB status protest decision?

The protested concern, the protestor, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with the SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

Subpart G—Penalties

§ 127.700 What penalties may be imposed under this part?

Persons or concerns that falsely self-certify or otherwise misrepresent a concern's status as an EDWOSB or WOSB for purposes of receiving Federal contract assistance under this part are subject to:

(a) Suspension and Debarment pursuant to the procedures set forth in the Federal Acquisition Regulations, subpart 9.4 of title 48 of the Code of Federal Regulations;

(b) Administrative and civil remedies prescribed by the False Claims Act, 31 U.S.C. 3729–3733 and under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801–3812;

(c) Administrative and criminal remedies as described at Sections 16(a) and (d) of the Small Business Act, 15 U.S.C. 645(a) and (d), as amended;

(d) Criminal penalties under 18 U.S.C. 1001; and

(e) Any other penalties as may be available under law.

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

8. The Authority citation for 13 CFR continues to read as follows:

Authority: 5 U.S.C. 504, 15 U.S.C. 632, 634(b)(6), 637(a), 637(m), 648(l), 656(i) and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

Subpart A—General Rules

9. Amend § 134.102 by redesignating paragraph (s) as paragraph (t) and adding new paragraph (s) to read as follows:

§ 134.102 Jurisdiction of OHA

* * * * *

(s) Appeals from Women-Owned Small Business or Economically-Disadvantaged Women-Owned Small Business protest determinations under Part 127 of this chapter;

* * * * *

Subpart E—Rules of Practice for Appeals from Service-Disabled Veteran Owned Small Business Concern Protests

10. Amend § 134.515 by revising paragraph (b) to read as follows:

§ 134.515 What are the effects of the Judge's decision?

* * * * *

(b) The Judge may reconsider an appeal decision within 20 calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

* * * * *

11. Add new subpart G to read as follows:

Subpart G—Rules of Practice for Appeals From Women-Owned Small Business Concern (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests

134.701 What is the scope of the rules in this subpart G?
134.702 Who may appeal?
134.703 When must a person file an appeal from an WOSB or EDWOSB protest determination?
134.704 What are the effects of the appeal on the procurement at issue?
134.705 What are the requirements for an appeal petition?
134.706 What are the service and filing requirements?
134.707 When does the D/GC transmit the protest file and to whom?
134.708 What is the standard of review?
134.709 When will a Judge dismiss an appeal?
134.710 Who can file a response to an appeal petition and when must such a response be filed?
134.711 Will the Judge permit discovery and oral hearings?
134.712 What are the limitations on new evidence?
134.713 When is the record closed?
134.714 When must the Judge issue his or her decision?
134.715 Can a Judge reconsider his decision?

Subpart G—Rules of Practice for Appeals From Women-Owned Small Business Concern (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests

§ 134.701 What is the scope of the rules in this subpart G?

(a) The rules of practice in this subpart G apply to all appeals to OHA from formal protest determinations made by the Director for Government Contracting (D/GC) in connection with a Women-Owned Small Business (WOSB) or Economically Disadvantaged WOSB (EDWOSB) status protest. Appeals under this subpart include issues related to whether the concern is owned and controlled by one or more women who are United States citizens and, if the appeal is in connection with an

EDWOSB contract, that the concern is at least 51% owned and controlled by one or more women who are economically disadvantaged. This includes appeals from determinations by the D/GC that the protest was premature, untimely, nonspecific, or not based upon protestable allegations.

(b) Except where inconsistent with this subpart, the provisions of Subpart A and B of this part apply to appeals listed in paragraph (a) of this section.

(c) Appeals relating to formal size determinations and NAICS Code designations are governed by subpart C of this part.

§ 134.702 Who may appeal?

Appeals from WOSB or EDWOSB protest determinations may be filed with OHA by the protested concern, the protestor, or the contracting officer responsible for the procurement affected by the protest determination.

§ 134.703 When must a person file an appeal from an WOSB or EDWOSB protest determination?

Appeals from a WOSB or EDWOSB protest determination must be commenced by filing and serving an appeal petition within 10 business days after the appellant receives the WOSB or EDWOSB protest determination (see § 134.204 for filing and service requirements). An untimely appeal will be dismissed.

§ 134.704 What are the effects of the appeal on the procurement at issue?

Appellate decisions apply to the procurement in question. If the contracting officer awarded the contract to a concern that OHA finds to be ineligible, then the contracting officer may terminate the contract, not exercise any options, or not award further task or delivery orders.

§ 134.705 What are the requirements for an appeal petition?

(a) *Format.* There is no required format for an appeal petition. However, it must include the following information:

(1) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;

(2) A statement that the petitioner is appealing a WOSB or EDWOSB protest determination issued by the D/GC and the date that the petitioner received it;

(3) A full and specific statement as to why the WOSB or EDWOSB protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation; and

(4) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

(b) *Service of appeal.* The appellant must serve the appeal petition upon each of the following:

(1) The D/GC at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile (202) 205–6390;

(2) The contracting officer responsible for the procurement affected by a WOSB or EDWOSB determination;

(3) The protested concern (the business concern whose WOSB or EDWOSB status is at issue) or the protester; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, facsimile number (202) 205–6873.

(c) *Certificate of Service.* The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

§ 134.706 What are the service and filing requirements?

The provisions of § 134.204 apply to the service and filing of all pleadings and other submissions permitted under this subpart unless otherwise indicated in this subpart.

§ 134.707 When does the D/GC transmit the protest file and to whom?

Upon receipt of an appeal petition, the D/GC will send to OHA a copy of the protest file relating to that determination. The D/GC will certify and authenticate that the protest file, to the best of his or her knowledge, is a true and correct copy of the protest file.

§ 134.708 What is the standard of review?

The standard of review for an appeal of a WOSB or EDWOSB protest determination is whether the D/GC's determination was based on clear error of fact or law.

§ 134.709 When will a Judge dismiss an appeal?

(a) The presiding Judge will dismiss the appeal if the appeal is untimely filed under § 134.703.

(b) The matter has been decided or is the subject of adjudication before a court of competent jurisdiction over such matters. However, once an appeal has been filed, initiation of litigation of the matter in a court of competent jurisdiction will not preclude the Judge from rendering a final decision on the matter.

§ 134.710 Who can file a response to an appeal petition and when must such a response be filed?

Although not required, any person served with an appeal petition may file and serve a response supporting or opposing the appeal if he or she wishes to do so. If a person decides to file a response, the response must be filed within 7 business days after service of the appeal petition. The response should present argument.

§ 134.711 Will the Judge permit discovery and oral hearings?

Discovery will not be permitted, and oral hearings will not be held.

§ 134.712 What are the limitations on new evidence?

The Judge may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals under this subpart will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition, and response(s) filed thereto.

§ 134.713 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to 13 CFR 134.710.

§ 134.714 When must the Judge issue his or her decision?

The Judge shall issue a decision, insofar as practicable, within 15 business days after close of the record.

§ 134.715 Can a Judge reconsider his decision?

(a) The Judge may reconsider an appeal decision within 20 calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within 20 calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(b) The Judge may remand a proceeding to the D/GC for a new WOSB or EDWOSB determination if the D/GC fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a

new appeal is filed as a result of the new WOSB or EDWOSB determination.

Steven C. Preston,

Administrator.

[FR Doc. E7–25056 Filed 12–26–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM08–1–000]

Enhancement of Competition in the Secondary Release Market; Notice of Extension of Time

December 14, 2007.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking: Extension of the Comment Date.

SUMMARY: On November 15, 2007, the Federal Energy Regulatory Commission issued a Notice of Proposed Rulemaking proposing revisions to its regulations governing interstate natural gas pipelines to reflect changes in the market for short-term transportation services on pipelines and to improve the efficiency of the Commission's capacity release mechanism. The date for filing comments on the proposed rule is being extended at the request of the American Gas Association, the American Public Gas Association, the Interstate Natural Gas Association of America and the Process Gas Consumers Group.

DATES: Comments are due on or before January 25, 2008.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

• *Agency Web Site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Robert McLean, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *Robert.McLean@ferc.gov,* (202) 502–8156.

David Maranville, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, *David.Maranville@ferc.gov,* (202) 502–6351.

SUPPLEMENTARY INFORMATION: On December 13, 2007, the American Gas Association, the American Public Gas Association, the Interstate Natural Gas Association of America, and the Process Gas Consumers Group (the Natural Gas Associations) filed a joint motion for an extension of time to file comments in response to the Commission's Notice of Proposed Rulemaking in this docket.[1] They request that the Commission extend the deadline for comments from January 10, 2008 to February 8, 2008. The motion states that the Natural Gas Associations require additional time in order to poll their members and weigh the major policy and factual issues raised in the Notice of Proposed Rulemaking.

Upon consideration, notice is hereby given that an extension of time for filing comments on the Notice of Proposed Rulemaking is granted to and including January 25, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–25001 Filed 12–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 071212833–7843–01]

RIN 0648–XB94

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2008 Atlantic Bluefish Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2008 specifications for the Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The intent of these specifications is to establish the allowable 2008 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the stock rebuilding program in Amendment 1 to the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on January 28, 2008.

ADDRESSES: You may submit comments, identified by 0648–XB94, by any one of the following methods:

• Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal: *http://www.regulations.gov*,

• Fax: (978) 281–9135, Attn: Regional Administrator.

• Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2008 Bluefish Specifications'',

Instructions: All comments received are part of the public record and will generally be posted to *http://regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP are prepared by the Mid-Atlantic Fishery Management Council (Council) and appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for bluefish (*Pomatomus saltatrix*) is U.S. waters of the western Atlantic Ocean.

[1] *Promotion of a More Efficient Capacity Release Market,* 72 FR 65,916 (November 26, 2007), 121 FERC ¶ 61,170 (2007).

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and recreational harvest limit (RHL). A research set aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors. The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee, the Council makes a recommendation to the Northeast Regional Administrator (RA). This FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission); therefore, the Commission meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation, concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

In July 2007, the Monitoring Committee met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2008. In August 2007, the Council approved the Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures.

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP (Amendment 1), overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as ½ B_{MSY}. Amendment 1 also established that the long-term target F ($F_{0.1}$) is 90 percent of F_{MSY}, and the long-term target B is B_{MSY} = 237 million lb (107,500 mt). The rebuilding plan established through Amendment 1 stipulates that the target fishing mortality rate (F_{target}) in 2008 be set at F = 0.31, or the status quo fishing mortality rate (F_{year}), whichever is less.

An age-structured assessment program (ASAP) model for bluefish was presented to the 41st Stock Assessment Review Committee (SARC–41) in 2005, and estimated annual biomass and F through the 2004 fishing year, as well as updated biological reference points. The original ASAP model output was revised in 2006. The ASAP model was updated for the purpose of estimating the current status of the bluefish stock; i.e., 2006 biomass and F estimates were compared to the corrected ASAP model output, in order to enable the Monitoring Committee to recommend 2008 specifications using landing information and survey indices through the 2006 fishing year. Additionally, a projection of biomass through 2010 was done using $F_{target} = F_{2006} = 0.15$. This projection identified a target yield for 2008 and also indicated that biomass is likely to reach the target before the 2010 rebuilding deadline. According to the biological reference points specified in Amendment 1 to the FMP, and the most recent estimates of stock biomass, the bluefish stock was rebuilt to above B_{MSY} in 2006. The Monitoring Committee, however, supported the model updates and corrected biological reference points from SARC–41 that derived the following new estimates of biomass and projected fishery yields: (1) An estimated stock biomass for 2006, B_{2006} = 307.5 million lb (139,496 mt); and (2) projected yields for 2008 using $F_{target} = F_{2006} = 0.15$. Based on the updated biological reference points, and the 2006 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: B_{2006} = 307.5 million lb (139,496 mt) is greater than the minimum biomass threshold, ½ B_{MSY} = 162 million lb (73,526 mt). Estimates of fishing mortality have declined from 0.41 in 1991 to 0.15 in 2006. The new model results also conclude that the Atlantic stock of bluefish is not experiencing overfishing; i.e., the most recent F (F_{2006} = 0.15) is less than the maximum F overfishing threshold specified by SARC–41 (F_{MSY} = 0.19).

2008 TAL

The FMP specifies that the bluefish stock is to be rebuilt to B_{MSY} over a 9-year period (i.e., by the year 2010). The FMP requires the Council to recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota and a RHL. The FMP rebuilding program requires the TAC for any given year to be set based either on the target F resulting from the stock rebuilding schedule specified in the FMP (0.31 for 2008), or the F estimated in the most recent fishing year (F_{2006} = 0.15), whichever is lower. Therefore, the 2008 recommendation is based on an estimated F of 0.15. An overall TAC of 31.887 million lb (14,464 mt) was recommended as the coast-wide TAC by the Council at its August 2007 meeting to achieve the target fishing mortality rate, (F = 0.15) in 2008, and to ensure that the bluefish stock continues toward the long-term biomass target, B_{MSY} = 324 million lb (147,052 mt), consistent with the rebuilding schedule specified in Amendment 1. Based on the 2006 biomass estimate (307.5 million lb (139,496 mt)), the bluefish stock is well above the minimum biomass threshold (½ B_{MSY} = 162 million lb (73,526 mt)), but is still slightly below the long-term biomass target (B_{MSY} = 324 million lb (147,052 mt)).

The proposed TAL for 2008 is derived by subtracting an estimate of discards of 3.734 million lb (1,694 mt), the average discard level from 2000–2006, from the TAC. After subtracting estimated discards, the 2008 TAL would be approximately 1.4 percent greater than the 2007 TAL, or 28.156 million lb (12,771 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2008 would be 4.787 million lb (2,171 mt), and the RHL would be 23.370 million lb (10,600 mt) in 2008. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and its proportional adjustment downward to account for the recommended bluefish RSA quota.

Proposed Commercial Quota and Recreational Harvest Limit

The FMP stipulates that, in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), the commercial quota may be increased up to 10.500 million lb (4,763 mt) as long as the recreational fishery is not projected to land more than 83 percent of the TAL in the upcoming fishing year, and the combined projected

recreational landings and commercial quota would not exceed the TAL. At the Monitoring Committee meeting, Council staff estimated projected recreational landings for the 2008 fishing year by using simple linear regression of the recent (2000–2006) temporal trends in recreational landings. Recreational landings are projected to reach 18.864 million lb (8,557 mt) in 2008. If the maximum commercial quota of 10.500 million lb (4,763 mt) is established within a TAL of 28.156 million lb (12,771 mt), this would leave 17.656 million lb (8,009 mt) for the recreational fishery. This amount is less than the projected 2008 recreational landings described above, which, when added to the maximum allowable commercial quota of 10.500 million lb (4,763 mt), would exceed the overall TAL. Therefore, because the FMP and regulations governing the bluefish fishery do not allow for this maximum allowable commercial quota, the Monitoring Committee and the Council recommended, and NMFS proposes, to transfer 4.088 million lb (1,854 mt) from the initial recreational allocation of 23.370 million lb (10,600 mt), resulting in a proposed 2008 commercial quota of 8.875 million lb (4,026 mt) and a RHL of 19.281 million lb (8,746 mt), which is 2.2 percent greater than the projected 2008 recreational landings. These allocations were also recommended by the Commission to be implemented by the states for fisheries within state waters.

RSA

A request for proposals was published to solicit research proposals to utilize RSA in 2006 based on research priorities identified by the Council (December 27, 2006; 71 FR 77726). Oneresearch project that would utilize bluefish RSA has been preliminarily approved by the RA and forwarded to the NOAA Grants Office. Therefore, a 50,000–lb (22,680–kg) RSA quota is proposed for use by this, or other potential research projects during 2008. This proposed rule does not represent NOAA's approval of any RSA-related grant award, which will be included in a subsequent action. Consistent with the allocation of the bluefish RSA, the proposed commercial quota for 2008 would be reduced to 8.859 million lb (4,018 mt) and the proposed RHL reduced to 19.246 million lb (8,730 mt).

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2008 commercial quota are shown in Table 1, based on the percentages specified in the FMP. The table shows the allocations both before and after the deduction made to reflect the proposed RSA allocation.

TABLE 1. PROPOSED BLUEFISH COMMERCIAL STATE–BY–STATE ALLOCATION FOR 2008

States	Quota	2007 Commercial Quota		2008 Commercial Quota (lb)	2008 Commercial Quota (kg)
	Percent Share	(lb)	(kg)	RSA Deducted	RSA Deducted
ME	0.6685	59,329	26,911	59,224	26,864
NH	0.4145	36,787	16,686	36,722	16,657
MA	6.7167	596,107	270,392	595,049	269,912
RI	6.8081	604,219	274,072	603,146	273,585
CT	1.2663	112,384	50,977	112,185	50,887
NY	10.3851	921,678	418,070	920,041	417,328
NJ	14.8162	1,314,938	596,452	1,312,603	595,393
DE	I .8782	166,690	75,610	166,394	75,476
MD	3.0018	266,410	120,843	265,937	120,628
VA	11.8795	1,054,306	478,230	1,052,433	477,380
NC	32.0608	2,845,396	1,290,663	2,840,343	1,288,371
SC	0.0352	3,124	1,417	3,118	1,414
GA	0.0095	843	382	842	382
FL	10.0597	892,798	404,971	891,213	404,252
Total	**100.0001**	**8,875,000**	**4,025,674**	**8,859,240**	**4,018,529**

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under E.O. 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this

preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

No large entities participate in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available and individual vessel profitability cannot be determined directly. Therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector were defined using two sets of data. First, the Northeast dealer reports were used to identify any vessel that reported having landed 1 lb (0.45 kg) or more of bluefish during calendar year 2006 (the last year for which there is complete data). These dealer reports identified 725 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 820 vessels[1] that landed bluefish in North Carolina and 567 vessels that landed bluefish on Florida's east coast. There were no landings of bluefish in South Carolina in 2006, and bluefish landings in Georgia were near zero, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2006. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

The IRFA analyzed three alternatives (including the no action/status quo alternative) for allocating the TAL between the commercial and recreational sectors of the fishery. Consistent with the FMP's rebuilding schedule and the status of the resource as assessed by the revised SARC–41 report and the updated model projections, alternatives one and two were based on an overall TAL of 28.156 million lb (12,771 mt) and included an RSA quota of 50,000 lb (22,680 kg). The no action alternative includes an overall TAL of 27.762 million lb (12,593 mt) and an RSA quota of 50,000 lb (22,680 kg). Outside of the difference in the overall TAL specification, the alternatives differed only in the manner in which the TAL was allocated between the commercial and recreational sectors.

The recommended alternative, before RSA deduction, would allocate 8.875 million lb (4,026 mt) to the commercial sector and 19.281 million lb (8,746 mt) to the recreational sector. Alternative 2, the most restrictive alternative, would have allocated 4.787 million lb (2,171 mt) to the commercial sector and 23.370 million lb (10,600 mt) to the recreational sector, reflecting the percentage allocations specified in the FMP (i.e., the 17–percent commercial/83–percent recreational sector split). Alternative 3 would have allocated 8.689 million lb (3,941 mt) to the commercial sector and 19.073 million lb (8,651 mt) to the recreational sector, reflecting the commercial level that was place in 2007 (i.e., status quo/no action alternative).

For the commercial sector, the recommended coast-wide quota is approximately 27 percent higher than 2006 commercial landings. Approximately 19 percent of the TAL was not harvested during the 2006 fishing year and, based on available data, the 2007 TAL is also not expected to be fully harvested. Only three states, Rhode Island, New York, and North Carolina, fully harvested their initial bluefish quotas and received allocation transfers from other states in 2006. Four additional states, New Hampshire, Massachusetts, New Jersey, and Virginia, harvested more than 50 percent of their bluefish quotas, while the remaining states only harvested between 0 and 40 percent of their allocations. Given these recent trends in landings, it is unlikely that the proposed TAL will be fully harvested in 2008, therefore resulting in no overall coastwide economic impacts on the bluefish fishery. For states that did not harvest their quotas in 2006, the proposed 2008 quotas are also not expected to result in any detrimental impacts. For states that exceeded their initial quota allocations in 2006, but received quota transfers from other states, the apparent economic losses would likely be mitigated by quota transfers during 2008, therefore resulting in no overall impacts. For states that exceeded their post-transfer quota allocations in 2006 (i.e., New York), any economic impacts would be solely due to the overage in landings.

Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 725 vessels that landed bluefish from Maine through North Carolina. The analysis projected that there would be no revenue change for 481 out of 725 vessels, while 238 vessels could incur slight revenue losses of less than 5 percent. Another six vessels, all identified with home ports in New York, could incur revenue losses of between 5 percent and 29 percent. According to a threshold impact analysis that compared 2006 landings from the Northeast dealer reports to the recommended 2008 adjusted commercial quota allocation, New York could experience decreases in landings of up to 14 percent, while overall coastwide landings would increase by approximately 27 percent. This is due to the fact that New York's proposed 2008 quota is smaller than its actual 2006 landings.

The impacts of the proposed alternative on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concluded that, as a consequence of the 2008 recommended allocation compared to 2006 landings, there would be no revenue reductions in North Carolina or Florida. The FMP provision that allows commercial quota to be transferred from one state to another may result in transfers of quota to New York and North Carolina, from other states, thus mitigating any potential negative revenue impacts. While not assured, such transfers have been made annually in recent years, including 2006 and 2007.

The analysis of Alternative 2 concluded that, for the commercial sector, there would be a 32–percent decrease in total potential commercial landings in 2008 compared to 2006 landings. The analysis of impacts on individual commercial vessels projected that there would be no revenue change for 62 of the 725 vessels that landed bluefish in 2006, while 610 vessels could incur slight revenue losses (less than 5 percent). Another 31 vessels could incur revenue losses of between 5 percent and 29 percent, while 22 vessels could incur revenue losses of greater than 29 percent. Most of the vessels projected to incur revenue losses of greater than 5 percent had home ports in Massachusetts, New York, New Jersey, or North Carolina. Again, the commercial quota transfer provision could be expected to mitigate some or all of these impacts, although to a lesser extent than in the other alternatives, as all states would have less quota to transfer.

The impacts of Alternative 2 on commercial vessels in the South Atlantic area were assessed using trip ticket data. The analysis concluded that, compared to 2006, landings of bluefish in 2008 could be reduced by approximately 47 percent in North Carolina. However, on average, reductions in revenues due to the

[1] Some of these vessels were identified in the Northeast dealer data, therefore double counting is possible.

potential decrease in landings would be approximately 4 percent for vessels that land in North Carolina. No projected revenue losses are expected for vessels that land in Florida.

The analysis of Alternative 3 concluded that, for the commercial sector, there would be a 24–percent increase in total potential commercial landings in 2008 compared to actual landings in 2006. The analysis of impacts on individual commercial vessels projected that there would be no change in revenue for 298 of the 725 vessels that landed bluefish in 2006, while 407 could incur slight revenue losses (less than 5 percent). Another 20 vessels could incur revenue losses of between 5 percent and 29 percent, and zero vessels would incur revenue losses of greater than 29 percent. The vessels projected to incur revenue losses of greater than 5 percent had home ports in New York and New Jersey.

The impacts of Alternative 3 on commercial vessels in the South Atlantic area were assessed using trip ticket data. The analysis concluded that these impacts would result in revenue reductions, associated with an estimated 9 percent landings decrease, of approximately 1 percent for 820 vessels identified as landing in North Carolina, and no revenue reductions for vessels landing in Florida.

For the recreational sector of the fishery, there were no negative revenue impacts projected to occur with regard to the recommended RHL, because this level would be greater than the recreational landings in 2006 (16.894 million lb (7,663 mt)), and above the recreational landings projected for 2008 (18.864 million lb (8,557 mt)). The recommended RHL is higher than the other two other alternatives, to account for this increase in expected landings. The recreational fishery impacts are not expected to be substantial under any of the alternatives, because the RHL under each alternative is greater than the projected landings for 2008. Although there is very little empirical evidence regarding the sensitivity of charter/party anglers to regulation, it is anticipated that the proposed harvest levels will not affect the demand for charter/party boat trips.

The IRFA also analyzed the impacts on revenues of the proposed RSA amount and found that the social and economic impacts are minimal. Assuming that the full RSA of 50,000 lb (22,680 kg) is landed and sold to support the proposed research project (a supplemental finfish survey in the Mid-Atlantic), then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments. Because the recommended overall commercial quota is higher than 2006 landings, no overall negative impacts are expected in the commercial sector. Based on recent trends in the recreational fishery, recreational landings will more than likely remain below the recommended harvest level in 2008.

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

Dated: December 19, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–25080 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

RIN 0648–AU22

Fisheries in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Management Measures for the Main Hawaiian Islands

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

ACTION: Notice of availability of fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) proposes to amend the Fishery Management Plan for the Bottomfish and Seamount Groundfish of the Western Pacific Region (Bottomfish FMP). Bottomfish FMP Amendment 14 was developed in response to a determination by NMFS that Hawaiian bottomfish stocks are experiencing overfishing, with the primary problem being excessive fishing mortality on seven deep water bottomfish species in the main Hawaiian Islands. Amendment 14 would end the overfishing by reducing bottomfish fishing mortality by 24 percent in 2008, and by establishing a management mechanism that would control fishing effort by responding to changes in the status of bottomfish stocks in the future.

DATES: Comments on Amendment 14, which includes a final environmental impact statement, must be received by February 25, 2008.

ADDRESSES: Comments on Amendment 14, identified by 0648–AU22, may be sent to either of the following addresses:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov; or
- Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to www.regulations.gov without change. All Personal Identifying Information (e.g., name, address, etc.) submitted voluntarily by the commenter may be publicly accessible. Do not submit Confidential Business Information, or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of Amendment 14, including a final environmental impact statement, are available from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS PIR, 808–944–2273.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** notice is also accessible at the Office of the **Federal Register**'s web site *www.gpoaccess.gov/fr*.

Background

NMFS determined that overfishing is occurring on the bottomfish species complex in the Hawaiian Archipelago, with the primary problem being excessive fishing mortality on seven deep water species (the ''Deep 7'' species) in the main Hawaiian Islands (MHI). The Deep 7 species are onaga (*Etelis coruscans*), ehu (*E. carbunculus*), gindai (*Pristipomoides zonatus*), kalekale (*P. sieboldii*), opakapaka (*P. filamentosus*), lehi (*Aphareus rutilans*), and hapu'upu'u (*Epinephelus quernus*). NMFS notified the Council of this overfishing determination on May 27, 2005 (70 FR 34452, June 14, 2005). In response, the Council prepared Bottomfish FMP Amendment 14 that would establish measures to end the overfishing.

Amendment 14 would establish the following management measures for vessel-based bottomfish fishing in the Main Hawaiian Islands:

1. New Federal permitting and reporting requirements for non-commercial bottomfish fishermen. Permits would be required for all individuals engaged in vessel-based non-commercial bottomfish fishing in Hawaii, and operators of these non-commercial vessels would be required to submit logbooks of fishing effort and catch;

2. Seasonal closure. The bottomfish fishery in the main Hawaiian Islands would be closed in the summer of 2008. This closure is intended to reduce fishing mortality on Deep 7 bottomfish by commercial and non-commercial fishermen;

3. Total allowable catch (TAC). A mechanism would be established to set an annual TAC. In 2008, a TAC of 178,000 lb would apply only to the commercial fishery. In subsequent years an annual TAC, determined by NMFS and the Council, would apply to both commercial and non-commercial fisheries; and

4. Bag limits for non-commercial fishermen of five fish, all species combined, of the Deep 7 species, per person per trip. The Federal bag limit would be repealed in the future when data on the non-commercial fishery are sufficient to allow the non-commercial fishery to be included in the TAC program.

The measures in Amendment 14 would reduce fishing mortality bottomfish by 24 percent in 2008, and respond to changes in the status of bottomfish stocks by adjusting the allowable fishing mortality in the future. Amendment 14 has the following objectives:

1. End overfishing of the bottomfish stocks in the Hawaiian Archipelago;

2. Reduce the fishing mortality for the deepwater bottomfish species complex in the MHI;

3. Establish a mechanism to respond to changes in stock status beyond 2008; and

4. Improve data collection from non-commercial bottomfish fisheries in Federal waters around the MHI.

Amendment 14 includes a final environmental impact statement that analyzes the management alternatives considered by the Council. A notice of availability for the FEIS will be published in the near future. A proposed rule to implement Amendment 14 has been prepared, and NMFS expects to publish and request public comment on the rule in the near future.

Public comments on Amendment 14 must be received by February 25, 2008 to be considered by NMFS in the decision to approve, partially approve, or disapprove the amendment. To be considered, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: December 20, 2007.

Galen R. Tromble,

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

[FR Doc. E7–25078 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 247
Thursday, December 27, 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 COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Recreational Fisheries Statistics Survey.

OMB Approval Number: 0648–0052.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 272 new burden hours.

Number of Respondents: 3,750 new respondents.

Average Hours per Response: 1 minute for anglers with no trips in past year; 7 minutes for anglers with trips in past year.

Needs and Uses: Recent amendments to the Magnuson-Stevens Fishery Conservation and Management Act require that the Marine Recreational Fisheries Statistics Survey (MRFSS) be upgraded and that future fishing surveys target anglers licensed or registered at the State or Federal level. This revision is requested to expand previously approved angler license directory surveys (ALDS) into North Carolina, which recently implemented a saltwater fishing license. Information collected through the ALDS will be integrated with data collected through the MRFSS Coastal Household Telephone Survey in a dual-frame approach to provide more complete coverage of the angling population. The results of this data collection effort will be used to calculate bi-monthly estimates of marine recreational fishing participation, effort and catch.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: December 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–24980 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Survey of Housing Starts, Sales, and Completions

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: To ensure consideration, written comments must be submitted on or before February 25, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, U.S. Census Bureau, MCD, CENHQ Room 7K181, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–5161 (or via the Internet at *Erica.Mary.Filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a revision of the current Office of Management and Budget (OMB) clearance of the Survey of Housing Starts, Sales and Completions, also known as the Survey of Construction (SOC). The SOC collects monthly data on new residential construction from a sample of owners or builders. The Census Bureau uses the Computer-Assisted Personal Interviewing (CAPI) electronic questionnaires SOC–QI/SF.1 and SOC–QI/MF.1 to collect data on start and completion dates of construction, physical characteristics of the structure (floor area, number of bathrooms, type of heating system, etc), and if applicable, date of sale, sales price, and type of financing. The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts and Housing Completions, which are from the New Residential Construction series, and New Residential Sales.

The current clearance for this survey is scheduled to expire on June 30, 2009. We are rewriting the CAPI questionnaire software and are requesting approval to begin using the revised questionnaire in the field in early summer of 2008. The revised questionnaire will include about 5 new data items requested by data users. Other information which is no longer needed will be eliminated from the questionnaire. The overall length of the interview will not change.

Census samples about 1,850 new buildings each month (22,200) per year. We inquire about the progress of each building multiple times until it is completed (and a sales contract is signed, if it is a single-family house that is built for sale). We conduct an average of 7.9 interviews for each building sampled. The total number of interviews conducted each year is about 175,380. Each interview takes 5 minutes on

average. Therefore the total annual burden is 14,615 hours.

II. Method of Collection

The Census Bureau uses its field representatives to collect the data.

III. Data

OMB Control Number: 0607–0110.

Form Number: SOC–QI/SF.1 and SOC–QI/MF.1.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 22,200.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 14,615.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 182.

IV. Request for Comments

Comments are invited 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–24981 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Questionnaire for Building Permit Official

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: To ensure consideration, written comments must be submitted on or before February 25, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Erica Filipek, U.S. Census Bureau, MCD, CENHQ Room 7K181, 4600 Silver Hill Road, Washington, DC 20233, telephone (301)763–5161 (or via the Internet at *Erica.Mary.Filipek@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request a revision of the current Office of Management and Budget (OMB) clearance of the Questionnaire for Building Permit Official (SOC–QBPO). The Census Bureau uses the Computer–Assisted Personal Interviewing (CAPI) electronic questionnaire SOC–QBPO to collect information from state and local building permit officials on: (1) The types of permits they issue, (2) the length of time a permit is valid, (3) how they store permits, and (4) the geographic coverage of the permit system. This information is needed to carry out the sampling for the Survey of Housing Starts, Sales, and Completions (OMB number 0607–0110), also known as Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts, Housing Completions, and New Housing Sales.

The current clearance for this survey is scheduled to expire on March 31, 2009. Census is rewriting the CAPI questionnaire software and requesting approval to begin using the revised questionnaire in the field in the summer of 2008. The revised questionnaire will include some additional information about how permits are issued that will improve the sampling for the Survey of Construction. Other information which is no longer needed will be eliminated from the questionnaire. The overall length of the interview will not change. The sample size also will not change.

II. Method of Collection

The Census Bureau uses its field representatives to obtain information on the operating procedures of a permit office. The field representative visits the permit office, conducts the interview, and completes the electronic form.

III. Data

OMB Control Number: 0607–0125.

Form Number: SOC–QBPO.

Type of Review: Regular submission.

Affected Public: State or Local Government.

Estimated Number of Respondents: 900.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 225.

Estimated Total Annual Cost: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182.

IV. Request for Comments

Comments are invited 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 19, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–24982 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the African American Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the African American Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by January 28, 2008.

ADDRESSES: Please submit nominations to Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609, or by e-mail to *jeri.green@census.gov*.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between African American communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the African American population, and on ways data can be disseminated for maximum usefulness to the African American population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce. They are appointed to the nine-member Committee for a period of three years.

2. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending meeting attendance, administrative compliance, Advisory Committee needs, and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns, issues, and/or data needs of the African American community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the African American population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (Résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 19, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–25011 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Asian Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the Asian Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by January 28, 2008.

ADDRESSES: Please submit nominations to Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609, or e-mail to *jeri.green@census.gov.*

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The

following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Asian communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Asian population, and on ways data can be disseminated for maximum usefulness to the Asian population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be re-evaluated at the conclusion of the three-year term with the prospect of renewal, pending meeting attendance, administrative compliance, advisory committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, and technical expertise, community involvement and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns, issues, and/or data needs of the Asian community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Asian population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 19, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–24994 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the Native Hawaiian and Other Pacific Islander Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by January 28, 2008.

ADDRESSES: Please submit nominations to Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609, or e-mail to *jeri.green@census.gov*.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between Native Hawaiian and Other Pacific Islander communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the Native Hawaiian and Other Pacific Islander population, and on ways data can be disseminated for maximum usefulness to the Native Hawaiian and Other Pacific Islander population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce.

2. Members are appointed to the nine-member Committee for a period of three years. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending meeting attendance, administrative compliance, Advisory Committee needs and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors

as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including state and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns, issues, and/or data needs of the Native Hawaiian and Other Pacific Islander community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the Native Hawaiian and Other Pacific Islander population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (résumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: December 19, 2007.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. E7–25010 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–2007]

Foreign-Trade Zone 104—Savannah, GA; Request for Manufacturing Authority, Fuji Vegetable Oil, Inc., (Refined Sunflower and Vegetable Oil Products), Savannah, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, pursuant to section 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Fuji Vegetable Oil, Inc. (FVO), to refine sunflower oil and manufacture vegetable oil products under FTZ procedures within FTZ 104. The application was formally filed on December 14, 2007.

The FVO facility (89 employees) is located at 120 Brampton Road (within FTZ 104-Site 2), Savannah Georgia, and used to produce refined sunflower oil and, vegetable oil and fat products (up to 120,000 tons annually), including cocoa butter equivalents, for the commercial food industry. Some foreign sunflower oil would be processed (up to 20 percent of total purchases), duty rate − 1.7cents/kg. + 3.4%.

There are no inverted tariffs related to FVO's finished products (duty rates − 1.7cents/kg. + 3.4% and 8.8 cents/kg.). FTZ procedures would exempt FVO from Customs duty payments on the foreign sunflower oil used in production for export (60% of shipments). The company could also realize duty deferral on shipments for U.S. consumption and certain logistical/supply chain savings. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address : Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Ave., NW., Washington, DC 20230–0002. The closing period for receipt of comments is February 25, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 11, 2008).

A copy of the request will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above. For further information, contact Diane Finver at: *Diane_Finver@ita.doc.gov*, or (202) 482–1367.

Dated: December 14, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–25013 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–2007]

Foreign-Trade Zone 155—Calhoun and Victoria Counties, TX; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Calhoun-Victoria FTZ, Inc., grantee of FTZ 155, requesting authority to expand its zone in the Calhoun and Victoria Counties, Texas, area, adjacent to the Port Lavaca—Point Comfort CBP port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 14, 2007.

FTZ 155 was approved on October 24, 1988 (Board Order 398, 53 FR 44510, 11/03/88). The general-purpose zone currently consists of six sites (1,234 acres total) in Calhoun and Victoria Counties, Texas. The applicant is now requesting authority to expand the zone to include an additional site in Calhoun and Victoria Counties: *Proposed Site* 7 (11 acres)—natural gas storage site at the Markham salt dome caverns located at Farm Road 1468, Markham, Texas. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 25, 2008. Rebuttal comments in response to material

submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 11, 2008).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations: U.S. Export Assistance Center, 15600 John F. Kennedy Blvd., Suite 530, Houston, Texas 77032 and the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Kathleen Boyce at 202–482–1346 or *Kathleen_Boyce@ita.doc.gov*.

Dated: December 14, 2007.

Andrew McGilvray,

Executive Secretary .

[FR Doc. E7–25008 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: December 27, 2007.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (2007), for administrative reviews of various antidumping and countervailing duty orders and findings with November anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than November 30, 2008.

	Period to be reviewed
Mexico: Circular Welded Non-Alloy Steel Pipe and Tube, A–201–805	11/1/06–10/31/07
Hylsa, S.A. de C.V. Mueller Comercial de Mexico, S. de R.L. de C.V. Southland Pipe Nipples Co., Inc.	
Thailand: Certain Hot-Rolled Carbon Steel Flat Products	11/1/06–10/31/07
Nakornthai Strip Mill Public Company Ltd. G Steel Public Company Limited.	
The People's Republic of China: Certain Hot-Rolled Carbon Steel Flat Products [1], A–570–865	11/1/06–10/31/07
Shanghai Baosteel International Economic & Trading Co., Ltd.	
Baoshan Iron and Steel Co., Ltd.	
Baosteel Group Corporation.	
The People's Republic of China: Fresh Garlic [2]	11/1/06–10/31/07
Anqiu Friend Food Co., Ltd.	
APS Qingdao.	
American Pioneer Shipping.	
Anqui Friend Food Co., Ltd.	
Anqui Haoshun Trade Co., Ltd.	
Beijing Jim International Food Co., Ltd.	
Burgeon International Inc.	
Fujian Meitan Import & Export Xiamen Corporation.	
Golden Bridge International, Inc.	
Hebei Golden Bird Trading Co., Ltd.	
Henan Xinchang Sunny Foodstuff.	
Henan Weite.	
Heze Ever-Best International Trade Co., Ltd. (a/k/a Shandong Heze International Trade and Developing Company).	
Huaiyang Hongda Dehydrated Vegetable Company.	
Jinan Farmlady Trading Co., Ltd.	
Jining Yongjia Trade Co., Ltd.	
Jining Meiya Foods Co., Ltd.	
Jinan Yipin Corporation Ltd.	
Jining Trans-High Trading Co., Ltd.	
Jinxian County Huaguang Food Import & Export Co., Ltd.	
Jinxiang Dongyun Freezing Storage Co., Ltd. (a/k/a Jinxiang Eastward Shipping Import and Export Limited Company).	
Jinxiang Shanyang Freezing Storage Co., Ltd.	
Jinxiang Tianma Freezing Storage Co., Ltd.	
Junan Auto Imp and Exp Co., Ltd.	
Linshu Dading Private Agricultural Products Co., Ltd.	
Linyi Futai Foodstuff Co., Ltd.	
Marnex (HongKong) Company.	
New Future International Trading Co.	
Omni Decor China Ltd.	
Qingdao Aobeilin Import & Export Co.	
Qingdao Camel Trading Co., Ltd.	
Qingdao Longyuan Aquatic Products.	
Qingdao Oasis International Trade Co.	
Qingdao Rock-It Sports Inc.	
Qingdao Tiantaixing Foods Co., Ltd.	
Qingdao Titan Shipping LLC.	
Qingdao Saturn International Trade Co., Ltd.	

	Period to be reviewed
Qingdao Xintianfeng Foods Co., Ltd. Qufu Dongbao Import & Export Trade Co., Ltd. Sea Trade International Incorporated. Shandong Chengshun Farm Produce Trading Co., Ltd. Shandong Chenhe Int'l Trading Co., Ltd. Shandong Dongsheng Eastsun Foods Co., Ltd. Shandong Garlic Company. Shandong Longtai Fruits and Vegetables Co., Ltd. Shandong Wonderland Organic Food Co., Ltd. Shanghai Ever Rich Trade Company. Shanghai LJ International Trading Co., Ltd. Shanghai New Long March International Trade Co., Ltd. Shenzhen Fanhui Import & Export Co., Ltd. Shenzhen Greening Trading Co., Ltd. Shenzhen Imp & Exp. Ltd. Shenzhen Xinboda Industrial Co., Ltd. Sunny Import & Export Limited. T&S International, LLC. Taian Fook Huat Tong Kee Pte. Ltd. Taiwan Wachine Co., Ltd. Taiyan Ziyang Food Co., Ltd. Taizhou Overseas Int'l Ltd. Weifang Hongqiao International Logistic Co., Ltd. Weifang Shennong Foodstuff Co., Ltd. XuZhou Simple Garlic Industry Co., Ltd. Zhengzhou Harmoni Spice Co., Ltd.	
The People's Republic of China: Refined Brown Aluminum Oxide [3], A–570–882 Henan Yilong High and New Materials Co., Ltd. Qingdao Shunxingli Abrasives Co., Ltd.	11/1/06–10/31/07
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

[1] If one of the above-named companies does not qualify for a separate rate, all other exporters of certain hot-rolled carbon steel flat products from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above-named companies does not qualify for a separate rate, all other exporters of Fresh Garlic from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above-named companies does not qualify for a separate rate, all other exporters of Refined Brown Aluminum Oxide from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: December 19, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–25082 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–533–820, A–560–812, A–570–865, A–583–835, A–549–817, A–823–811, C–533–821, C–560–813, C–549–818

Certain Hot–Rolled Carbon Steel Flat Products from India, Indonesia, the People's Republic of China, Taiwan, Thailand, and Ukraine: Continuation of Antidumping Duty and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2006, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty (AD) orders on certain hot–rolled carbon steel flat products (HR steel) from India, Indonesia, the People's Republic of China (PRC), Taiwan, Thailand, and Ukraine and countervailing duty (CVD)

orders on HR steel from India, Indonesia, and Thailand. As a result of the determinations by the Department and the International Trade Commission (ITC) that revocation of the AD and CVD orders on HR steel from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine would likely lead to continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, the Department is publishing a notice of continuation of these AD and CVD orders.

EFFECTIVE DATE: December 27, 2007.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani (India and Indonesia/AD and CVD) at (202) 482–0395, Juanita Chen (PRC/AD) at (202) 482–1904, Deborah Scott (Taiwan and Thailand/AD) at (202) 482–2657, Myrna Lobo (Thailand/CVD) at (202) 482–2371, or Martha Douthit (Ukraine/AD) at (202) 482–5050, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The AD and CVD orders which cover HR steel from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine were published in the **Federal Register** in September, November and December 2001. *See Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From India*, 66 FR 60194 (December 3, 2001), *Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 60192 (December 3, 2001), *Notice of Amended Final Determination and Notice of Countervailing Duty Orders: Certain Hot–Rolled Carbon Steel Flat Products from India and Indonesia*, 66 FR 60198 (December 3, 2001), *Notice of Countervailing Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Thailand*, 66 FR 60197 (December 3, 2001), *Notice of Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*, 66 FR 59561 (November 29, 2001), *Notice of Antidumping Duty Order; Certain Hot-Rolled Carbon Steel Flat Products From Taiwan, 66 FR 59563 (November 29, 2001), Antidumping Duty Order; Certain Hot–Rolled Carbon Steel Flat Products From Thailand*, 66 FR 59562 (November 29, 2001), and *Antidumping Duty Order: Certain Hot–Rolled Carbon Steel Flat Products From Ukraine*, 66 FR 59559 (November 29, 2001).

On August 1, 2006, the Department initiated and the ITC instituted sunset reviews of the AD orders on HR steel from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine, and CVD orders on HR steel from India, Indonesia, and Thailand pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five–year (''Sunset'') Reviews*, 71 FR 43443 (August 1, 2006); and *Hot–Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Netherlands, Romania, South Africa, Taiwan, Thailand, and Ukraine, Investigation Nos. 701–TA–404–408 and 731–TA–898–908 (Review)*, 71 FR 43521 (August 1, 2006).

As a result of its reviews, the Department found that revocation of the AD and CVD orders would likely lead to continuation or recurrence of dumping and countervailable subsidies, and notified the ITC of the magnitude of the margins and net countervailable subsidies likely to prevail were the orders to be revoked. *See Hot–Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five–Year (Sunset) Reviews of the Countervailing Duty Orders*, 71 FR 70960 (December 7, 2006); and *Certain Hot–Rolled Carbon Steel Flat Products from Argentina, the People's Republic of China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine; Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 71 FR 70506 (December 5, 2006).

On October 31, 2007, the ITC determined pursuant to section 751(c) of the Act, that revocation of the AD orders on HR steel from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine, and CVD orders on HR steel from India, Indonesia, and Thailand would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Hot–Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine*, 72 FR 61676 (October 31, 2007) and USITC Publication 3956 (October 2007), entitled *Hot–Rolled Steel Products from Argentina, China, India, Indonesia, Kazakhstan, Romania, South Africa, Taiwan, Thailand, and Ukraine: Investigation Nos. 701–TA–404–408 and 731–TA–898–902 and 904–908 (Review)*.

Scope of the Orders

The merchandise subject to these orders is certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these orders.

Specifically included within the scope of these orders are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of these orders, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical descriptions provided above are within the scope of these orders unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of these orders:

- Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *3*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion–resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to these orders is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by these orders, including vacuum degassed fully stabilized, high strength low alloy, and the substrate for motor lamination steel, may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00.

Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the Department's written description of the merchandise subject to these orders is dispositive.

Continuation of Orders

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would likely lead to continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD orders on HR steel from India, Indonesia, the PRC, Taiwan, Thailand, and Ukraine, and CVD orders on HR steel from India, Indonesia, and Thailand. U.S. Customs and Border Protection will continue to collect AD and CVD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five–year review of these orders not later than November 2012.

These five–year (sunset) reviews and this notice are in accordance with section 751(c) of the Act. This notice is published pursuant to 751(c) and 771(i) of the Act and 19 CFR 351.218(f)(4).

Dated: December 14, 2007.

Stephen J. Claeys,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E7–25098 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–549–813)

Canned Pineapple Fruit from Thailand: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a semiannual new shipper review of the antidumping duty order on canned pineapple fruit (CPF) from Thailand in response to a request from C & A Products Co., Ltd. (C&A). The period of review (POR) is July 1, 2006 through December 31, 2006. The domestic interested party for this proceeding is Maui Pineapple Company Ltd. (petitioner).

We preliminarily determine that C&A's sales are *bona fide* transactions. In addition, we preliminarily determine that C&A made its U.S. sales during the POR at prices above normal value. If these preliminary results are adopted in the final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries subject to this review without regard to antidumping duties. If these preliminary results are not adopted in the final results and the assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent), we will instruct CBP to assess antidumping duties on all appropriate entries covered by this review.

Interested parties are invited to comment on these preliminary results. The final results will be issued 90 days after the date of issuance of these preliminary results, unless extended.

EFFECTIVE DATE: December 27, 2007.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CPF from Thailand on July 18, 1995. *See Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit from Thailand*, 60 FR 36775 (July 18, 1995) (*Antidumping Duty Order*). On December 15, 2006, the Department received a timely request from C&A, in accordance with 19 CFR 351.214(c), to conduct a semiannual new shipper review of the anitdumping duty order on CPF from Thailand. This request was rejected by the Department and C&A resubmitted its request for review on January 22, 2007. This resubmission was still timely in accordance with 19 CFR 351.214(d). On February 22, 2007, the Department found that the request for review with respect to C&A met all of the requirements set forth in 19 CFR 351.214(b) and initiated a semiannual new shipper review of the antidumping duty order on CPF from Thailand for the period, July 1 through December 31, 2006. *See Canned Pineapple Fruit from Thailand: Initiation of New Shipper Antidumping Duty Review*, 72 FR 9305 (March 1, 2007).

On March 9, 2007, the Department issued the initial questionnaire to C&A.[1] On March 30, 2007, the Department received C&A's section A response, and on April 23, 2007, the Department received C&A's sections B and C questionnaire response. However, the Department initially rejected C&A's sections A, B and C questionnaire responses. *See* Letter from Maureen A. Flannery, Program Manager, AD/CVD Operations, Office 6, to Mr. Worawat Chinpinkyo, C & A Products Co., Ltd. dated May 9, 2007 on file in room B–099, the Central Records Unit of the main Commerce building (CRU). On May 23, 2007 we received C&A's revised sections A, B and C responses. On July 5, 2007, the Department issued a supplemental questionnaire to C&A and C&A responded on July 20, 2007. A second and third supplemental questionnaire were issued to C&A on November 7 and November 21, 2007, and C&A responded on November 16 and November 27, 2007, respectively. On December 10, 2007, C&A submitted revised databases on their U.S. and Russian sales due to missing information in the databases submitted in their previous response. On June 5, 2007, the petitioner submitted deficiency comments on C&A's section A questionnaire response.

On April 18, 2007, petitioner filed an allegation that C&A's comparison market sales were being made at prices below the cost of production. Since petitioner's allegation was based on C&A's section A response dated March 30, 2007 which was removed from the record, the Department rejected petitioner's allegation. On June 5, 2007 petitioner resubmitted its sales below cost allegation. On August 9, 2007, the Department determined not to initiate a cost of production investigation because petitioner did not provide a reasonable basis to believe or suspect that C&A was selling CPF at prices below the cost of production in the comparison market. *See Memorandum to Barbara E. Tillman, Director, AD/CVD Operations, Office 6 from the Team on Petitioner's Allegation of Sales Below the Cost of Production by C&A Products Co., Ltd. dated August 9, 2007 (Cost Allegation Memo)* on file in the CRU.

On August 15, 2007, the Department published a notice extending the deadline for the preliminary results to December 19, 2007. *See Canned Pineapple Fruit from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review*, 72 FR 45733 (August 15, 2007).

Verification

The Department intends to conduct a sales verification of C&A's responses following the preliminary results of this review.

Period of Review

This review covers the period July 1, 2006 through December 31, 2006.

Scope of the Order

The product covered by this order is CPF, defined as pineapple processed and/or

prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). HTSUS 2008.20.0010 covers CPF packed in a sugar–based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (*i.e.*,juice–packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, the written description of the scope is dispositive. There have been no scope rulings for the subject order.

Bona Fides Analysis of U.S. Sales

For the reasons stated below, we preliminarily find C&A's reported U.S. sales during the POR to be *bona fide* transactions based on the totality of the facts on the record. In evaluating whether or not sales in a new shipper review are commercially reasonable, and therefore *bona fide*, the Department considers, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's–length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005), citing *American Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (Ct. Int'l Trade 2000). Accordingly, the Department considers a number of factors in its *bona fide*s analysis, ''all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.'' *See Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 2005), citing *Fresh Garlic from the PRC: Final Results of Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.

Specifically, we find that: (1) the per–unit prices of C&A's sales were within the range of the unit values for other entries of subject merchandise during the POR; (2) the quantity of C&A's shipments were within the range of other shipments of subject merchandise entered during the POR; (3) the expenses arising from the transactions were not unusual; and (4) C&A's sales were made between unaffiliated parties at arm's length. *See Memorandum to Barbara E. Tillman, Office Director, through Dana Mermelstein, Program Manager, from Myrna Lobo, International Trade Compliance Analyst regarding Antidumping Duty New Shipper Review of Canned Pineapple Fruit from Thailand: Bona Fides Analysis of Sales Reported by C & A Products Co., Ltd.,* dated concurrently with this notice and on file in the CRU (*Bona Fides* Memo).

Therefore, pursuant to 19 CFR 351.214(b)(2), we are preliminarily treating C&A's sales of canned pineapple fruit to the United States as appropriate transactions for review.

Fair Value Comparisons

To determine whether C&A's sales of CPF from Thailand were made in the United States at less than normal value (NV), we compared the export price (EP) to the NV, as described in the U.S. Price and Normal Value section of this notice in accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (''the Act'').

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products sold in the comparison market as described in the Scope of the Order section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to the U.S. sales. In accordance with sections 771(16)(B) and (C) of the Act, where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade, we compared U.S. sales to sales of the most similar foreign like product based on the

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

characteristics listed in sections B and C of our antidumping questionnaire: weight, form, variety and grade. We found that there were no comparison sales of foreign like product that were identical in these respects to the merchandise sold in the United States, and therefore compared U.S. products with the most similar merchandise sold in the comparison market based on the characteristics listed above, in that order of priority.

Date of Sale

Regarding date of sale, the Department's regulations at 19 CFR 351.401(i) state that the Department will normally use the date of invoice as the date of sale, unless a different date better reflects the date on which the material terms of sale are established. C&A reported invoice date as the date of sale for all sales in both the U.S. and comparison markets. We have analyzed the data on the record and preliminarily determine that invoice date is the appropriate date of sale for all U.S. and comparison market sales under review.

U.S. Price

We used EP methodology for C&A's U.S. sales, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price methodology was not otherwise warranted based on the facts of record. In accordance with sections 772(a) and (c) of the Act, we calculated EP using prices C&A charged for packed subject merchandise shipped on an FOB basis. We made deductions for movement expenses, including charges for terminal handling, bill of lading preparation, shipping fee and where applicable cargo declaration document charges. Further, we treated C&A's reported commissions to its customer as discounts because the record shows that the amounts reported by C&A as commissions were in actuality reductions in price to C&A's unaffiliated customer, and that no principal–agent relationship exists between C&A and its U.S. customer. These discounts were deducted from U.S. price. *See Analysis Memorandum for C & A Products Co., Ltd. (C&A Preliminary Analysis Memo)* dated concurrently with this notice.

Normal Value

In accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the comparison market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade (LOT) as the EP sale. *See* ''Level of Trade'' section below. After testing comparison market viability, we calculated NV for C&A as discussed below.

Home Market Viability and Selection of Comparison Market

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*,the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of C&A's home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that C&A's home market was not viable during the POR. Consequently, the Department considered C&A's sales to third countries, and selected Russia as the appropriate comparison market because Russia was the largest third country market and no other third country market offered greater product similarity. We therefore based NV on C&A's sales to Russia.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as EP. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling expenses, G&A expenses, and profit. For EP, the U.S. LOT is also the level of the starting–price sale, which is usually from the exporter to the unaffiliated U.S. customer.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

C&A reported that it made export sales to four customer categories during the period of review (*i.e.*, to resellers, wholesalers, retailers and traders). C&A further reported that it performs identical selling functions for all customers in the U.S. and comparison markets, except for sales through the trader for which it did not perform certain marketing functions. Further, C&A reported that its selling activities do not vary by customer category and it performs the same functions for all customers.

After analyzing the data on the record with respect to these selling functions, we find that there were not sufficient differences in the selling functions performed for different customer categories to determine that sales are made at more than one level of trade. We therefore find a single level of trade exists for all of C&A's sales to the U.S. and a single level of trade exists for all sales to the Russian market, and that the LOT in each market is the same.

Calculation of Normal Value

We based NV on the starting prices of C&A's sales to the comparison market adjusting for billing adjustments where applicable pursuant to section 773(a)(1)(A) of the Act. Pursuant to section 773(a)(6)(B)(ii) of the Act, we made deductions for movement expenses (*i.e.*, inland freight and warehousing, terminal handling expenses, bill of lading and shipping fees) when appropriate.

C&A reported commissions on its comparison market sales. Based on our analysis of the documentation on the record, we preliminarily find that C&A's reported commissions are more appropriately considered to be discounts or brokerage fees, and we made deductions for them. In accordance with section 771(33) of the Act, we examined C&A's relationships with the parties it reported as selling agents and to whom C&A claimed it paid commissions. Based on the criteria the Department normally examines in determining a principal/agent relationship, we find that with respect to Russia, the parties identified by C&A as agents are intermediaries operating on their own behalf or on behalf of the customer, and that a principal/agent relationship does not exist. *See e.g. Stainless Steel Bar from Germany: Final Results of New Shipper Review*, and accompanying Issues and Decision Memorandum at Comment 2, 72 FR 39059, (July 17, 2007). Further, upon review of evidence on the record, we found the amounts reported as commissions are more properly treated as discounts or brokerage charges rather than as commissions. As a result, we have reclassified these expenses for margin calculation purposes.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we deducted comparison market direct selling expenses (*i.e.*, credit expenses) and added U.S. direct selling expenses (*i.e.*, credit expenses). In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted comparison market packing costs and added U.S. packing costs. We made an adjustment to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a). We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise. *See* 19 CFR 351.411(b). *See C&A Preliminary Analysis Memo.*

Currency Conversion

In accordance with sections 773A(a) of the Act, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. *See also* 19 CFR 351.415.

Preliminary Results of New Shipper Review

As a result of our review, we preliminarily determine that the following percentage margin exists for C&A for the period July 1, 2006, through December 31, 2006:

Manufacturer/Exporter	Margin
C & A Products Co., Ltd.	0.00 %

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of the new shipper review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for C&A (*i.e.*, for subject merchandise both manufactured and exported by C&A) will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in these reviews or the original less–than-fair–value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be the all–others rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until further notice.

Assessment Rate

Upon completion of the new shipper review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions for C&A directly to CBP 15 days after the date of publication of the final results of this new shipper review.

Pursuant to 19 CFR 351.212(b)(1), we will calculate an importer–specific assessment rate on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if the importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1).

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review.

Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. *See* 19 CFR 351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 5 days after the deadline for filing the case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs.

The Department will issue the final results of this review, including the results of its analysis of issues raised in any written briefs, within 90 days of publication of these preliminary results, unless the final results are extended. See section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review is issued and published in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act, as well as 19 CFR 351.214(i).

Dated: December 19, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–25057 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Carbon and Certain Alloy Steel Wire Rod From Canada: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada for the period October 1, 2006, to September 30, 2007, with respect to Mittal Canada Inc. (formerly Ispat Sidbec Inc.). This rescission, in part, is based on the timely withdrawal of the request for review.

DATES: December 27, 2007.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone: (202) 482–0408 and (202) 482–0649, respectively.

Background

On October 29, 2002, the Department published in the **Federal Register** an antidumping duty order on carbon and certain alloy steel wire rod (steel wire rod) from Canada. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada,* 67 FR 65944 (October 29, 2002) (*Order*).

On October 1, 2007, the Department issued a notice of opportunity to request an administrative review of this order for the October 1, 2006 through September 30, 2007 period of review. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 72 FR 55741 (October 1, 2007). Administrative reviews were requested for Ivaco Rolling Mills 2004 (formerly Ivaco Rolling Mills L.P.), Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P. (formerly Ivaco, Inc.), and Mittal Canada Inc. (formerly Ispat Sidbec Inc.). On November 26, 2007, the Department initiated a review of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 72 FR 65938 (November 26, 2007).

Rescission in Part, of Administrative Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review in whole or in part. Mittal Canada Inc. (formerly Ispat Sidbec Inc.) made a timely withdrawal of its request for an administrative review within the 90-day deadline. Because no other party requested an administrative review of that company, we are rescinding the review with regard to Mittal Canada Inc. (formerly Ispat Sidbec Inc.).

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties for this company at the cash deposit rate in effect on the date of entry for entries during the period October 1, 2006, to September 30, 2007.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of time. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 351.213(d)(4) of the Department's regulations and sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 17, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary, for Import Administration.

[FR Doc. 07–6217 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–915]

Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Notice of Amended Affirmative Preliminary Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The purpose of this amended affirmative preliminary determination is to correct a significant ministerial error in the preliminary determination, published on November 30, 2007, that countervailable subsidies are being provided to producers and exporters of light-walled rectangular pipe and tube from the People's Republic of China.

EFFECTIVE DATE: December 27, 2007.

FOR FURTHER INFORMATION CONTACT: Damian Felton or Shane Subler, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0133 and (202) 482–0189, respectively.

SUPPLEMENTARY INFORMATION:

Background

We initiated a countervailing duty investigation on light-walled rectangular pipe and tube (''LWRP'') from the People's Republic of China (''PRC''). *See Notice of Initiation of Countervailing Duty Investigation: Light-Walled Rectangular Pipe and Tube from the People's Republic of China*, 72 FR 40281 (July 24, 2007). On November 30, 2007, we published our preliminary determination stating that countervailable subsidies are being provided to producers and exporters of LWRP from the PRC. *See Light-walled Rectangular Pipe and Tube from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 72 FR 67703 (November 30, 2007) (''*Preliminary Determination*''). On December 3, 2007, Zhangjiagang Zhongyuan Pipe-making Co., Ltd. (''ZZPC'') filed a timely allegation of a significant ministerial error contained in the Department's *Preliminary Determination.* After reviewing the allegation, we have determined that the *Preliminary Determination* included a significant ministerial error. Therefore, in accordance with 19 CFR 351.224(e), we have made changes, as described below, to the *Preliminary Determination.*

Scope of the Investigation

The merchandise that is the subject of this investigation is certain welded carbon-quality light-walled steel pipe and tube, of rectangular (including square) cross section (LWR), having a wall thickness of less than 4mm.

The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the

quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this investigation is currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Analysis of Alleged Significant Ministerial Error

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' With respect to preliminary determinations, 19 CFR 351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination * * *'' A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the countervailable subsidy rate calculated in the original (erroneous) preliminary determination; or (2) a difference between a countervailable subsidy rate of zero (or *de minimis*) and a countervailable subsidy rate of greater than *de minimis* or vice versa. *See* 19 CFR 351.224(g). We have determined that the *Preliminary Determination* contained a ''significant'' ministerial error with respect to ZZPC. *See* Memorandum to Susan Kuhbach, Director, Office 1, AD/CVD Operations, entitled, ''Ministerial Error Allegation'' (December 19, 2007) for the analysis performed. This memorandum is on file in the Department's Central Records Unit in Room B–099 of the main Department building.

Amended Preliminary Determination

Because the error alleged by ZZPC regarding the countervailable subsidy rate calculation for ZZPC was significant, we have amended the preliminary countervailing duty rate calculation for ZZPC, pursuant to 19 CFR 351.224(e). In addition, the correction to ZZPC's rate also affects the rates established for Qingdao Xiangxing Steel Pipe Co. (''Qingdao'') and the all-others rate. The preliminary net countervailable subsidy rate for Kunshan Lets Win Steel Machinery Co., Ltd. (''Lets Win'') remains unchanged from the *Preliminary Determination* at 0.27 percent. As a result of corrections of ministerial errors, the amended preliminary net countervailable subsidy rates are as follows:

Exporter/manufacturer	Original subsidy rate	Amended subsidy rate
Kunshan Lets Win Steel Machinery Co., Ltd	0.27	0.27.
Qingdao Xiangxing Steel Pipe Co	77.85	45.6 percent.
Zhangjiagang Zhongyuan Pipe-making Co., Ltd., Jiangsu Qiyuan Group Co, Ltd	2.99	0.90 percent.
All Others	2.99	15.59 percent.

Suspension of Liquidation

The collection of bonds or cash deposits and suspension of liquidation will be revised, in accordance with section 703(d) and (f) of the Act. Specifically, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of LWRP from the PRC on or after the date of publication of this notice in the **Federal Register**. However, neither the suspension of liquidation nor the requirement for a cash deposit or bond will apply to merchandise produced and exported by Lets Win or ZZPC because the Department has preliminarily determined that Lets Win and ZZPC received *de minimis* subsidies.

International Trade Commission Notification

In accordance with section 703(f) of the Act, we have notified the U.S. International Trade Commission (''ITC'') of our amended affirmative preliminary determination. If our final countervailing duty determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: December 19, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–25083 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 07–00003.

SUMMARY: On December 19, 2007, the U.S. Department of Commerce issued an Export Trade Certificate of Review to Global Express Trading, LLC (''GET''). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2006).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the

United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)

Export Trade Facilitation Services, including, but not limited to, professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sales of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, GET, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. GET may exchange information on a one-to-one basis with individual Suppliers regarding that Supplier's inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operations, GET will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. GET will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standard of Section 303(a) of the Act.

Definition

''Supplier'' means a person who produces, provides, or sells Products, Services, and/or Technology Rights.

Protection Provided by Certificate

This Certificate protects GET and its directors, officers, and employees acting on its behalf, from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

Other Conduct

Nothing in this Certificate prohibits GET from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

Disclaimer

The issuance of this Certificate of Review to GET by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion of the Secretary or the Attorney General concerning either (a) the viability or quality of the business plans of GET or (b) the legality of such business plans of GET under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in export trade where the U.S. Government is the buyer or where the U.S. Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the ''Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition),'' 50 FR 1786 (January 11, 1985).

A copy of the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: December 19, 2007.

Jeffrey Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–25104 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070817470–7855–03; I.D. 051906D]

RIN 0648–ZB83

Availability of Grant Funds for Fiscal Year 2008

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to supplement the agency's solicitation for applications published on July 2, 2007 in an action entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2008''. This notice announces 11 additional programs that are soliciting applications for FY 08 funding.

DATES: Proposals must be received by the date and time specified under each program listed in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Proposals must be submitted to the program address listed in the **SUPPLEMENTARY INFORMATION** section of this document. NOAA's discretionary grant fund notices may be found on the internet at Grants.gov. The URL for Grants.gov is *http://www.grants.gov*.

FOR FURTHER INFORMATION CONTACT: For those without Internet access request a copy of the full funding opportunity announcement and/or application kit, from the person listed as the information contact under each program.

SUPPLEMENTARY INFORMATION: Applicants must comply with all requirements contained in the Federal Funding Opportunity announcement for each of the programs listed in this omnibus notice. These Federal Funding Opportunities are available at *http://www.grants.gov*.

The list of grant opportunities under NOAA Project Competitions (below) describe the basic information and requirements for the competitive grant/cooperative agreement programs offered by NOAA. These programs are open to anyone who meets the eligibility criteria specified under each grant. To be considered for an award in a competitive grant/cooperative agreement program, eligible applicants must submit a complete and responsive application to the appropriate address by the deadline specified in this notice. An award is made upon conclusion of the evaluation and selection process for the respective program.

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1. Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management

Summary Description: Coastal areas are among the most developed in the Nation.

More than half the population lives on less than one-fifth of the land in the contiguous United States. Furthermore, the employment rate in near shore areas is growing three times faster than the population. Coastal and marine waters support over 28 million jobs and provide a tourism destination for nearly 90 million Americans a year. The value of the ocean economy to the United States is over $115 billion. The value added annually to the national economy by the commercial and recreational fishing industry alone is over $48 billion. U.S. aquaculture sales total almost $1 billion annually. With its Exclusive Economic Zone of 3.4 million square miles, the United States manages the largest marine territory of any nation in the world.

Funded proposals should help achieve the following outcomes:

1. Healthy and productive coastal and marine ecosystems that benefit society.

2. A well-informed public that acts as a steward of coastal and marine ecosystems.

Program Names:

1. Ballast Water Management Demonstration Program (Technologies and Practices).

2. 2008 Regional Research, Information Planning and Coordination.

3. Proactive Species Conservation Program.

4. FY08 Hawaii Seafood Program.

5. Ballast Water Management Demo (RDTE Facility).

6. NOAAs National Height Modernization Program.

7. FY08 Bay Watershed Education and Training Program, Adult and Community Watershed Education in the Monterey Bay.

2. Support the Nation's Commerce With Information for Safe, Efficient, and Environmentally Sound Transportation

Summary Description: Safe and efficient transportation systems are crucial to the U.S. economy. The U.S. marine transportation system ships over 95 percent of the tonnage and more than 20 percent by value of foreign trade through U.S. ports, including 48 percent of the oil needed to meet America's energy demands. At least $4 billion is lost annually due to economic inefficiencies resulting from weather related air-traffic delays. Improved surface weather forecasts and specific user warnings would reduce the 7,000 weather related fatalities and 800,000 injuries that occur annually from crashes on roads and highways. The injuries, loss of life, and property damage from weather related crashes cost an average of $42 billion annually. We provide information, services, and products for transportation safety and for increased commerce on roads, rails, and waterways. We will improve the accuracy of our information for marine, aviation, and surface weather forecasts, the availability of accurate and advanced electronic navigational charts, and the delivery of real-time oceanographic information. We seek to provide consistent, accurate, and timely positioning information that is critical for air, sea, and surface transportation. We will respond to hazardous material spills and provide search and rescue routinely to save lives and money and to protect the coastal environment. We will work with port and coastal communities and with Federal and state partners to ensure that port operations and development proceed efficiently and in an environmentally sound manner. We will work with the Federal Aviation Administration and the private sector to reduce the negative impacts of weather on aviation without compromising safety. Because of increased interest by the public and private sectors, we also will expand weather information for marine and surface transportation to enhance safety and efficiency.

Funded proposals should help achieve the following outcomes:

1. Safe, secure, efficient, and seamless movement of goods and people in the U.S. transportation system.

2. Environmentally sound development and use of the U.S. transportation system.

Program Names:

1. Ballast Water Management Demonstration Program (Technologies and Practices).

2. 2008 Regional Research, Information Planning and Coordination.

3. Ballast Water Management Demo (RDTE Facility).

4. NOAAs National Height Modernization Program.

3. Serve Society's Needs for Weather and Water Information

Summary Description: Floods, droughts, hurricanes, tornadoes, tsunamis, wildfires, and other severe weather events cause $11 billion in damages each year in the United States. Weather is directly linked to public health and safety, and nearly one-third of the U.S. economy (about $3 trillion) is sensitive to weather and climate. With so much at stake, NOAA's role in understanding, observing, forecasting, and warning of environmental events is expanding. With our partners, we seek to provide decision makers with key observations, analyses, predictions, and warnings for a range of weather and water conditions, including those related to water supply, air quality, space weather, and wildfires. Businesses, governments, and nongovernmental organizations are getting more sophisticated about how to use this weather and water information to improve operational efficiencies, to manage environmental resources, and to create a better quality of life. On average, hurricanes, tornadoes, tsunamis, and other severe weather events cause $11 billion in damages per year. Weather, including space weather, is directly linked to public safety and about one-third of the U.S. economy (about $3 trillion) is weather sensitive. With so much at stake, NOAA's role in observing, forecasting, and warning of environmental events is expanding, while economic sectors and its public are becoming increasingly sophisticated at using NOAA's weather, air quality, and water information to improve their operational efficiencies and their management of environmental resources, and quality of life.

Funded proposals should help achieve the following outcomes:

1. Reduced loss of life, injury, and damage to the economy.

2. Better, quicker, and more valuable weather and water information to support improved decisions.

3. Increased customer satisfaction with weather and water information and services.

Program Names:

1. FY 2008 Gulf of Mexico Alliance Governors' Action Plan Implementation.

2. 2008 Regional Research, Information Planning and Coordination.

3. National Weather Service MSI Program.

4. Hydrologic Research.

5. NOAAs National Height Modernization Program.

4. Understand Climate Variability and Change To Enhance Society's Ability To Plan and Respond

Summary Description: Climate shapes the environment, natural resources, economies, and social systems that people depend upon worldwide. While humanity has learned to contend with some aspects of climate's natural variability, major climatic events, combined with the stresses of population growth, economic growth, public health concerns, and land-use practices, can impose serious consequences on society. The 1997–98 El Nino, for example, had a $25 billion impact on the U.S. economy—property losses were $2.6 billion and crop losses approached $2 billion. Long-term drought leads to increased and competing demands for fresh water with related effects on terrestrial and marine ecosystems, agricultural productivity, and even the spread of infectious diseases. Decisions about mitigating climate change also can alter economic and social structures on a global scale. We can deliver reliable climate information in useful ways to help minimize risks and maximize opportunities for decisions in agriculture, public policy, natural resources, water and energy use, and public health. We continue to move toward developing a seamless suite of weather and climate products. The Climate Goal addresses predictions on time scales of up to decades or longer.

Funded proposals should help achieve the following outcomes:

1. A predictive understanding of the global climate system on time scales of weeks to decades with quantified uncertainties sufficient for making informed and reasoned decisions.

2. Climate-sensitive sectors and the climate-literate public effectively incorporating NOAA's climate products into their plans and decisions.

Program Names:

1. 2008 Regional Research, Information Planning and Coordination.

2. National Weather Service MSI Program.

3. NOAAs National Height Modernization Program.

4. Environmental Literacy Grants for Formal K–12 Education.

5. Provide Critical Support for NOAA's Mission

Summary Description: Strong, effective, and efficient support activities are necessary for us to achieve our Mission Goals. Our facilities, ships, aircraft, environmental satellites, dataprocessing systems, computing and communication systems, and our approach to management provide the foundation of support for all of our programs. This critical foundation must adapt to evolving mission needs and, therefore, is an integral part of our strategic planning. It also must support U.S. homeland security by maintaining continuity of operations and by providing NOAA services, such as civil alert relays through NOAA Weather Radio and air dispersion forecasts, in response to national emergencies. NOAA ships, aircraft, and environmental satellites are the backbone of the global Earth observing system and provide many critical mission support services. To keep this capability strong and current with our Mission Goals, we will ensure that NOAA has adequate access to safe and efficient ships and aircraft through the use of both NOAA platforms and those of other agency, academic, and commercial partners. We will work with academia and partners in the public and private sectors to ensure that future satellite systems are designed, developed, and operated with the latest technology. Leadership development and program support are essential for achieving our Mission Goals. We must also commit to organizational excellence through management and leadership across a ''corporate'' NOAA. We must continue our commitment to valuing NOAA's diverse workforce, including effective workforce planning strategies designed to attract, retain and develop competencies at all levels of our workforce. Through the use of business process re-engineering, we will strive for state-of-the-art, value-added financial and administrative processes. NOAA will ensure state-of-the-art and secure information technology and systems. By developing long-range, comprehensive facility planning processes, NOAA will be able to ensure right-sized, cost-effective, and safe facilities.

Funded proposals should help achieve the following outcomes:

1. A dynamic workforce with competencies that support NOAA's mission today and in the future.

Program Names:

1. No programs are currently soliciting proposals for this mission goal.

I. Background

In this notice, NOAA announces that 11 programs are making funds available for financial assistance awards. Each of the following grant opportunities provide: A description of the program, funding availability, statutory authority, catalog of federal domestic assistance (CFDA) number, application deadline, address for submitting proposals, information contacts, eligibility requirements, cost sharing requirements, and intergovernmental review under Executive Order 12372. [Interested applicants should consult the July 2, 2007, in an action entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2008'' (72 FR 36244) notice for the selection criteria, evaluation criteria, and other requirements for submitting an application.]

II. NOAA Project Competitions

National Marine Fisheries Service (NMFS)

FY08 Hawaii Seafood Program

Summary Description: NMFS is soliciting competitive applications for the FY08 Hawaii Seafood Program. The Hawaii Seafood Program is proposed for an effort to help strengthen and sustain the economic viability of Hawaii's fishing and seafood industry through activities that promote Hawaii fisheries products as high quality and safe domestic seafood produced by a responsible and well-managed fishery. Projects may request support for cooperative seafood safety research, technical assistance, and/or seafood education.

Funding Availability: Total funding available under this notice is anticipated to be approximately $700,000. Actual funding availability for this program is contingent upon Fiscal Year 2008 Congressional appropriations. Proposals in any amount may be submitted, but awards in excess of $250,000 are unlikely. Award amounts will be determined by the number of proposals selected and the amount of available funds. There is no set minimum or maximum amount, within the available funding, for any award. There is also no limit on the number of applications that can be submitted by the same applicant; however, multiple applications submitted by the same applicant must clearly identify different projects. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years. Notwithstanding verbal or written assurance that may have been received, pre-award costs are not allowed under the award unless approved by the NOAA Grants Officer.

Statutory Authority: The statutory authority for the Hawaii Seafood Program is 15 U.S.C. 713c–3(d).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.452, Unallied Industry Projects.

Application Deadline: Proposals must be received by 5 p.m. Hawaii Standard Time on January 30, 2008.

Address for Submitting Proposals: Proposals should be submitted through Grants.gov. For those applicants without internet access, proposals should be submitted to NOAA Federal Program Officer, Pacific Islands Regional Office, 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814.

Information Contacts: If you have any questions regarding this proposal solicitation, please contact Scott W.S. Bloom at the NOAA/NMFS Pacific Islands Regional Office, 1601 Kapiolani Blvd., Honolulu, Hawaii 96814, by phone at 808–944–2218, or by e-mail at *Scott.Bloom@noaa.gov.*

Eligibility: Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, foreign governments, organizations under the jurisdiction of foreign governments, and state, local and Indian tribal governments. Federal agencies, or employees of Federal agencies are not eligible to apply. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that work in undeserved areas. The Hawaii Seafood Program encourages proposals involving any of the above institutions.

Cost Sharing Requirements: No cost sharing or matching is required under this program.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

Proactive Species Conservation Program

Summary Description: The Proactive Species Conservation Program supports voluntary conservation efforts designed to conserve marine and anadromous species before they reach the point at which listing as threatened or endangered under the Endangered Species Act (ESA) becomes necessary. Such proactive conservation efforts can serve as an efficient, non-regulatory, and cost-effective means of managing potentially at-risk species. To raise awareness of potentially at-risk species and to foster their proactive conservation, the NMFS created a 'species of concern' list in April 2004 (69 FR 19975). 'Species of concern' are species that are potentially at risk of becoming threatened or endangered or may potentially require protections under the ESA, yet for which sufficient data are lacking. The species-of-concern status carries no procedural or regulatory protections under the ESA. The list of species of concern and descriptions of each species are available at *http://www.nmfs.noaa.gov/pr/species/concern/#list*). Under this solicitation, the NMFS is seeking to provide federal assistance, in the form of grants or cooperative agreements, to support conservation efforts for the current list of marine and anadromous species of concern. Any state, territorial, Tribal or local entity that has regulatory or management authority over one or more species of concern is eligible to apply to this grant program. This document describes how to submit proposals for funding in fiscal year (FY) 2007 and how the NMFS will determine which proposals will be funded.

Funding Availability: This solicitation announces that approximately $500,000 may be available for distribution in FY 2008 under the PSCP; there are no restrictions on minimum or maximum funding requests. Actual funding availability for this program is contingent upon Fiscal Year 2008 Congressional appropriations. Applicants are hereby given notice that funds have not yet been appropriated for this program. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige the NMFS to award any specific project or to obligate any available funds; and, if an application is selected for funding, the NMFS has no obligation to provide any additional funding in connection with that award in subsequent years. Notwithstanding verbal or written assurance that may have been received, pre-award costs are not allowed under the award unless approved by the Grants Officer.

Statutory Authority: 16 U.S.C. 661.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.472, Unallied Science Program.

Application Deadline: Applications submitted through Grants.gov must be received by 5 p.m. Eastern Time on February 12, 2008. Hard copy applications must be postmarked by February 12, 2008.

Address for Submitting Proposals: Applications should be submitted online through the Grants.gov Web site at *http://grants.gov*. If online submission is not possible, paper applications may be mailed to NOAA/NMFS/Office of Protected Resources, Attn: Dwayne Meadows, NMFS Office of Protected Resources F/PR3, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.

Information Contacts: If you have any questions regarding this proposal solicitation, please contact Dwayne Meadows at the NMFS Office of Protected Resources F/PR3, Endangered Species Division, 1315 East-West Highway, Silver Spring, MD 20910, by phone at 301–713–1401 x199, or by email at *Dwayne.Meadows@noaa.gov*. You may also contact one of the following people in your region for further guidance: Kim Damon-Randall, Northeast Regional Office (*Kimberly.Damon-Randall@noaa.gov*, 978–281–9300 x6535), Alex Meyer, Southeast Regional Office (*Alex.Meyer@noaa.gov*, 727–824–5312), Krista Graham, Pacific Islands Regional Office (*Krista.Graham@noaa.gov*, 808–944–2238), Melissa Neuman, Southwest Regional Office (*Melissa.Neuman@noaa.gov*, 562–980–4115), Scott Rumsey, Northwest Regional Office (*Scott.Rumsey@noaa.gov*, 503–872–2791), Brad Smith, Alaska Regional Office (*Brad.Smith@noaa.gov*, 907–271–3023).

Eligibility: Eligible applicants are U.S. state, territorial, tribal, or local governments that have regulatory or management authority over one or more SOC or activities that affect one or more SOC. A current list of SOC can be found at *http://www.nmfs.noaa.gov/pr/species/concern/#list* or obtained from the Office of Protected Resources (see Full Funding Opportunity, section G, Agency Contacts). Applicants are not eligible to submit a proposal under this program if they are a federal employee; however, federal employees may serve as Cooperators. In addition, NMFS employees are not allowed to actively engage in the preparation of proposals or write letters of support for any application. However, if applicable, NMFS employees can write a letter verifying that they are collaborating with a particular project. NMFS contacts (see Full Funding Opportunity, section G, Agency Contacts) are available to provide information regarding programmatic goals and objectives associated with the PSCP, other ongoing ESA programs, regional funding priorities, and, along with other Federal Program Officers, can provide information on application procedures and completion of required forms.

Cost Sharing Requirements: There are no cost-sharing or matching requirements under this solicitation.

Intergovernmental Review: Applications submitted by state and local governments are subject to the provisions of Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Any applicant submitting an application for funding is required to complete item 16 on SF–424 regarding clearance by the State Single Point of Contact (SPOC) established as a result of EO 12372. To find out about and comply with a State's process under EO 12372, the names, addresses and phone numbers of participating SPOC's are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html.*

National Ocean Service (NOS)

FY 2008 Gulf of Mexico Alliance Governors' Action Plan Implementation

Summary Description: The purpose of this notice is to solicit proposals for cooperative agreements between NOAA and partnering entities from Gulf of Mexico States to implement Action Blueprint Steps identified in the Gulf of Mexico Alliance Governors' Action Plan. Proposals submitted in response to this announcement should contribute to the beneficial public outcomes associated with the five priority issues in the NOAA Plan: Water quality for healthy beaches and shellfish beds; wetland and coastal conservation and restoration; environmental education; identification and characterization of Gulf habitats; and nutrient reduction as well as Coastal Community Resiliency, a priority issue elevated by the Alliance since release of the Plan. Beneficial public outcomes can include (among many other possibilities) reduced social disruptions and storm resilient economies; improved fisheries production, increased storm damages reduction from wetland buffers, and improved water quality with the natural filtering from wetland processes; less harmful algal blooms and beach closures. This competition is focused on the geography of the Gulf of Mexico in response to NOAAs development of the Gulf of Mexico Alliance implementation plan and subsequent congressional appropriations. The program priorities for this opportunity support NOAAs mission support goal of: Weather and Water Serve Society's Needs for Weather and Water Information.

Funding Availability: Total anticipated funding for all awards is approximately $4,500,000 and is subject to the availability of FY 2008 appropriations. Multiple awards are anticipated from this announcement. The anticipated federal funding per award (min-max) is approximately $750,000 to $1,000,000 per year. The anticipated number of awards ranges from five (5) to seven (7), approximately, and will be adjusted based on available funding. The intent is to award a minimum of one grant to each Gulf coast state.

Statutory Authority: Statutory authority for this program is provided under Coastal Zone Management Act, 16 U.S.C. 1456c (Technical Assistance); 33 U.S.C. 883d; and 33 U.S.C. 1442 (Research program investigating possible long-range effects of pollution, overfishing, and anthropogenically-induced changes of ocean ecosystems).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.473, Coastal Services Center.

Application Deadline: Letters of Intent (LOIs) must be received by the Coastal Services Center by 4 p.m. ET on January 10, 2008. Full proposals must be received no later than 4 p.m. ET, February 8, 2008. An LOI must be submitted to be able to submit a full proposal.

Address for Submitting Proposals: Letters of intent (LOI) may be sent via e-mail to *GOMA.fy2008@noaa.gov.* Insert ''FY 2008 Gulf of Mexico Alliance Governors' Action Plan Implementation'' as the subject line of the e-mail. If hard copy LOIs are submitted, an original and two copies should be sent to the attention of James Lewis Free, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413. Full proposal application packages, including any letters of support, should be submitted through Grants.gov. If an applicant does not have Internet access, one set of originals (signed) and two copies of the proposals and related forms should be mailed to the attention of James Lewis Free, NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413. No e-mail or fax copies will be accepted.

Information Contacts: For administrative questions, contact James Lewis Free, NOAA CSC; 2234 South

Hobson Avenue, Room B–119; Charleston, South Carolina 29405–2413, or by phone at 843–740–1185, or by fax 843–740–1224, or via e-mail at *James.L.Free@noaa.gov.* For technical questions regarding this announcement, contact Todd Davison, NOAA CSC; 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413, or by phone at 770–486–0028 Extension 214, or by fax 770–486–0930, or via e-mail at *Todd.Davison@noaa.gov.*

Eligibility: Because this competition is focused on the geography of the Gulf of Mexico in response to NOAAs development of the Gulf of Mexico Alliance implementation plan and subsequent congressional appropriations, eligible funding applicants are institutions of higher education, regional or watershed authorities, nonprofit organizations, and state and Indian tribal governments from the Gulf States (Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas). Federal agencies are not allowed to receive funds under this announcement but may serve as collaborative project partners and may contribute services in kind.

Cost Sharing Requirements: N.A.

Intergovernmental Review: Funding applications under the Center are subject to Executive Order 12372, Intergovernmental Review of Federal Programs. It is the state agency's responsibility to contact their states Single Point of Contact (SPOC) to find out about and comply with the states process under EO 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget's Web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

FY08 Bay Watershed Education and Training Program, Adult and Community Watershed Education in the Monterey Bay

Summary Description: The California B–WET Program, Adult and Community Watershed Education, is a competitively based program that supports existing environmental education programs, fosters the growth of new programs, and encourages the development of partnerships among environmental education programs throughout the Monterey Bay watershed. Funded projects provide meaningful watershed education to adults and communities. The term meaningful watershed education is defined as outcome-based programs that educate citizens about their role in protecting water quality and demonstrate behavioral changes that improve water quality and promote environmental stewardship.

Funding Availability: This solicitation announces that approximately $100,000 may be available in FY 2008 in award amounts to be determined by the proposals and available funds. The National Marine Sanctuary Program anticipates that approximately 2–4 grants will be awarded with these funds and that typical project awards will range from $10,000 to $50,000. The California B–WET Program should not be considered a long-term source of funds; applicants must demonstrate how ongoing programs, once initiated, will be sustained. There is not guarantee that sufficient funds will be available to make awards for all qualified projects. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If applicants incur any costs prior to an award being made, they do so at their own risk of not being reimbursed by the government. Notwithstanding verbal or written assurance that may have been received, there is no obligation on the part of NOAA to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

Statutory Authority: 16 U.S.C. 1440, 15 U.S.C. 1540.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.429, Marine Sanctuary Program.

Application Deadline: Proposals must be received by 5 p.m. Pacific Standard Time on February 14, 2008. Both hard copy and electronic proposals received after that time will not be considered for funding and will be returned to the applicant.

Address for Submitting Proposals: Application packages should be submitted through *Grants.gov.* If an applicant does not have Internet access, the applicant should send the application package to: Seaberry Nachbar, B–WET Program Manager, Monterey Bay National Marine Sanctuary Office, 299 Foam Street, Monterey, CA 93940.

Information Contacts: Please visit the National Marine Sanctuaries B–WET website for further information at: *http://sanctuaries.noaa.gov/BWET* or contact Seaberry Nachbar, Monterey Bay National Marine Sanctuary office; 299 Foam Street, Monterey, CA 93940, or by phone at 831–647–4204, or fax to 831–647–4250, or via Internet at *seaberry.nachbar@noaa.gov.*

Eligibility: Eligible applicants are institutions of higher education, nonprofit organizations, state or local government agencies, and Indian tribal governments. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of historically black colleges and universities, Hispanic serving institutions, tribal colleges and universities, and institutions that service underserved areas. The National Marine Sanctuary Program encourages proposals involving any of the above institutions.

Cost Sharing Requirements: No cost sharing is required under this program; however, the National Marine Sanctuary Program strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards will not be accepted as matching funds. The nature of the contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process with cash being the preferred method of contribution.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

NOAA's National Height Modernization Program

Summary Description: The purpose of this notice is to solicit proposals for grants or cooperative agreements between NOAA and partnering entities in the United States, implementing NOAA's National Height Modernization Program (NHMP). Proposals submitted in response to this announcement should contribute to the beneficial public outcomes associated with the five priority issues in the NOAA Plan; enhancing the vertical component of the National Spatial Reference System (NSRS); enabling users to access the vertical component of the NSRS; outreach and education regarding geospatial issues and activities as they relate to Height Modernization; capacity building and technology transfer as they relate to Height Modernization; coordination, cooperation, and collaboration with other entities to accomplish common goals as they relate to Height Modernization. This competition is focused on the geography of the United States and its territories in response to NOAA's Height Modernization Regional Implementation Plan and subsequent congressional appropriations. The program priorities for this opportunity support NOAA's mission support goal of: Commerce and Transportation; Enable safe, secure, and seamless movement of goods and people

in the United States transportation system. Priorities addressing this mission goal also are found frequently to support NOAA's other mission goals: ''Improve protection, restoration, and management of coastal and ocean resources through ecosystem-based management; increase understanding of climate variability and change; and improve accuracy and timeliness of weather and water information.''

Funding Availability: Total anticipated funding for all awards is approximately $9,500,000 and is subject to the availability of FY 2008 appropriations. The anticipated federal funding per award (min-max) is approximately $100,000 to $1,200,000 per year. The anticipated number of awards ranges from 10 to 15, approximately, and will be adjusted based on available funding and quantity of awards made by NOAA.

Statutory Authority: Statutory authority for this program is provided under 33 U.S.C. 883a and 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.400, Geodetic Surveys and Services (Applications of the National Geodetic Ref System).

Application Deadline: Letters of Intent (LOIs) must be received by the National Ocean Service by 4 p.m. ET on January 10, 2008. Full proposals must be received no later than 4 p.m. ET, February 11, 2008. A LOI must be submitted to be able to submit a full proposal.

Address for Submitting Proposals: A letter of intent (LOI) must be sent via e-mail to *Gilbert.Mitchell@noaa.gov*. Applicants submitting a LOI should reference the Funding Opportunity Title (FY 2008 NOAAs National Height Modernization Program) as the subject line of the e-mail containing the LOI. If an applicant does not have Internet access, the applicant must submit through surface mail one original and two copies of the LOI to the National Ocean Service. Any U.S. Postal Service correspondence should be sent to the attention of James Gilbert Mitchell at 1315 East-West Highway, N/NGS1, Room 9356, SSMC3, Silver Spring, MD 20910. Full proposal application packages should be submitted through *Grants.gov*. If an applicant does not have Internet access, the applicant must submit through surface mail one set of originals (signed) and two copies of the proposals and related forms to the National Ocean Service. Any U.S. Postal Service correspondence should be sent to the attention of Gilbert Mitchell at 1315 East-West Highway, N/NGS1, Room 9356, SSMC3, Silver Spring, MD 20910.

Information Contacts: For administrative questions, contact Gilbert Mitchell, NOAA NOS, SSMC3; 1315 East-West Highway, Silver Spring, MD 20910, or by phone at 301–713–3228 extension 114, or by fax 301–713–4176, or via e-mail at *Gilbert.Mitchell@noaa.gov.* For technical questions regarding this announcement, contact Renee Shields, NOAA NOS SSMC3; 1315 East-West Highway, Silver Spring, MD 20910; or contact her by phone at 301–713–3231 extension 115, or by fax 301–713–4176, or via e-mail at *Renee.Shields@noaa.gov.*

Eligibility: Eligible funding applicants are institutions of higher education, state, local and Indian tribal governments.

Cost Sharing Requirements: There is no requirement for cost sharing.

Intergovernmental Review: Funding applications under the National Ocean Service are subject to Executive Order 12372, Intergovernmental Review of Federal Programs. It is the state agency's responsibility to contact their state's Single Point of Contact (SPCO) to find out about and comply with the state's process under EO 12372. To assist the applicant, the names and addresses of the SPOCs are listed on the Office of Management and Budget's web site *http://www.whitehouse.gov/omb/grants/spoc.html.*

National Weather Service (NWS)

Hydrologic Research

Summary Description: This program represents a NOAA/NWS effort to create a cost-effective continuum of basic and applied research through collaborative research between the Hydrology Laboratory of the NWS Office of Hydrologic Development and academic communities or other private or public agencies which have expertise in the hydrometeorologic, hydrologic, and hydraulic routing sciences, as well as those aspects of social sciences that apply to hydrologic and water resources forecasting and how information on those forecasts is distributed and assimilated by managers and the public. These activities will engage researchers and students in basic and applied research to improve the scientific understanding of river forecasting. Ultimately these efforts will improve the accuracy of forecasts and warnings of rivers and flash floods by applying scientific knowledge and information to NWS research methods and techniques, resulting in a benefit to the public. NOAA's program is designed to complement other agency contributions to that national effort.

Funding Availability: Because of Federal budget uncertainties, it has not been determined how much money will be available through this announcement. It is also uncertain exactly when the funding from the Federal budget will be available. It is expected that up to two awards will be made, depending on availability of funds and quality of the proposals.

Statutory Authority: Authority for the Hydrologic Research programs is provided by Weather Service Organic Act, 15 U.S.C. 313, and 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.462, Hydrologic Research.

Application Deadline: Proposals are due no later than 3 p.m. Eastern Standard Time January 28, 2008. We anticipate that a review of proposals will be completed during January and February, 2008, and funding should begin during spring 2008 for most approved projects. June 1, 2008, should be used as the proposed start date on proposals. Applicants should be notified of their status within 3 months of the closing date.

Address for Submitting Proposals: Applications should be submitted through *http://www.grants.gov.* For applicants without internet access, or Federal agencies without access to *www.grants.gov*, please submit three copies to: Pedro Restrepo, NOAA/NWS 1325 East-West Highway, Room 8176; Silver Spring, Maryland 20910–3283. No facsimile or e-mail copies will be accepted.

Information Contacts: The point of contact is Pedro Restrepo, NOAA/NWS/W–OHD1; 1325 East-West Highway, Room 8176; Silver Spring, Maryland 20910–3283, or by phone at 301–713–0640 ext. 210, or fax to 301–713–0963, or via internet at *Pedro.Restrepo@noaa.gov.*

Eligibility: Eligible applicants are Federal agencies; institutions of higher education; other nonprofits; commercial organizations; foreign governments; organizations under the jurisdiction of foreign governments; international organizations; state, local and Indian tribal governments. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA scientists shall be effected by an intra-agency fund transfer. Proposals selected for funding from a non NOAA Federal agency will be

funded through an interagency transfer. PLEASE NOTE: Before non NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements: A matching share is not required by this program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

National Weather Service MSI Program

Summary Description: The NWS is soliciting projects to be conducted by university investigators for 1–year to 3–years, with an anticipated start date of August 1, 2008. The NWS MSI Program represents an NOAA/NWS effort to promote and increase diversity in the atmospheric and related sciences through collaborative research between operational forecasters and academic institutions which have expertise in the environmental sciences in support of the NOAA Weather and water mission goal. These activities will engage researchers and students in applied research of interest to the operational meteorological community and will result in the development of new educational opportunities for the public.

Funding Availability: This funding opportunity announces that approximately $50,000 will be available through this announcement for fiscal year 2008. Proposals should be prepared assuming an annual budget up to $50,000. No award less than $25,000 will be made. It is expected that one to two awards will be made, depending on availability of funds.

Statutory Authority: Authority for the MSI program is provided by the following: 15 U.S.C. 313; 49 U.S.C. 44720(b); 33 U.S.C. 883d; 15 U.S.C. 2904; 15 U.S.C. 2934.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.468, Applied Meteorological Research.

Application Deadline: Applications must be received by the NWS no later than 5 p.m., EST on February 29, 2008.

Address for Submitting Proposals: Proposals must be submitted through *grants.gov,* unless an applicant does not have internet access. In that case, hard copy applications may be sent to Sam Contorno, 1325 East-West Highway, Room 15330, Silver Spring, MD 20910. Proposals may not be e-mailed or faxed.

Information Contacts: Contact Sam Contorno, NOAA/NWS; 1325 East-West Highway, Room 15330; Silver Spring, Maryland 20910–3283, or by phone at 301–713–3557 ext. 150, or fax to 301–713–1253, or via Internet at *samuel.contorno@noaa.gov.*

Eligibility: Minority Serving Institutions eligible to submit proposals include institutions of higher education identified by the Department of Education as: (i) Historically Black Colleges and Universities, (ii) Hispanic-Serving Institutions, (iii) Tribal Colleges and Universities, or (iv) Alaska Native or Native Hawaiian Serving Institutions on the most recent United States Department of Education Accredited Post-Secondary Minority Institutions list (at the date of publication of this announcement). Proposals will not be accepted from non-profit organizations, foundations, auxiliary services or any other entity on behalf of MSIs.

Cost Sharing Requirements: No cost sharing is required under this program.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs.

Oceanic and Atmospheric Research (OAR)

2008 Regional Research, Information Planning and Coordination

Summary Description: To continue the development of regional research and information plans for U.S. coastal, ocean, and Great Lakes areas, NOAA Sea Grant anticipates (depending on appropriations) making available about $750,000 in FY 2008 for grants to regional planning teams in the following three regions: the Greater New York Bight region, the Mid-Atlantic region, and the Caribbean region. It is expected that Sea Grant programs within each of these regions will work together and submit one proposal per region that covers a 2–5 year period. The objective is to use Sea Grant's university capabilities to facilitate discussions among the broad range of regional ocean, coastal, and Great Lakes stakeholders to help identify and prioritize critical resource management problems and associated research and information needs necessary for practical solutions. Depending on appropriations and the number and quality of applications received, NOAA Sea Grant anticipates making three awards of between $250,000 and $400,000 each.

Funding Availability: Depending on appropriations, a total of $250,000 of federal Sea Grant funds will be made available for each eligible region over two years to cover the completion of a regional research and information plan (assuming appropriations are available). Proposals may request up to an additional three years of staff support (up to $50,000 per region per year) to help implement completed regional plans. The maximum support requested for an individual application is $400,000, of which no more than $250,000 can be for the first two years of the proposed project. Additional support may be made available in subsequent competitions for regional research and outreach activities. Approximately three awards will be made in FY 2008. It is expected that multiple Sea Grant Programs and institutions will be involved in each region, and that they will designate in their application a single managing Sea Grant Program, to whom the grant award would be made. All other participating Sea Grant Programs and institutions must be handled through subawards.

Statutory Authority: Authority for the Regional Research, Information Planning and Coordination is provided by 33 U.S.C. 1121 et seq., as amended. Catalog of Federal Domestic Assistance (CFDA) Number(s): 11.417, Sea Grant Support.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Applications must be received by 4 p.m. EST, February 5, 2008.

Address for Submitting Proposals: Applications are to be submitted through *grants.gov,* under Federal Funding Opportunity number OAR–SG–2008–2001255. Applicants without internet access may submit a hard copy application, but must include documentation stating their lack of internet access. Hard copy applications (one UNBOUND original and one copy) should be submitted to: Mrs. Geri Taylor, National Sea Grant College Program, R/SG, Attn: Regional Research Competition, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone number for express mail applications is 301–734–1066.) Faxed or e-mailed applications will not be accepted.

Information Contacts: Contact Dr. Leon M. Cammen, Director, National Sea Grant College Program, 1315 East-West Highway, R/SG, Rm 11841, Silver Spring, MD 20910; tel: (301) 734–1088; e-mail: *oar.hq.nsgo.competitions@noaa.gov.*

Eligibility: Proposals may be submitted only by the designated

managing Sea Grant College or Institutional Program.

Cost Sharing Requirements: Matching funds equal to at least 50 percent of the Federal funding must be provided to support the proposed regional planning.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, 'Intergovernmental Review of Federal Programs.'

Ballast Water Management Demo (RDTE Facility)

Summary Description: The Ballast Water Management Demonstration Program supports projects to develop, test, and demonstrate ballast water treatment methods in order to reduce the threat of introduction of aquatic invasive species to U.S. waters through the discharge of ballast water. THIS SOLICITATION IS ONLY FOR COOPERATIVE AGREEMENTS TO ESTABLISH AND MAINTAIN A RESEARCH, DEVELOPMENT, TESTING AND EVALUATION (RDTE) FACILITY. There is a separate FFO for technologies and practices development (Funding Opportunity Number: OAR–SG20082001206).

Funding Availability: Depending on FY2008 appropriations and the quality of proposals, NOAA expects to make available up to about $1 million in 2008 funds for four-year cooperative agreements to create and operate ballast water RDTE facilities. We anticipate making 1 or 2 multiyear awards in FY2008. Depending on future year appropriations and satisfactory execution of the terms of the cooperative agreement, NOAA anticipates funding up to $1,250,000 over the next four years for each successful award.

Statutory Authority: 16 U.S.C. 4701 et seq.; 33 U.S.C. 1121–1131.

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Preliminary proposals must be received by the National Sea Grant Office by 4 p.m. EST February 21, 2008. Full proposals must be received by 4 p.m. EDT April 24, 2008. Only those who submit preliminary proposals meeting the preliminary proposal deadline and other requirements of this notice are eligible to submit full proposals.

Address for Submitting Proposals: Preliminary proposals should be submitted by hardcopy (one unbound original and one copy) to Mrs. Geri Taylor, National Sea Grant College Program, R/SG, Attn: Ballast Water Competition, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, telephone 301–734–1072. Full Proposals must be submitted through Grants.gov unless the applicant does not have Internet access or is a Federal agency without access to Grants.gov, in which case they should be submitted to the above address. Any application that includes an appendix B (oversize documents) must submit appendix B in hardcopy to the above address.

Information Contacts: Dorn Carlson, National Sea Grant Office, NOAA, Room 11828, 1315 East-West Highway, Silver Spring, MD, 20910, or via e-mail at *ballast.water@noaa.gov*. Prospective applicants with questions about this announcement should ask the Agency Contact in writing (e-mail preferred). All questions (without attribution) and any answers provided will be made available to all applicants who request to be kept informed, either by e-mail or by posting them on a Web site, or, for applicants without e-mail access, by conventional mail. To be kept informed of questions and responses prior to the preproposal deadline, send an e-mail to *ballast.water@noaa.gov*, and ask to be kept informed of all questions and responses concerning Federal Funding Opportunity number OAR–SG–2008–2001279. Applicants without Internet access please send your request by mail to the above mailing address. After the preproposal deadline, all applicants who submitted preproposals by the preproposal deadline will be informed of any questions and responses, unless they ask not to be so informed.

Eligibility: Eligible applicants are individuals, institutions of higher education, nonprofit organizations, for-profit organizations, Federal, State, local and Indian tribal governments, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. Applications from non-Federal and eligible Federal applicants (including NOAA employees) will be evaluated in the same selection process. Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals.

Cost Sharing Requirements: Applications for RDTE facility cooperative agreements must include additional non-federal matching funds equal to at least 20% of the total NOAA funds requested over the duration of the cooperative agreement. In-kind contributions are eligible to satisfy the match requirement. Matching funds for each individual year need not equal a 20% match of that year's request, as long as the total matching funds for the duration of the cooperative agreement meet the 20% match requirements for the total request amount.

Intergovernmental Review: Applications under this Program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Ballast Water Management Demonstration Program (Technologies and Practices)

Summary Description: ''The Ballast Water Management Demonstration Program supports projects to develop, test, and demonstrate ballast water technologies and practices in order to reduce the threat of introduction of aquatic invasive species to U.S. waters through the discharge of ballast water. This FFO is for projects dealing with technologies and practices necessary for successful ballast water management. For example, this could include technologies or practices that treat ballast water, or that make it possible to test, evaluate, regulate or use ballast water treatment technologies or practices. There is a separate FFO for establishing a Research, Development, Testing and Evaluation (RDTE) Facility (Funding Opportunity Number: OAR–SG–2008–2001279).''

Funding Availability: Depending on 2008 appropriations, NOAA expects to make available up to $1 million in FY 2008, and the U.S. Maritime Administration (MARAD) expects to make available several vessels for use as test platforms, to support ballast water management demonstration projects. Depending on the funding available and the number and quality of proposals received, we anticipate between 3 and 6 grants with a median value of about $200,000 will be awarded, and about one applicant will have certain expenses associated with verification testing at an ETV facility paid for.

Statutory Authority: 16 U.S.C. 4701 et seq.; 33 U.S.C. 1121–1131; 46 U.S.C. App 1211 (2000); 50 U.S.C. App 1744 (2000).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.417, Sea Grant Support.

Application Deadline: Letters of Intent must be received by the National Sea Grant Office by 4 p.m. EST February 21, 2008. Full proposals must be received by 4 p.m. EDT April 3, 2008. Only those applicants who submit

Letters of Intent by the preliminary proposal deadline and who submit LOIs that meet the other requirements of this notice are eligible to submit full proposals.

Address for Submitting Proposals: Letters of Intent must be submitted by hard copy to Mrs. Geri Taylor, National Sea Grant College Program, R/SG, Attn: Ballast Water Competition, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (phone number for express mail LOIs is 301–734–1066). Full Proposals must be submitted through grants.gov (Web site *html://grants.gov*) to Funding Opportunity Number: OAR–SG–2008–2001206. Applicants without internet access may submit one unbound original hard copy of the proposal, but must submit documentation demonstrating their inability to use grants.gov. Facsimile and electronic mail transmissions of proposals will not be accepted for either Letters of Intent or Full Proposals.

Information Contacts: Dorn Carlson, NOAA National Sea Grant Office, 301–734–1080; via electronic mail at *ballast.water@noaa.gov*. Carolyn Junemann, U.S. Maritime Administration, 202–366–1920; via electronic mail at *carolyn.junemann@dot.gov.*

Eligibility: Eligible applicants are individuals, institutions of higher education, nonprofit organizations, for-profit organizations, Federal, State, local and Indian tribal governments, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations. Applications from non-Federal and eligible Federal applicants (including NOAA and MARAD employees) will be evaluated in the same selection process. Note: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis. Only those who submit Letters of Intent by the Letters of Intent deadline are eligible to submit full proposals.

Cost Sharing Requirements: Cost sharing or matching funds is NOT required. However, any such funding (direct or indirect) offered by the Applicant will be considered in the Evaluation Criteria of Project Costs.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Office of the Under Secretary (USEC)

Environmental Literacy Grants for Formal K–12 Education

Summary Description: The NOAA Office of Education (OED) is issuing a request for applications for environmental literacy projects in support of K–12 education. Funded projects will be between one and five years in duration and will promote changes in K–12 education to expand the amount of Earth System Science taught in the classroom and improve student learning of that subject. Successful projects will catalyze change in K–12 education through development of new programs and materials and/or revision of existing programs and materials by supporting transformative methods: Those practices (which are not necessarily new) that are likely to increase the environmental literacy of K–12 teachers and their students by increasing the amount of Earth System Science taught in grades K–12. This federal funding opportunity meets NOAA's Mission Goal to understand climate variability and change to enhance society's ability to plan and respond. For any questions concerning this funding opportunity, please visit our FAQ Web site *www.oesd.noaa.gov/elg_faqs.html* before contacting the Office of Education.

Funding Availability: NOAA anticipates the availability of approximately $4,000,000 of Federal financial assistance in FY 2009 and FY2010 for K–12 education projects. Approximately 5 to 7 awards in the form of grants or cooperative agreements will be made. NOAA will only consider projects that have duration of 1 to 5 years. The total Federal amount for all years that may be requested from NOAA for the direct and indirect costs of the proposed project shall not exceed $750,000. The minimum Federal amount that must be requested from NOAA for all years for the direct and indirect costs is $200,000. Applications requesting Federal support from NOAA of less than $200,000 total or more than $750,000 total for the duration of the project will not be considered for funding. The amount of funding available through this announcement will be dependent upon the final FY09 and FY10 appropriations. Publication of this announcement does not obligate NOAA to award any specific project or to obligate all or any part of the available funds. It is likely that there will be no additional solicitation issued for these projects for FY10. If an applicant incurs any costs prior to receiving an award agreement signed by an authorized NOAA Grants Officer, the applicant would do so solely at one's own risk of such costs not being included under the award. The exact amount of funds that may be awarded will be determined in pre-award negotiations between the applicant and NOAA representatives.

Statutory Authority: Authority for the Environmental Literacy Grants for Formal K–12 Education program is provided by the following: 33 U.S.C. 892a(a).

Catalog of Federal Domestic Assistance (CFDA) Number: 11.469, Congressionally Identified Awards and Projects.

Application Deadline: Preliminary proposals (pre-proposals) are required for submission of a full application and must be received by 5 p.m., EST, February 20, 2008. Applicants who submit a pre-proposal will receive notification authorizing submission of a full application on or about April 30, 2008. Please contact Stacey Rudolph if you have not heard from the Office of Education by May 14, 2008. The full applications must be received by 5 p.m., EDT, June 25, 2008.

Address for Submitting Proposals: Pre-proposals must be submitted through Grants.gov *(http://www.grants.gov).* It is strongly suggested that Grants.gov be accessed using a PC and Internet Explorer for maximum compatibility. If an applicant does not have Internet access, one hard copy must be mailed to ATTN: ELG Competition Manager, DOC/NOAA, Office of Education, 1401 Constitution Avenue, NW., Room 6863, Washington, DC 20230; Telephone: 202–482–3384. Full applications must be submitted through Grants.gov *(http://www.grants.gov).* If an applicant does not have Internet access, one hard copy should be sent to ATTN: ELG Competition Manager, DOC/NOAA Office of Education, 1401 Constitution Avenue, NW., Room 6863, Washington, DC 20230; Telephone: 202–482–3384. If submitting a hard copy, applicants are also requested to provide a CD–ROM of the full application, including scanned signed forms or forms with electronic signatures. Facsimile or e-mail transmissions of full applications will not be accepted. Please note: Hard copies of pre-applications or full applications submitted via the U.S. Postal Service can take up to 4 weeks to reach this office; applicants are recommended to send hard copies via expedited shipping methods (e.g., Airborne Express, DHL, FedEx, UPS, etc.). Facsimile or e-mail transmissions of pre-proposals will not be accepted.

Information Contacts: Please visit the OEd Web site for further information at

http://www.oesd.noaa.gov/funding_opps.html or contact Sarah Schoedinger at 704.370.3528 or *Sarah.Schoedinger@noaa.gov* or Stacey Rudolph at 202.482.3739 or *Stacey.Rudolph@noaa.gov.* For those applicants without Internet access, hard copies of referenced documents may be requested from NOAA's Office of Education by contacting Stacey Rudolph at 202.482.3739 or sending a letter to Stacey Rudolph, DOC/NOAA Office of Education, 1401 Constitution Avenue, NW., Room 6863, Washington, DC 20230.

Eligibility: Eligible applicants are institutions of higher education, for-profit and nonprofit organizations, and state, local and Indian tribal governments in the United States. Among those eligible applicants are K through 12 public and independent schools and school systems, and science centers and museums. Foreign institutions, foreign organizations and foreign government agencies are not eligible to apply. Federal agencies are not eligible to receive Federal assistance under this announcement, but may be project partners. Individuals not connected to an institution are ineligible to apply for funding under this announcement. The Department of Commerce/National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to increasing the participation of Minority Serving Institutions (MSIs), i.e., Historically Black Colleges and Universities, Hispanic-serving institutions, Tribal colleges and universities, Alaskan Native and Native Hawaiian institutions, and institutions that work in underserved communities. Applications are encouraged that involve any of the above types of institutions. An applicant may serve only once as principal investigator (PI) through this funding opportunity. However institutions may submit more than one application and individuals may serve as co-PIs or key personnel on more than one application.

Cost Sharing Requirements: There are no cost-sharing requirements.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, Intergovernmental Review of Federal Programs (refer to item 19 on the grants.gov version of the SF–424).

III. Classification

Limitation of Liability

Funding for potential projects in this notice is contingent upon the availability of Fiscal year 2008 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for any proposed activities in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs. 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, for programs which have deadline dates on or after October 1, 2003, they may be 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,* NEPA Questionnaire, *http://www.nepa.noaa.gov/questionnaire.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.

Compliance With Department of Commerce Bureau of Industry and Security Export Administration Regulations

(a) This section applies to the extent that this BAA results in financial assistance awards involving access to export-controlled information or technology.

(b) In performing a financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient will then be responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

(c) Definitions.

(1) Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is ''deemed'' to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

(2) Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 et seq.), implemented by the DOC Bureau of Industry and Security, or the International Traffic I Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-us items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

(d) The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

(e) Nothing in the terms of this section is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

(f) The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

NOAA Implementation of Homeland Security Presidential Directive—12

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive-12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements.

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, CD–346, SF 424 Research and Related Family, SF 424 Short Organizational Family, SF 424 Individual Form family has been approved by the Office of Management and Budget (OMB) under the respective control numbers 4040–0004, 0348–0044, 0348–0040, 0348–0046, 0605–0001, 4040–0001, 4040–0003, and 4040–0005. 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: December 18, 2007.

Helen Hurcombe,

Director, Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. 07–6224 Filed 12–26–07; 8:45 am]

BILLING CODE 3510–12–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled National Study of the Prevalence of Community Service and Service-Learning in K–12 Public Schools to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), (44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Kimberly Spring, 202–606–6629 (*kspring@cns.gov*). Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Office for the Corporation for National and community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**.

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways 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 technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on June 22, 2007. This comment period ended on August 22, 2007. No comments were received.

Description: The Corporation is seeking approval for a National Study of the Prevalence of Community Service and Service-Learning in K–12 Public Schools. The study will survey a nationally representative sample of 2,000 elementary, middle and high schools in the scale and scope of service-learning, as well as the presence of a variety of policies and practices in support of service-learning activities in

the school. Respondents will be those school administrators and teachers, such as principals and service-learning coordinators, who are most knowledgeable about service-learning activities in the school. The survey will be administered by mail with the opportunity for respondents to complete the survey by phone.

Type of Review: New Collection.

Agency: Corporation for National and Community Service.

Title: National Study of the Prevalence of Community Service and Service-Learning in K–12 Public Schools.

OMB Number: 3045–New.

Affected Public: K–12 School Administrators.

Number of Respondents: 2000.

Frequency: One-time.

Average Time per Response: 21 minutes.

Estimated Total Burden Hours: 700.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 19, 2007.

Robert Grimm,

Director, Department of Research and Policy Development.

[FR Doc. E7–25052 Filed 12–26–07; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled the AmeriCorps*VISTA Project Application and Instructions (OMB Control Number 3045–0038) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Paul Davis at (202) 606–6608. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to: Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to 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 submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on October 9, 2007. This comment period ended December 8, 2007. No public comments were received from this notice.

Description: The AmeriCorps*VISTA Project Application and Instructions is used by the Corporation in the selection of VISTA sponsors and in the approval of both new and renewing VISTA projects. The information collection consists of a brief Concept Paper, and, if the Concept Paper is approved, a full application including budget.

The Corporation seeks to revise the previously used Project Application to: (a) Better align the information requested on the Concept Paper and the Application; and (b) simplify the project plan while continuing to provide a robust tool for evaluating project performance.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA Project Application and Instructions.

OMB Number: 3045–0038.

Agency Number: None.

Affected Public: AmeriCorps*VISTA project applicants and sponsoring organizations seeking project renewal.

Total Respondents: 3,200, of which 1,000 will complete the full application.

Frequency: One time only for Concept Paper, once annually for Application.

Average Time per Response: 1.5 hours for Concept Paper; 8 hours for application.

Estimated Total Burden Hours: 12,800 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 20, 2007.

Jean Whaley,

*Director, AmeriCorps*VISTA.*

[FR Doc. E7–25094 Filed 12–26–07; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2006–0S–0216]

Implementation of Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Department of Defense.

ACTION: Notice with request for comments.

SUMMARY: The Department of Defense is preparing to draft a report to Congress and invites public comments and suggestions. An Item of Special Interest in the Senate Report 110–077 accompanying the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA), requests the Department of Defense to report on the implementation of limitations on terms of consumer credit extended to Service members and dependents. The guidance from the Senate Armed Services Committee on drafting the report can be found at Senate Report 110–077, at pages 355–356, accompanying the FY 2008 NDAA.

DATES: Comments must be received by February 25, 2008.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Marcus Beauregard, (703) 588–0952.

SUPPLEMENTARY INFORMATION: To help develop this report, the Department of Defense is seeking comments from the public about the potential negative impact of certain consumer loan products on Service members. Please indicate whether the following products, which are not currently regulated by 32 CFR 232.3, negatively impact Service members to the degree that the Department of Defense should regulate them. If regulation is needed, please provide proposed solutions. These products are:

- Installment loans, not covered in the definitions of credit in 32 CFR 232.3. These installment loans may include excessive fees and interest rates, loan flipping, and regular inclusion of high cost ancillary credit insurance products.
- Credit cards that are characterized by minimal available credit coupled with high fees.
- Fee-based, high-cost, courtesy overdraft products.

Additionally, the Department of Defense is seeking comments from the public on the implementation of 32 CFR part 232, specifically issues concerning:

- Disclosure requirements and identification of the covered borrower as required by 32 CFR 232.5 and 232.6.
- Implementation of alternative small-dollar credit products and recommended changes that can facilitate producing and delivering these products to Service members and their dependents.
- Oversight and enforcement of the regulation with respect to Internet-based lenders offering credit covered by the definitions in 32 CFR 232.3.
- Methods for the Department of Defense to use in monitoring enforcement of the rule. The Department of Defense has the authority to make regulatory changes and to recommend statutory change. The Department of Defense seeks input on potential changes for consideration.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E7–25119 Filed 12–26–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2008.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 19, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title: Eighth Grade Access to Algebra I: A Study of Virtual Algebra.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,494.

Burden Hours: 493.

Abstract: This study of the effects of 8th grade algebra on student math achievement and advanced course-taking patterns is to be carried out by the Northeast and Islands Regional Education Laboratory. This randomized controlled field trial involves 60 schools in Maine, 60 teachers, and 1,800 students. Targeted outcomes are students' mathematics achievement, as measured by scores on the 8th grade Maine Educational Assessment in mathematics, scores on the Northwest Evaluation Association-Measures of Academic Progress (NWEA–MAP) test, 9th grade transcript data, 10th grade course enrollments, and 10th grade Preliminary Scholastic Aptitude Test (PSAT) scores.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3545. 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. E7–25085 Filed 12–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2008.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 20, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Teacher Quality Enhancement Grants Program (TQE) Scholarship Contract and Teaching Verification Forms on Scholarship Recipients.

Frequency: On Occasion; Semi-Annually; Annually.

Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,850.

Burden Hours: 3,065.

Abstract: Students receiving scholarships under section 204 of the Higher Education Act of 1965, as amended, Public Law 105–244, incur a service obligation to teach in a high-need school in a high-need local educational agency (LEA). This information collection consists of a contract to be executed when funds are awarded, subsequent addenda for students receiving funds beyond one semester/quarter/term, and a separate teaching verification form to be used by students and high-need school districts, to document the students' compliance with the contract's conditions. The Department of Education (ED) has developed an Internet based, e-authorization certified Web site that will allow these TQE Grants Program Scholarship forms (Scholarship Terms and Conditions and Scholarship Terms and Conditions Addendum) to be electronically submitted. This Internet-based Web site will escalate efficiently and will reduce a substantial paper burden of imputing these documents manually.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3472. 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. E7–25086 Filed 12–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 25, 2008.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be

collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 19, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Stafford Loan Master Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 3,123,451.

Burden Hours: 2,297,415.

Abstract: The Federal Stafford Loan Master Promissory Note (MPN) serves as the means by which an individual agrees to repay a Federal Stafford Loan. The School Certification form serves as the means by which a school that participates in the Federal Family Education Loan (FFEL) Program certifies a borrower's eligibility for a Federal Stafford Loan if the school does not certify eligibility electronically.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3551. 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. E7–25087 Filed 12–26–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) Review; Comment Request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request (ICR) to OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The ICR requests a 3-year extension of its Occupational Radiation Protection Program, OMB Control Number 1910–5105. This ICR covers information necessary to permit DOE and its contractors to provide management control and oversight over health and safety programs concerning worker exposure to ionizing radiation.

DATES: Comments regarding this collection must be received on or before January 28, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to Judith D. Foulke by facsimile at (301) 903–7773 or by e-mail at *judy.foulke@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: The DOE person listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No:* 1910–5105; (2) *ICR Title:* Occupational Radiation Protection Program; (3) *Purpose: Needs and Uses:* The information that 10 CFR part 835 requires DOE major facilities management contractors to produce, maintain, and/or report is necessary to permit the Department to manage and oversee health and safety programs that control worker (i.e., DOE employees, contractor and sub-contractor employees, and visiting workers) exposure to radiation; (4) *Estimated Number of Respondents:* 50; (5) *Estimated Total Burden Hours:* 50,000; and (6) *Number of Collections:* ICR contains 6 information and/or recordkeeping requirements.

Statutory Authority: 42 U.S.C. 2201, 7191; 50 U.S.C. 2410.

Issued in Washington, DC, on December 7, 2007.

Lesley A. Gasperow,

Director, Office of Resource Management (HS–1.2) Office of Health, Safety and Security.

[FR Doc. E7–25032 Filed 12–26–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) submitted an information collection request (ICR) to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995 (OMB Control Number 1910–0068).

DOE requests a three-year extension of its collection activities for information from owners of qualified renewable energy generation facilities who apply annually for Renewable Energy Production Incentive (REPI) payments. This ICR seeks information necessary to determine whether an applicant's facility qualifies for these REPI payments by producing the requisite amount of net electricity. The information gathered by the ICR ensures that the government has sufficient information to determine whether public funds are being properly used for these incentive payments.

DATES: Comments regarding this request to extend the collection of information concerning annual applications from the owners of qualified renewable energy generation facilities must be received on or before January 28, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to: Dan Beckley, Project Manager, Energy Efficiency and Renewable Energy, EE–2K, Forrestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290 or by fax, 202–586–

1628 or by e-mail *dan.beckley@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to the person in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: *This package contains:* (1) OMB No. 1910–0068. (2) *ICR Title:* Renewable Energy Production Incentive. (3) *Purpose:* To provide required information to receive consideration for payment for qualified renewable energy electricity produced in the prior fiscal year. (4) *Estimated Number of Respondents:* 75. (5) *Estimated Total Burden Hours:* 450. (6) *Number of Collections:* The ICR contains 75 (one per grantee annually) information and/or recordkeeping requirements.

Statutory Authority: Energy Policy Act of 1992 (P. L. 102–486) and as amended in the Energy Policy Act of 2005, (P. L. 109–058)—42 U.S.C. 13317.

Issued in Washington, DC, on December 19, 2007.

Mark Bailey,

Supervisor, Weatherization and Intergovernmental Program, Energy Efficiency and Renewable Energy.

[FR Doc. E7–25033 Filed 12–26–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, January 30, 2008, 2 p.m.–8 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

2 p.m. Call to Order by Deputy Designated Federal Officer, Christina Houston.
Establishment of a Quorum.
Welcome, Ed Moreno.
Approval of Agenda, J.D. Campbell.
Approval of Minutes of November 28, 2007, Board Meeting, J.D. Campbell.
2:05 p.m. Old Business, Ed Moreno
A. Consideration and Action—Proposed amendment to NNMCAB Bylaws.
B. Consideration and Action—Recommendation 2007–5 (Tabled on November 28, 2007).
New Business
2:14 p.m. Committee Business/Reports.
A. Environmental Monitoring, Surveillance and Remediation Committee, Pam Henline.
- Introduction of Draft Recommendation(s).
- Update on Los Alamos National Laboratory (LANL) Quarterly Groundwater Workshop.

B. Waste Management Committee, Ralph Phelps.
- Report on Spring NNMCAB Sponsored Forum.

3:30 p.m. Consideration and Action on Draft Recommendations to DOE, Ed Moreno.
4 p.m. Break.
4:15 p.m. Reports from Liaison Members:
U.S. Environmental Protection Agency, Rich Mayer.
DOE, George Rael.
Los Alamos National Security, LLC, Sue Stiger.
New Mexico Environment Department, James Bearzi.
5:15 p.m. Public Comment.
5:30 p.m. Dinner Break.
6:30 p.m. Presentation—Fundamentals of Well Drilling, TBA.
7:15 p.m. Questions/Answers on Presentation.
7:45 p.m. Recap of Meeting: Issuance of Press Releases, Editorials, etc., Ed Moreno.
8 p.m. Adjourn, Christina Houston.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on December 19, 2007.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–25029 Filed 12–26–07; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES:

Monday, January 28, 2008, 1 p.m.–5 p.m.

Tuesday, January 29, 2008, 8:30 a.m.–4 p.m.

ADDRESSES: Crowne Plaza Hotel, 130 Shipyard Drive, Hilton Head, SC 29928.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of External Affairs, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; *Phone:* (803) 952–7886.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, January 28, 2008

1 p.m. Work Plan Development and Combined Committee Session.
5 p.m. Adjourn.

Tuesday, January 29, 2008

8:30 a.m. Approval of Minutes, Agency Updates.
9:30 a.m. Public Comment Session.
9:45 a.m. Chair and Facilitator Updates.
10:15 a.m. Facility Disposition and Site Remediation Committee Report.
11 a.m. Nuclear Materials Committee Report.
11:45 a.m. Public Comment Session.

12 p.m. Lunch Break.
1 p.m. Administrative Committee Report.
1:45 p.m. Strategic and Legacy Management Committee Report.
3:15 p.m. Waste Management Committee Report.
3:45 p.m. Public Comment Session.
4 p.m. Adjourn.

If needed, time will be allotted after public comments for items added to the agenda and administrative details. A final agenda will be available at the meeting Monday, January 28, 2008.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Gerri Flemming at the address or phone number listed above. Minutes will also be available at the following Web site *http://www.srs.gov/general/outreach/srs-cab/srs-cab.html.*

Issued at Washington, DC on December 19, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–25030 Filed 12–26–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, January 15, 2008, 8 a.m.–5:30 p.m.

Opportunities for public participation will be held from 1 p.m. to 1:15 p.m. and 4 p.m. to 4:15 p.m.

These times are subject to change; please contact the Federal Coordinator (below) for confirmation of times prior to the meeting.

ADDRESSES: AmeriTel Inn, 645 Lindsey Boulevard, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Robert L. Pence, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS–1203, Idaho Falls, ID 83415. Phone (208) 526–6518; Fax (208) 526–8789 or e-mail: *pencerl@id.doe.gov* or visit the Board's Internet home page at: *http://www.inlemcab.org.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Topics (agenda topics may change up to the day of the meeting; please contact Robert L. Pence for the most current agenda):

- Accelerated Retrieval Project (ARP) III Engineering Evaluation/Cost Analysis (EE/CA) & Waste Area Group 7 Public Comment Discussion.
- Chemical Processing Plant (CPP)–601 EE/CA.
- Special Nuclear Material.
- Workforce Restructuring Plan Briefing.
- Life-Cycle Baseline.
- Operable Unit 10–08 Briefing.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Robert L. Pence at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Robert L. Pence, Federal Coordinator, at the address and phone number listed above. Minutes will also be available at the following Web site *http://www.inlemcab.org/meetings.html.*

Issued at Washington, DC on December 20, 2007.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–25031 Filed 12–26–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–1386–000; ER07–1386–001; ER07–1386–002]

Tatanka Wind Power, LLC; Notice of Issuance of Order

December 17, 2007.

Tatanka Wind Power, LLC (Tatanka) filed an application for market-based rate authority, with an accompanying market-based rate tariff. The proposed market-based rate tariff provides for the sale of energy and capacity at market-based rates. Tatanka also requested waivers of various Commission regulations. In particular, Tatanka requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Tatanka.

On December 10, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development-West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Tatanka, should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2007).

Notice is hereby given that the deadline for filing protests is January 9, 2008.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Tatanka is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Tatanka compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Tatanka's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Director's Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number filed, to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–25004 Filed 12–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08–31–000 and Docket No. PF06–32–000]

Transcontinental Gas Pipe line Corporation; Notice of Application

December 17, 2007.

Take notice that on December 3, 2007, Transcontinental Gas Pipe line Corporation (Transco), 2800 Post Oak Boulevard, Houston, Texas 77056–6106 filed an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, for a certificate of public convenience and necessity to construct, operate and abandon facilities in eastern Pennsylvania and northern New Jersey that would expand its existing system by providing an additional 142,000 dekatherms per day of firm transportation capacity to the northeastern U.S. market. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Transco proposes to construct the expansion facilities, referred to as the Sentinel Expansion Project, in two phases. Phase 1 would consist of approximately four miles of 42-inch pipeline looping in Pennsylvania as well as modifications to Compressor Station No. 195 and modifications to various other existing valve settings and meter stations in Pennsylvania. The phase 1 facilities would provide 40,000 dekatherms per day for a proposed in-service date of November 1, 2008. The Phase 2 facilities would consist of about seven miles of 42-inch pipeline replacement in Pennsylvania and a total of about 7 miles of 42-inch pipeline looping in Pennsylvania and New Jersey as well as modifications to Compressor Station No. 200 and various existing meter stations in Pennsylvania and New Jersey. Phase 2 would provide 102,000 dekatherms per day for a proposed in-service date of November 1, 2009.

Any questions regarding the application are to be directed to Scott Turkington, Director, Rates & Regulatory, Transcontinental Gas Pipe Line Corporation, Post Office Box 1396, Houston, Texas 77251–1396, telephone: (713) 215–3391 or e-mail: *scott.c.turkington@williams.com.*

On August 4, 2006, the Commission staff granted Transco's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–32–000 to staff activities involving the project. Now, as of the filing of this application on December 3, 2007, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP08–31–000, as noted in the caption of this notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be file on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit the original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: January 7, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–25003 Filed 12–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12874–000]

Hydro Green Energy, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 17, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12874–000.

c. *Date filed:* July 24, 2007.

d. *Applicant:* Hydro Green Energy, LLC.

e. *Name of Project:* ''Alaska 17'' Project.

f. *Location:* The project would be located in a section of the Yukon River in the Yukon-Koyukuk Census Area, Alaska. The project uses no dam or impoundment.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne F. Krouse, Hydro Green Energy, LLC, 5090 Richmond Avenue #390, Houston, TX 77056, and Mr. James H. Hancock Jr., Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, Alabama 35203.

i. *FERC Contact:* Kelly Houff, (202) 502–6393.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12874–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project consists of: (1) 5 arrays, each consisting of ten, 100 kilowatt hydrokinetic turbine units, for a total installed capacity of 5 megawatts, (2) a proposed transmission line no greater than 1500 feet from the ''node'' array to the shore, (3) a mooring system which does not require the use of pilings to permanently attach the units to the bedrock but instead uses tethers and Danforth type anchors, and (4) appurtenant facilities. The project would have an average annual generation of 32.873 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'',

''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The

Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–25005 Filed 12–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP07–443–000; RP07–443–001]

Iroquois Gas Transmission Systems, L.P.; Notice of Informal Settlement Conference

December 17, 2007.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (EST), on Friday, January 11, 2008, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Arnold Meltz at (202) 502–8649 or Marc Denkinger at (202) 502–8662.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–25002 Filed 12–26–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD08–2–000; ER07–1375–000; ER07–970–000; ER07–1311–000; OA07–54–000; NJ08–2–000; ER08–280–000; ER08–140–000]

Interconnection Queuing Practices; Midwest Independent Transmission System Operator, Inc.; Midwest Independent Transmission System Operator, Inc.; Southwest Power Pool PacifiCorp; United States Department of Energy Bonneville Power Administration; PJM Interconnection, L.L.C.; California Independent System Operator Corporation; Notice Inviting Comments

December 17, 2007.

On December 11, 2007, the Commission held a technical conference to obtain information as to any queue issues that may have arisen since the issuance of Order No. 2003 and solutions that may have been developed or proposed to deal with those queue issues.[1] The purpose of the technical conference was to discuss possible methods to address the current challenges of queue management while still honoring the goals of Order No. 2003. All interested persons are invited to file written comments no later than January 10, 2008 in relation to the issues that were the subject of the technical conference.

Filing Requirements for Paper and Electronic Filings

Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. The Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov,* click on ''e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Do not submit comments to this e-mail address.

For paper filings, the original and 14 copies of the comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All written comments will be placed in the Commission's public files and will be available for inspection at the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–25006 Filed 12–26–07; 8:45 am]

BILLING CODE 6717–01–P

[1] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g,* Order No. 2003–A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g,* Order No. 2003–B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g,* Order No. 2003–C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs* v. *FERC,* 475 F.3d 1277 (D.C. Cir. 2007). *See also Standardization of Small Generator Interconnection Agreements and Procedures,* Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g,* Order No. 2006–A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification,* Order No. 2006–B, FERC Stats. & Regs. ¶ 31,221 (2006), *appeal pending sub nom. Consol. Edison Co. of N.Y., Inc.* v. *FERC,* Nos. 06–1275, et al. (D.C. Cir. filed July 14, 2006 and later); *Interconnection for Wind Energy,* Order No. 661, FERC Stats. & Regs. ¶ 31,186 (2005), *order on reh'g,* Order No. 661–A, FERC Stats. & Regs. ¶ 31,198 (2005).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2007–0707, FRL–8511–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Oil and Hazardous Substance Pollution Contingency Plan (NCP) (Renewal), EPA ICR Number 1463.07, OMB Control Number 2050–0096

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that an Information Collection Request

(ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before January 31, 2008.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–SFUND–2007–0707 to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: S. Steven Chang, Assessment and Remediation Division, Office of Superfund Remediation and Technology Innovation, Mail Code 5204P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:703–603–9017; fax number: 703–603–9112; e-mail address: *chang.steven@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 22, 2007 (72 *FR* 46991), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2007–0707, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Superfund Docket is 202–566–0276.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: National Oil and Hazardous Substance Pollution Contingency Plan (NCP) (Renewal).

ICR Numbers: EPA ICR Number 1463.07, OMB Control No. 2050–0096.

ICR Status: This ICR is scheduled to expire on January 31, 2008. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This Information Collection Request is a renewal ICR that covers the remedial portion of the Superfund Program, as specified in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA) and the National Oil and Hazardous Substance Pollution Contingency Plan (NCP). All remedial actions covered by this ICR (e.g., Remedial Investigations/Feasibility Studies) are stipulated in the statute (CERCLA) and are instrumental in the process of cleaning up National Priority List (NPL) sites to be protective of human health and the environment. Some community involvement activities covered by this ICR are not required at every site (e.g., Technical Assistance Grants) and depend very much on the community and the nature of the site and cleanup. All community activities seek to involve the public in the cleanup of the sites, gain the input of community members, and include the community's perspective on the potential future reuse of Superfund NPL sites. Community involvement activities can enhance the remedial process and increase community acceptance and the potential for productive and useful reuse of the sites.

The respondents on whom a burden is placed include State (and Tribal) governments and communities. Potential Responsible Parties (PRPs) are not addressed in this ICR because the Paperwork Reduction Act [5 CFR part 1320 (Controlling Paperwork Burdens on the Public, FRN 8/29/1995) Sect. 1320.4 (a)] does not require the inclusion of those entities that are the subject of administrative or civil action by the Agency. The ICR reports the estimated reporting and recordkeeping burden hours and costs expected to be incurred by these entities and by the Federal government in its oversight capacities of State action and administration of community activities at Fund-lead NPL sites. Remedial activities undertaken by States at NPL sites are those required and recommended by CERCLA and the NCP and the cost of many of these activities may be reimbursed by the Federal government. All community involvement in the remedial process of Superfund is voluntary. Therefore, all cost estimates for community members is theoretical and does not represent expenditure of actual dollars.

States have responsibilities at new and on-going State-lead sites and at all State-lead, Federal-lead, and Federal Facility sites entering the remedial phase of Superfund. All other remedial activities taken by the State are done so at sites at which the State voluntarily assumes the lead agency role. Over each year of this ICR the State will be completing remedial activities at sites that entered the remedial phase of Superfund at different times.

Community members' participation in remedial activities at Superfund sites is purely voluntary and the level of involvement varies greatly depending on the complexity of the site, its location (urban vs. rural, industrial vs. residential, etc.), and the level of interest.

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. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8.4 hours per response.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State, Tribal, or local governments, and individuals or households.

Estimated Number of Respondents: 7,970.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 71,165 hours, which includes an estimated 40,185 hours for States and 30,980 hours for communities.

Estimated Total Annual Cost: $572,415, which includes an estimated $61,245 for States and $511,170 for communities. There are no capital/O&M costs.

Changes in the Estimates: There is no change in the burden for this ICR. Cost models were updated to reflect wage inflation. While currently approved O&M costs are listed as $850,000 and are updated in the current ICR, they have been removed from the cost estimate listed above because they are reimbursed in full by the Federal government, and thus effectively impose no burden on state governments.

Dated: December 18, 2007.

Sara Hisel-McCoy,

Director, Collection Strategies Division.

[FR Doc. E7–25039 Filed 12–26–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8511–3]

EPA Office of Children's Health Protection and Environmental Education Staff Office; Notice of Public Meetings for the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) Office of Children's Health Protection and Environmental Education Office hereby gives notice that the National Environmental Education Advisory Council will hold public meetings by conference call on the 2nd Wednesday of each month, beginning with December 12, 2007 from 3 p.m. to 4 p.m. All times noted are eastern time. The purpose of these meetings is to provide the Council with the opportunity to advise the Environmental Education Division on its implementation of the National Environmental Protection Act of 1990. Requests for the draft agenda will be accepted up to 1 business day before the meeting.

DATES: This notice is applicable for the following dates:

- January 9, 2008
- February 13, 2008
- March 12, 2008
- April 9, 2008
- May 14, 2008
- June 11, 2008

SUPPLEMENTARY INFORMATION: Participation in the conference calls will be by teleconference only—meeting rooms will not be used. Members of the public may obtain the call-in number and access code for the call from Ginger Potter, the Designated Federal Officer, whose contact information is listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. Any member of the public interested in receiving a draft meeting agenda may contact Ginger Potter via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Ms. Ginger Potter, Designated Federal Officer (DFO), EPA National Environmental Education Advisory Council, at *potter.ginger@epa.gov* or (202) 564–0453. General information concerning NEEAC can be found on the EPA Web site at: *http://www.epa.gov/enviroed*. For information on access or services for individuals with disabilities, please contact Ginger Potter as directed above. To request accommodation of a disability, please contact Ginger Potter, preferable at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: December 19, 2007.

Ginger Potter,

Designated Federal Officer.

[FR Doc. E7–25097 Filed 12–26–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the FDIC hereby gives notice that it is submitting to the Office of Management and Budget (OMB) a request for OMB review and approval of the new information collection described below. The collection would provide information on the efforts of FDIC-insured depository institutions to meet the financial services needs of individuals who do not have an account at a bank or credit union (the ''unbanked''), and individuals who have a deposit account but also rely on alternative, non-bank financial service providers for transaction or credit services (the ''underbanked'') features and effectiveness of small-dollar programs offered by FDIC-insured financial institutions.

DATES: Comments must be submitted on or before January 28, 2008.

ADDRESSES: Interested parties are invited to submit written comments on the collection of information entitled: National Survey on Banks' Efforts to Serve the Unbanked and Underbanked.

All comments should refer to the name of the collection. Comments may be submitted by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202.898.3719), Counsel, Federal Deposit Insurance Corporation, Room F–1064, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Interested members of the public may obtain additional information about the collection, including a copy of the proposed collection and related instructions without charge, by contacting Leneta G. Gregorie, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to seek OMB approval for the following new collection of information:

Title: National Survey on Banks' Efforts to Serve the Unbanked and Underbanked.

OMB Number: 3064–NEW.

1. *Survey*

Frequency of Response: Once.

Affected Public: FDIC-insured depository institutions.

Estimated Number of Respondents: 865.

Estimated Time per Response: 30 minutes per respondent.

Estimated Total Annual Burden: 0.5 hours × 865 respondents + 432.5 hours.

2. *Case Studies*

Frequency of Response: Exploratory interview—once; in-depth interview—once.

Affected Public: 25 to 30 FDIC-insured depository institutions.

Estimated Number of Respondents: 25 to 30 FDIC-insured depository institutions.

Estimated Time per Response: Exploratory interview—1 hour; in-depth interview—2.5 hours.

Estimated Total Burden: 30 hours + 75 hours = 105 hours.

Total burden for this collection: 432.5 hours + 105 hours = 537.5 hours.

General Description of Collection: The FDIC has a number of initiatives underway to encourage practical solutions to ensure that all consumers have reasonable access to full service banking and other financial services. The FDIC believes that insured depositories can provide a path into the financial mainstream for those who need these financial services, and that depository institutions can create an array of affordable lending services to meet the needs of all their customers. Currently a large segment of the population relies on a mix of non-bank financial service providers for their needs. The FDIC is undertaking a series of analyses in this area, including the proposed National Survey of Banks' Efforts to Serve the Unbanked and Underbanked. The survey is mandated by section 7 of the Reform Act, which calls for the FDIC to conduct ongoing surveys ''on efforts by insured depository institutions to bring those individuals and families who have rarely, if ever, held a checking account, a savings account or other type of transaction or check cashing account at an insured depository institution (hereafter in this section referred to as the ''unbanked'') into the conventional finance system.''

In this initial survey effort, the FDIC plans to survey FDIC-insured depository institutions on their efforts to serve underbanked as well as unbanked populations. The survey will consist of two components—a questionnaire survey of a sample of FDIC-insured depository institutions and a limited number of case studies of FDIC-insured depository institutions that are employing innovative methods to serve unbanked and underbanked populations.

The Reform Act mandates that the FDIC consider the following factors and questions in conducting the survey:

''(A) To what extent do insured depository institutions promote financial education and financial literacy outreach?

''(B) Which financial education efforts appear to be the most effective in bringing 'unbanked' individuals and families into the conventional finance system?

''(C) What efforts are insured institutions making at converting 'unbanked' money order, wire transfer, and international remittance customers into conventional account holders?

''(D) What cultural, language and identification issues as well as transaction costs appear to most prevent 'unbanked' individuals from establishing conventional accounts?

''(E) What is a fair estimate of the size and worth of the 'unbanked' market in the United States?''

In addition to these mandated objectives, in its questionnaire survey of a sample of FDIC-insured depository institutions, the FDIC seeks to identify and quantify the extent to which institutions serve the needs of the unbanked and underbanked; identify the characteristics of institutions that are reaching out to and serving the unbanked and underbanked; identify efforts (for example, practices, programs, alliances) of institutions to serve the unbanked and underbanked; and identify potential barriers that affect the ability of institutions to serve the unbanked and underbanked.

The objectives of the case studies are to identify and share ''best practice'' programs and practices that appear to be the most effective in bringing unbanked and underbanked populations into the financial mainstream, particularly the federally-insured financial institutions. The case studies will be designed to collect information on the size and scope of programs, the nature of service offerings, program budgets, and results.

Request for Comment

Comments are invited on: (a) Whether these collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimate of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 19th day of December, 2007.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. E7–24963 Filed 12–26–07; 8:45 am]

BILLING CODE 6714–01–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 January 9, 2008.

A. Federal Reserve Bank of Cleveland (Douglas A. Banks, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Robert Duane Hord, Inez Hord, Hord Livestock, Patrick Hord and Janel Hord; to acquire voting shares of FC Banc Corp., and thereby indirectly

acquire voting shares of Farmers Citizens Bank, all of Bucyrus, Ohio.

Board of Governors of the Federal Reserve System, December 20, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–25016 Filed 12–26–07; 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 January 18, 2008.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp Ltd., and Capitol Development Bancorp Limited VII, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Mountain View Bank of Commerce (in organization), Westminster, Colorado.

In connection with this application, Capitol Bancorp Colorado Ltd. III, Lansing, Michigan; has applied to become a bank holding company by acquiring 51 percent of the voting shares of Mountain View Bank of Commerce (in organization), Westminster, Colorado.

2. Kerndt Bank Services, Inc., Lansing, Iowa; to acquire 100 percent of Family Merchants Bancorporation, Inc., and thereby indirectly acquire voting shares of Family Merchants Bank, both of Cedar Rapids, Iowa.

Board of Governors of the Federal Reserve System, December 20, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E7–25015 Filed 12–26–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4134–N]

Medicare Program; Medicare Appeals; Adjustment to the Amount in Controversy Threshold Amounts for Calendar Year 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustment in the amount in controversy (AIC) threshold amounts for administrative law judge (ALJ) hearings and judicial review under the Medicare appeals process. The adjustment to the AIC threshold amounts will be effective for requests for ALJ hearings and judicial review filed on or after January 1, 2008. The 2008 AIC threshold amounts are $120 for ALJ hearings and $1,180 for judicial review.

EFFECTIVE DATE: This notice is effective on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Arrah Tabe-Bedward, (410) 786–7129; Katherine Hosna, (410) 786–4993.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1869(b)(1)(E) of the Social Security Act (the Act), as amended by Section 521 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), established the AIC threshold amounts for ALJ hearing requests and judicial review at $100 and $1000, respectively, for Medicare Part A and Part B appeals. Section 940 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act ''MMA''), amended section 1869(b)(1)(E) of the Act to require the AIC threshold amounts for ALJ hearings and judicial review be adjusted annually. The AIC threshold amounts are to be adjusted, as of January 2005, by the percentage increase in the medical care component of the consumer price index for all urban consumers (U.S. city average) for July 2003 to July of the year preceding the year involved and rounded to the nearest multiple of $10. Section 940(b)(2) of the MMA provided conforming amendments to apply the AIC adjustment requirement to Medicare Part C (Medicare Advantage ''MA'') appeals and certain health maintenance organization and competitive health plan appeals. Health care prepayment plans are also subject to MA appeals rules, including the AIC adjustment requirement. Section 101 of the MMA provides for the application of the AIC adjustment requirement to Medicare Part D appeals.

A. Medicare Part A and Part B Appeals

The statutory formula for the annual adjustment to the AIC threshold amounts for ALJ hearings and judicial review of Medicare Part A and Part B appeals, set forth at section 1869(b)(1)(E) of the Act, is included in the applicable implementing regulations, 42 CFR part 405, Subpart I, at § 405.1006(b). The regulations require the Secretary of the Department of Health and Human Services (the Secretary) to publish changes to the AIC threshold amounts in the **Federal Register** (§ 405.1006(b)(2)). In order to be entitled to a hearing before an ALJ, a party to a proceeding must meet the AIC requirements at § 405.1006(c). Similarly, a party must meet the AIC requirement at the time judicial review is requested for the court to have jurisdiction over the appeal (§ 405.1136(a)).

B. Medicare Part C (Medicare Advantage) Appeals

Section 940(b)(2) of the MMA applies the AIC adjustment requirement to Part C (MA) appeals by amending section 1852(g)(5) of the Act. The implementing regulations for Medicare Part C appeals are found at 42 CFR part 422, Subpart M. Specifically, § 422.600 and § 422.612 discuss the AIC threshold amounts for ALJ hearings and judicial review.

Section 422.600 grants any party, except the MA organization, a right to an ALJ hearing as long as the amount remaining in controversy after reconsideration meets the threshold requirement established annually by the Secretary. Section 422.612 states that

any party, including the MA organization, may request judicial review if the amount in controversy meets the threshold requirement established annually by the Secretary.

C. Health Maintenance Organizations, Competitive Medical Plans, and Health Care Prepayment Plans

Section 940(b)(2) of the MMA also amended section 1876(c)(5)(B) of the Act to make section 1869(b)(1)(E) of the Act applicable to certain beneficiary appeals within the context of health maintenance organizations and competitive medical plans. The applicable implementing regulations for Medicare Part C appeals are set forth in 42 CFR part 422, Subpart M, and as discussed above, apply to these appeals. The Medicare Part C appeals rules also apply to health care prepayment plan appeals.

D. Medicare Part D (Prescription Drug Plan) Appeals

The annually adjusted AIC threshold amounts for ALJ hearings and judicial review that apply to Medicare Parts A, B, and C appeals also apply to Medicare Part D appeals. Section 101 of the MMA added section 1860D–4(h)(1) of the Act regarding Part D appeals. This statutory provision requires a prescription drug plan sponsor to meet the requirements set forth in sections 1852(g)(4) and (g)(5) of the Act, in a similar manner as MA organizations. As noted above, the annually adjusted AIC threshold requirement was added to section 1852(g)(5) of the Act by section 940(b)(2)(A) of the MMA. The implementing regulations for Medicare Part D appeals can be found at 42 CFR part 423, Subpart M. The regulations impart at § 423.562(c) that unless the Part D appeals rules provide otherwise, the Part C appeals rules (including the annually adjusted AIC threshold amount) apply to Part D appeals to the extent they are appropriate. More specifically, § 423.610 and § 423.630 of the Part D appeals rules discuss the AIC threshold amounts for ALJ hearings and judicial review. Section 423.610(a) grants a Part D enrollee, who is dissatisfied with the Independent Review Entity (IRE) reconsideration determination, a right to an ALJ hearing if the amount remaining in controversy after the IRE reconsideration meets the threshold amount established annually by the Secretary. Section 423.630(a) allows a Part D enrollee to request judicial review if the AIC meets the threshold amount established annually by the Secretary.

II. Annual AIC Adjustments

A. AIC Adjustment Formula and AIC Adjustments

As previously noted, section 940 of the MMA requires that the AIC threshold amounts be adjusted annually, beginning in January of 2005, by the percentage increase in the medical care component of the consumer price index (CPI) for all urban consumers (U.S. city average) for July 2003 to the July of the preceding year involved and rounded to the nearest multiple of $10.

B. Calendar Year 2008

The AIC threshold amount for ALJ hearing requests will rise to $120 and the AIC threshold amount for judicial review will rise to $1,180 for the 2008 calendar year. These new amounts are based on the 18.2 percent increase in the medical care component of the CPI from July of 2003 to July of 2007. The CPI level was at 297.6 in July of 2003 and rose to 351.6 in July of 2007. This change accounted for the 18.2 percent increase. The AIC threshold amount for ALJ hearing requests changes to $118.16 based on the 18.2 percent increase. In accordance with section 940 of the MMA, this amount is rounded to the nearest multiple of $10. Therefore, the 2008 AIC threshold amount for ALJ hearings is $120. The AIC threshold amount for judicial review changes to $1,181.60 based on the 18.2 percent increase. This amount was rounded to the nearest multiple of $10, resulting in a 2008 AIC threshold amount of $1,180.

C. Summary Table of Adjustments in the AIC Threshold Amounts

In Table 1 below, we list the Calendar Year 2005 through 2008 threshold amounts.

TABLE 1.—AMOUNT-IN-CONTROVERSY THRESHOLD AMOUNTS

	CY 2005*	CY 2006	CY 2007	CY 2008
ALJ Hearing	$100	$110	$110	$120
Judicial Review	1050	1090	1130	1180

*CY—Calendar Year.

III. Collection of Information Requirements (If Applicable)

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Authority: Section of the Social Security Act (42 U.S.C.).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 19, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 07–6198 Filed 12–20–07; 1:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2007–N0002; 96300–1671–0000]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 28, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive,

Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Saint Louis Zoo, St. Louis, MO, PRT–170356.

The applicant requests a permit to import biological samples from Peruvian brown pelicans (*Pelecanus occidentalis thagus*) for the purpose of enhancement of the species through scientific research. This notification covers activities conducted by the applicant for a five-year period.

Applicant: Saint Louis Zoo, St. Louis, MO, PRT–168186.

The applicant requests a permit to import a captive born male Somali wild ass (*Equus africanus somalicus*) from Marwell Zoological Park in Hampshire, Great Britain for the purpose of enhancement of the survival of the species.

Applicant: Dennis Miller, Lowell, IN, PRT–164875.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Perry S. Tucker, Aiken, SC, PRT–165737.

The applicant requests a permit to import the sport-hunted trophy of one male cape mountain zebra (*Equus zebra zebra*) culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Leo C. Potter, Lake Geneva, WI, PRT–171622.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Frank A. Bove, Eighty Four, PA, PRT–170349.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Dated: December 14, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–25061 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2007–N0001; 96300–1671–0000]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by January 28, 2008.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Joseph A. Lukas, Ennis, MT, PRT–165271.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Norman J. Dozier, Merkel, TX, PRT–165270.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Kenneth P. Shemoski, Collegeville, PA, PRT–165945.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Jay Royce Jr., Mt. Enterprise, TX, PRT–165754.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: George Kishida Jr., Lodi, CA, PRT–164873.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gregory G. Liautaud, Trout Valley, IL, PRT–168791.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Gordon B. Bauer, New College of Florida, Saratoga, FL, PRT–837923.

The applicant requests to renew his permit to conduct auditory studies on up to 14 captive held Florida manatees (*Trichechus manatus*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Alan J. Stone, Honeoye, NY, PRT–169695.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Applicant: Thomas K. Joyce, Levittown, NY, PRT–170114.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Lester A. Pride, Milton, DE, PRT–170327.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal, noncommercial use.

Applicant: Daniel H. Smith, San Jose, CA, PRT–170341.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Kevin E. Johnson, Gaylord, MI, PRT–170600.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Nicolas A. DiJoseph, Cedarville, NJ, PRT–163763.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal, noncommercial use.

Dated: December 7, 2007.

Lisa J. Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E7–25064 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for Draft Recovery Crediting Guidance

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of a comment period on our draft recovery crediting guidance for an additional 60 days. We solicit comment from all interested parties on the contents of the draft guidance and the likely effects of its implementation.

DATES: Comments from all interested parties on the draft guidance document must be received on or before February 25, 2008.

ADDRESSES: To obtain a copy of the draft guidance: The draft guidance may be downloaded from our Web site at *http://www.fws.gov/endangered/policy/oct.2007.html.* To request a copy of the draft guidance, write to U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240, Attention: Recovery Crediting; or call 703/358–2171. You may also send an e-mail request to *recovery_crediting@fws.gov*. Specify whether you wish to receive a hard copy by U.S. mail or an electronic copy by e-mail.

To submit your comments: Send comments by any one of the following methods:

- *Mail:* U.S. Fish and Wildlife Service, 420 ARLSQ, Washington, DC 20240, Attention: Recovery Crediting.
- *Hand Delivery/Courier:* Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203–1601.
- *E-mail: recovery_crediting@fws.gov*. Include ''Recovery Crediting comments'' in the subject line of the message.
- *Fax:* 703/358–1735. Include ''Recovery Crediting comments'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information about the draft guidance to Dr. Richard L. Sayers; Division of Consultation, Habitat Conservation Planning, Recovery, and State Grants; U.S. Fish and Wildlife Service; 420 ARLSQ; Washington, DC 20240 (703/358–2171). Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: We published a notice of availability of draft recovery crediting guidance on November 2, 2007 (72 FR 62258). The original comment period ended on December 3, 2007. In response to requests from respondents, we are reopening comment for an additional 60 days. Initial comments submitted revealed a possible misunderstanding of our notice of availability. That notice included the entire guidance document; no additional information is available. We regret any impression we may have created that it was necessary to obtain an additional document in order to understand the guidance.

We will take into consideration the relevant comments, suggestions, or objections that we receive by the comment due date indicated above in **DATES**. These comments, suggestions, or objections, and any additional information we receive, may lead us to adopt final guidance that differs from the draft. We prefer to receive comments via e-mail, but you may submit your

comments by any method mentioned above in **ADDRESSES**.

Please submit e-mail comments to *recovery_crediting@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Recovery Crediting comments'' in the subject line of the message, preferably with your full name and return address in the body of your message. Please note that the Internet address will be closed when the public comment period ends.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531 et seq.).

Dated: December 14, 2007.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E7–24971 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–912–1640–PH; 08–08807; TAS: 14X1109]

Notice Public Meetings: Mojave-Southern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Mojave-Southern Great Basin Resource Advisory Council (RAC), will meet as indicated below.

DATES AND TIMES: The RAC will meet four times in Fiscal Year 2008: January 10 and 11 at the BLM Las Vegas Field Office at 4701 N. Torrey Pines Drive, Las Vegas, Nevada; May 1 and 2 at the BLM Las Vegas Field Office; June 26 and 27 at the BLM Ely Field Office at 702 N. Industrial Way, Ely, Nevada; and August 14 and 15 at the Caliente Youth Center, U.S. Highway 93 North, Caliente, Nevada. All meetings are open to the public. Meetings generally begin at 8 a.m. and will include a general public comment period, where the public may submit oral or written comments to the RAC. Each public comment period will begin at approximately 1 p.m. unless otherwise listed in each specific, final meeting agenda.

FOR FURTHER INFORMATION CONTACT: Chris Hanefeld, (775) 289–1842, E-mail: *chris_hanefeld@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: The 15-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 Nevada.

Topics for discussion at each meeting will include, but are not limited to:

- January 10 and 11, (Las Vegas)—Brownsfield Act, mine closures and renewable energy.
- May 1 and 2, (Las Vegas)—National Conservation Areas, Southern Nevada Public Land Management Act (SNPLMA) Round 9 and special legislation.
- June 26 and 27, (Ely)—abandoned mines, groundwater development and wilderness.
- August 14 and 15, (Caliente)—Healthy Lands Initiative and recreation.

Managers' reports of field office activities will be given at each meeting. The council may raise other topics at any of the four planned meetings.

Final agendas with any additions/corrections to agenda topics, locations, field trips and meeting times will be sent to the media at least 14 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, should contact Chris Hanefeld no later than 10 days prior to each meeting.

Dated: December 18, 2007.

John Ruhs,

Ely Field Office Manager.

[FR Doc. E7–25024 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meetings, Southwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Correction.

SUMMARY: Bureau of Land Management published notice in the **Federal Register,** Dec. 13, 2007, listing an incorrect meeting date.

FOR FURTHER INFORMATION CONTACT: Melodie Lloyd, Public Affairs Specialist, (970) 244–3097.

Correction: In the **Federal Register** of Dec. 13, 2007, in FR Doc. E7–24051, on page 70890, second paragraph, under the heading of **DATES,** correct the May meeting date. It should read:

The Southwest Colorado RAC meetings will be held February 8, 2008; May 30, 2008; August 8, 2008; and November 14, 2008.

Dated: December 13, 2007.

Dated: December 19, 2007.

Barb Sharrow,

Uncompahgre Field Office Manager, Designated Federal Officer, Southwest Colorado RAC.

[FR Doc. E7–25026 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–0777–XX]

Notice of Public Meeting: Northeast 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) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, Feb. 7–8, 2008, in the Conference Room of the Bureau of Land Management Eagle Lake Field Office, Susanville, CA. The meeting runs from 1 to 5 p.m. Feb. 7 and from 8 a.m. to noon on Feb. 8. Time for public comment is reserved at 11 a.m. on Friday, Feb. 8.

FOR FURTHER INFORMATION CONTACT: Tim Burke, BLM Alturas Field Office manager, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-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 Northeast California and the northwest corner of Nevada. At this meeting, agenda topics will include an overview of proposals for wind energy development on BLM-managed public lands in northeast California, an update on management of sage-grouse habitat, a status report on field office resource management plans and status reports from the Alturas, Eagle Land and Surprise field offices. 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: December 19, 2007.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. E7–25034 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–5870–EU; N–82413; 8–08807; TAS: 14X5260]

Notice of Realty Action: Segregation for a Direct Sale of Public Land in Lander County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: A parcel of public land of approximately 2.65 acres in Lander County, Nevada is being proposed for sale under the provisions of section 203 of the Federal Land Policy Management Act of 1976 (FLPMA) (43 U.S.C. 1713), at no less than the appraised fair market value to resolve unauthorized use of the public lands.

DATES: Interested parties may submit written comments to the Bureau of Land Management (BLM) regarding the proposed sale of the lands until February 11, 2008.

ADDRESSES: Mail written comments to the BLM Field Manager, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lane, (775) 635–4168.

SUPPLEMENTARY INFORMATION: The following-described public land in Lander County, Nevada, is being proposed for sale under the authority of section 203 of the FLPMA: Mount Diablo Meridian, Nevada.

T. 19 N., R. 44 E.,

Sec. 19, lots 28 and 29.

The area described contains 2.65 acres, more or less.

The 1986 BLM Shoshone-Eureka Resource Management Plan identifies this parcel of public land as suitable for disposal. The sale will be subject to the provisions of FLPMA and applicable regulations and will contain the reservation to the United States of a right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945). Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to section 209 of the Act of October 21, 1976 (43 U.S.C. 1719) will be analyzed during processing of the proposed sale.

On December 27, 2008, the above described land will be segregated from appropriation under the public land laws, including the mining and mineral laws, except the sale provisions of the FLPMA. Upon publication of this Notice of Realty Action and until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or December 27, 2009, unless extended by the BLM Nevada State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

For a period until February 11, 2008, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land to the BLM Field Manager at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice of Realty Action. Only written comments submitted by postal service or overnight mail to the BLM Field Manager will be considered properly filed. Facsimiles, telephone calls, and electronic mails are unacceptable means of notification. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish to have your name or address withheld from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Any determination by the BLM to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. Such requests will be honored to the extent allowed by law. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by individuals in their capacity as an official or representative of a business or organization.

Any adverse comments will be reviewed by the BLM Nevada State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Dated: December, 18, 2007.

Gerald Smith,

Acting Battle Mountain Field Office Manager.

[FR Doc. 07–6196 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–956–1420–BJ–TRST; Group No. 189, Minnesota]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 148 N., R. 36 W.

The plat of survey represents the dependent resurvey of a portion of the subdivisional lines; and the reestablishment of a portion of the record meanders of West Four Legged Lake, Township 148 North, Range 36 West, of the Fifth Principal Meridian, in the State of Minnesota, and was accepted September 21, 2007.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: December 13, 2007.

Jerry L. Wahl,

Chief Cadastral Surveyor.

[FR Doc. E7–25019 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1430–ET; CACA 46634]

Notice of Proposed Withdrawal and Transfer of Jurisdiction, and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw approximately 472 acres of Federal lands from surface entry and mining and transfer jurisdiction to the U.S. Fish and Wildlife Service (FWS) to be managed as part of the Sacramento River National Wildlife Refuge (Refuge). This notice segregates the lands for up to 2 years from surface entry and mining while various studies and analyses are made to support a final decision on the withdrawal application. The lands will remain open to mineral and geothermal leasing and mineral material sales.

DATES: Comments should be received on or before March 26, 2008.

ADDRESSES: Comments should be sent to Stephen Dyer, Realty Officer, California/Nevada Realty Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–1832, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Karen Bierley-Hand, 916–414–6448 or at the above address.

SUPPLEMENTARY INFORMATION: The applicant is the FWS at the address stated above. The petition/application requests the Secretary of the Interior to withdraw, subject to valid existing rights the following described Federal lands from settlement, sale, location or entry under the general land laws, including the United States mining laws, but not the mineral leasing or mineral materials laws, and transfer jurisdiction to the FWS:

Mount Diablo Meridian, California

Foster Island

T. 23 N., R. 2 W.,
Sec. 11, lots 4 and 5;
Sec. 14, lots 1 to 5, inclusive;
Sec. 15, lots 1 to 5, inclusive.

The area described contains 221.89 acres in Tehama County.

Todd Island

A portion of Lot 40 of Rancho El Primer Canon or Rio de los Berrendos Land Grant, in Tehama County, California, and in T. 26 N., R. 2 W., MDM, more particularly described as follows: Parcels one, two, three, and four, described by metes and bounds, in a Corporation Grant Deed recorded in Book 602 at Page 620 of the Official Records of Tehama County, California on September 11, 1972. The area described contains approximately 250 acres in Tehama County. The two islands aggregate approximately 471.89 acres in Tehama County.

The FWS's petition/application has been approved by the Assistant Secretary, Land and Minerals Management, therefore, it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The lands proposed for withdrawal consist of isolated tracts of public land within the boundary of the Sacramento River National Wildlife Refuge (Refuge). The lands would be withdrawn to protect riparian habitat along the Sacramento River, which is critically important for fish, migratory birds, plants, and river system health, and to transfer jurisdiction to the FWS, so it could manage the lands under the authority of the Fish and Wildlife Act of 1956 (16 U.S.C. 742aa-742j-2), as amended, and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), as amended.

The use of a right-of-way, interagency agreement, cooperative agreement, or surface management under 43 CFR Part 3809 regulations would not adequately constrain non-discretionary uses that could irrevocably affect the use of the lands for a wildlife refuge managed by the FWS.

There are no suitable alternative sites since the lands described herein contain the natural and biological resources of interest for protection.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to Stephen Dyer, Realty Officer, California/Nevada Realty Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–1832, Sacramento, California 95825.

Comments, including names and street addresses for respondents, will be available for public review at Bureau of Land Management's (BLM) California State Office, 2800 Cottage Way, Suite W–1834, Sacramento, California 95825–1886, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request no later than March 26, 2008. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from December 27, 2007, the Federal lands and minerals will be segregated as specified above unless the application is denied or

canceled or the withdrawal is approved prior to that date.

During the segregative period, BLM may, after consulting with the FWS, allow uses of a temporary nature that are compatible with the purposes for which the Refuge was established.

(Authority: 43 CFR 2310.3–1)

Dated: November 26, 2007.

Robert M. Doyel,

Chief, Branch of Lands Management (CA–930).

[FR Doc. E7–25110 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice and Agenda for Meeting of the Royalty Policy Committee

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the January 17, 2008, meeting of the Royalty Policy Committee (RPC). Agenda items for the meeting of the RPC will include remarks from the Director, MMS, and the Associate Director, Minerals Revenue Management (MRM), as well as updates from the Subcommittee on Royalty Management and the Coal and Indian Oil Valuation Subcommittees. The RPC membership includes representation from states, Indian Tribes, various mineral interests, the public-at-large (with knowledge and interest in royalty issues), and other Federal departments.

DATES: Thursday, January 17, 2008, from 8:30 a.m. to 4:30 p.m., Mountain Standard Time.

ADDRESSES: The meeting will be held at the Golden Hotel, 800 11th Street, Golden, Colorado, telephone number 303–279–0100 or 1–877–424–6423.

FOR FURTHER INFORMATION CONTACT: Gina Dan, Minerals Revenue Management, Minerals Management Service; PO Box 25165, MS 300B2, Denver, Colorado 80225–0165; telephone number (303) 231–3392, fax number (303) 231–3780; e-mail *gina.dan@mms.gov*.

SUPPLEMENTARY INFORMATION: The RPC provides advice to the Secretary and top Department officials on minerals policy, operational issues, and the performance of discretionary functions under the laws governing the Department's management of Federal and Indian mineral leases and revenues. The RPC reviews and comments on revenue management and other mineral-related policies and provides a forum to convey views representative of mineral lessees, operators, revenue payors, revenue recipients, governmental agencies, and the interested public. The location and dates of future meetings will be published in the **Federal Register** and posted on our Internet site at *http://www.mms.gov/mmab/RoyaltyPolicyCommittee/rpc_homepage.htm*. Meetings are open to the public without advanced registration on a space-available basis. The public may make statements during the meetings, to the extent time permits, and file written statements with the RPC for its consideration. Copies of these written statements should be submitted to Ms. Dan by January 8, 2008. Transcripts of this meeting will be available for public inspection and copying at our offices in Building 85 on the Denver Federal Center in Lakewood, Colorado. The minutes will also be posted on our Internet site.

These meetings are conducted under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 1) and the Office of Management and Budget (Circular No. A–63, revised).

Dated: December 19, 2007.

Lucy Querques Denett,

Associate Director, Minerals Revenue Management.

[FR Doc. E7–25081 Filed 12–26–07; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

United States Section; Notice of Availability of a Final Environmental Assessment and Final Finding of No Significant Impact for Flood Control Improvements to the Rio Grande Canalization Project Levee System, El Paso County, TX, and Sierra and Dõna Ana Counties, NM

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of Final Environmental Assessment (EA) and Final Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508), and the United States Section, International Boundary and Water Commission's (USIBWC) Operational Procedures for Implementing Section 102 of NEPA, published in the **Federal Register** September 2, 1981, (46 FR 44083); the USIBWC hereby gives notice of availability of the Final Environmental Assessment and FONSI for Flood Control Improvements to the Rio Grande Canalization Project located within El Paso County, Texas and Sierra and Doña Ana Counties, New Mexico.

FOR FURTHER INFORMATION CONTACT: Daniel Borunda, Environmental Protection Specialist, Environmental Management Division, United States Section, International Boundary and Water Commission; 4171 N. Mesa, C–100; El Paso, Texas 79902. Telephone: (915) 832–4767; e-mail: *danielborunda@ibwc.state.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande Canalization Project was authorized by the Act of June 4, 1936, 49 Stat. 1463, Public Law No. 648 to facilitate compliance with the Convention concluded with Mexico on May 21, 1906 (TS 455), providing for the equitable division of waters of the Rio Grande, and to properly regulate and control the water supply for use in the two countries. The Act authorized the construction, operation, and maintenance of the project in accordance with the plan in the Engineering Report of December 14, 1935.

Proposed Action

The Proposed Action would increase the flood containment capacity of the Rio Grande Canalization Project Levee System by raising the elevation of a number of levee segments for improved flood protection. Fill material, obtained from commercial sources would be added to the existing levee to meet the 3 foot freeboard criterion. Typical height increases in improvement areas would range from 1 to 4 feet. Improvements greater than 2 feet would require expansion of the existing levee footprint. In some locations, up to 4 feet of fill material would be added, extending the levee footprint up to a maximum of 24 feet from the current toe of the levee. This expansion would take place along the approximately 20-foot service corridor currently utilized for levee maintenance, inside the maintained floodway, and entirely within the flood control project right-of-way. In some instances, adjustments in levee slope would be made to eliminate the need for levee footprint expansion, when required by engineering considerations or for protection of resources.

Alternatives to the Proposed Action

A No Action Alternative was evaluated for the flood control improvements to the Rio Grande Canalization Project Levee System. This alternative would retain the existing configuration of the system, and the current level of protection currently associated with this system. Under severe storm events, current containment capacity may be insufficient to fully control Rio Grande flooding, with risks to personal safety and potential property damage.

Summary of Findings

Pursuant to NEPA guidance (40 Code of Federal Regulations 1500–1508), The President's Council on Environmental Quality issued regulations for NEPA implementation which included provisions for both the content and procedural aspects of the required Environmental Assessment. The USIBWC completed an EA of the potential environmental consequences of raising segments of the Rio Grande Canalization Project Levee System to meet current requirements for flood control. The EA, which supports the Finding of No Significant Impact, evaluated the Proposed Action and No Action Alternative.

Levee System Evaluation

No Action Alternative

The No Action Alternative was evaluated as the single alternative action to the Proposed Action. The No Action Alternative would retain the current configuration of the Rio Grande Rectification Project Levee System, with no impacts to biological and cultural resources, water resources, land use, community resources, and environmental health issues. In terms of flood protection, however, current containment capacity under the No Action Alternative may be insufficient to fully control Rio Grande flooding under severe storm events, with associated risks to personal safety and property. The USIBWC will not be able to certify the levee system segments, that are being targeted for improvements, as meeting Federal Emergency Management Act (FEMA) requirements.

Proposed Action

Biological Resources

Improvements to the levee system would entail clearing and placement of fill material on the existing levees. Vegetation would be impacted along the levee slopes and at locations where levee footprint expansion is required (fill greater than 2 feet). Levee expansion, if required, would take place along the current levee service corridor, limiting vegetation removal to low quality invasive plant species along the levee slopes. Avoidance measures would be implemented to protect resources, as needed.

No significant effects are anticipated on wildlife habitat in the vicinity of the levee system, including potential habitat for threatened and endangered species. In areas requiring levee footprint expansion, no riparian woodland communities would be impacted; impacts on vegetation would be limited to low quality vegetation along the levee slopes, of very limited value as wildlife habitat.

Cultural Resources

Improvements to the levee system are not expected to adversely affect known archaeological or historical resources. Typically, placement of fill material over the existing levee would not expand the levee footprint; when levee footprint expansion is needed, expansion would take place within the service corridor currently used for levee maintenance.

Water Resources

Improvements to the levee system would increase flood containment capacity to control the design flood event with a negligible increase in water surface elevation. Levee footprint expansion would not affect water resources.

Land Use

Levee improvements would occur on existing levee structures. Footprint levee expansion, where required, would take place completely within the existing levee footprint, including the existing service corridor, and remain within USIBWC right-of-way (ROW). There is minimal potential for impacts to urban or agricultural lands since the majority of the work will take place on USIBWC ROW. The majority of the existing river trails would not be impacted, except for those segments that have been constructed on top of the levee and are within the areas targeted for improvements.

Community Resources

In terms of socioeconomic resources, the influx of federal funds into El Paso, Doña Ana, and Sierra Counties from the levee improvement project would have a positive but minor local economic impact. No adverse impacts to disproportionately high minority and low-income populations were identified for construction activities. Moderate utilization of public roads is required during construction; a temporary increase in access road use would be required for equipment mobilization and material shipments.

Environmental Health Issues

Improvements to the levee system would have minimal impact to air quality through construction activities. Air emissions during construction would be limited to heavy equipment operation during normal working hours. There would be a moderate increase in ambient noise levels due to construction activities. No long-term and regular exposure is expected above noise threshold values.

Best Management Practices

When warranted due to engineering considerations, or for protection of biological or cultural resources, the need for levee footprint expansion would be eliminated by levee slope adjustment. Best management practices during construction would include use of sediment barriers and soil wetting to minimize erosion and dust. To protect riparian woody vegetation, avoidance measures will be implemented. To protect wildlife, construction activities would be scheduled to occur, to the extent possible, outside the March to August bird migratory season.

Availability

Single hard copies of the Final Environmental Assessment and Finding of No Significant Impact may be obtained by request at the above address. Electronic copies may also be obtained from the USIBWC Home Page at *http://www.ibwc.state.gov*.

Dated: December 19, 2007.

Susan E. Daniel,

General Counsel.

[FR Doc. E7–25118 Filed 12–26–07; 8:45 am]

BILLING CODE 7010–01–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Proposed Collection; National Survey of Youth in Custody.

The Department of Justice (DOJ), Bureau of Justice Statistics, has submitted 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 72, Number 200, page 58895 on October 17, 2007, allowing for a sixty day period.

The purpose of this notice is to allow for an additional 30 days for public comment until January 28, 2008. 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 Allen J. Beck, PhD, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone 202–616–3277).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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 Collection

(1) *Type of Information Collection:* New data collection.

(2) *Title of the Form/Collection:* National Survey of Youth in Custody.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form numbers not available at this time. The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for the collection.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, Local, or Tribal Government. Other: Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to develop surveys to produce estimates for the incidence and prevalence of sexual assault within juvenile correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 16,594 respondents will spend approximately 30 minutes on average responding to the survey.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 18,441 total burden hours associated with this collection (including obtaining parental consent, administrative records, and roster processing).

If additional information is required, contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: December 20, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. E7–25060 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on November 22, 2007, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import Phenylacetone for use as a precursor in the manufacture of amphetamines only.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 28, 2008.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25055 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR),

this is notice that on November 22, 2007, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Phenylacetone (8501)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than February 25, 2008.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25111 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II and prior to issuing a registration under 21 U.S.C. 952(a)(2) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations (CFR), 1301.34(a), this is notice that on October 19, 2007, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of a substance controlled under the basic class of Cocaine (9041), a schedule II controlled substance.

The company plans to import small quantities of ioflupane, in the form of three separate analogues of Cocaine, to validate production and QC systems; for a reference standard; and for producing material for future investigational new drug (IND) submission.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic class of controlled substance may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than January 28, 2008.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substances in schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25042 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 20, 2007, GE Healthcare, 3350 North Ridge Avenue, Arlington Heights, Illinois 60004–1412, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of a substance controlled under the basic class of Cocaine (9041), a schedule II controlled substance.

The company plans to manufacture a radioactive product used in diagnostic imaging in the diagnosis of Parkinson's Disease and for manufacture in bulk for investigational new drug (IND) submission and clinical trials.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than February 25, 2008.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration.

[FR Doc. E7–25051 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 31, 2007, Innovacon, Inc., 4106 Sorrento Valley Boulevard, San Diego, California 92121, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370).	I
3,4–Methylenedioxymethamphetamine (MDMA) (7405).	I
Heroin (9200)	I
Cocaine (9041)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II

The company plans to utilize small quantities of controlled substances to produce drugs of abuse tests.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 25, 2008.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25053 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on November 7, 2007, Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Staw (9670).	II

The company plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

No comments, objections, or requests for any hearings will be accepted on any application for registration or re-registration to import crude opium, poppy straw, concentrate of poppy straw, or coca leaves.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedule I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative/ODL, Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative/ODL, 8701 Morrissette Drive, Springfield, VA 22152; and must be filed no later than January 28, 2008.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR § 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: December 18, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25043 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 7, 2007, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370).	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administrator, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 25, 2008.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25049 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer Of Controlled Substances; Notice Of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 6, 2007, Noramco Inc., Division of Ortho, McNeil, Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Codeine-N-oxide (9053)	I
Morphine-N-oxide (9307)	I
Dihydromorphine (9145)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620).	II
Opium tincture (9630)	II
Opium, powdered (9639)	II
Opium, granulated (9640)	II
Poppy Staw (9650)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to bulk manufacture the above listed controlled substances for sale and distribution to manufacturers for product development and formulation.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administrator, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 25, 2008.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25045 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

This is notice that on November 6, 2007, Noramco Inc., 500 Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745), all applicants for registration to import a basic class of any controlled substances in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25054 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 12, 2007, Orasure Technologies, Inc., Lehigh University, Seeley G Mudd-Building 6, 220 East First Street, Bethlehem, Pennsylvania 18015, made application by renewal to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (THC) (7370).	I
4–Methoxyamphetamine (7411).	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Cocaine (9041)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances in bulk to manufacture controlled substance derivatives. These derivatives will be used in diagnostic products created specifically for internal use only.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 25, 2008.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25048 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 15, 2007, Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Cocaine (9041)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers for research purposes.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), Washington, DC 20537, or any being sent via express mail should be sent to Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than February 25, 2008.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25114 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–306E]

Established Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2008

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of Assessment of Annual Needs for 2008.

SUMMARY: This notice establishes the initial year 2008 Assessment of Annual Needs for certain List I chemicals in accordance with the Combat Methamphetamine Epidemic Act of 2005 (CMEA), enacted on March 9, 2006.

EFFECTIVE DATE: December 27, 2007.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

Section 713 of the Combat Methamphetamine Epidemic Act of 2005 (CMEA) (Title VII of Pub. L. 109–177) amended section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requiring that the Attorney General establish quotas to provide for the annual needs for ephedrine, pseudoephedrine, and phenylpropanolamine. Section 715 of the CMEA amended 21 U.S.C. 952 by adding ephedrine, pseudoephedrine and phenylpropanolamine to the existing language concerning importation of controlled substances.

The 2008 Assessment of Annual Needs represents those quantities of ephedrine, pseudoephedrine, and phenylpropanolamine which may be manufactured domestically and/or imported into the United States in 2008 to provide adequate supplies of each chemical for: The estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks.

The responsibility for establishing the assessment has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

On September 20, 2007, a notice entitled, ''Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2008: Proposed'' was published in the **Federal Register** (72 FR 53911). This notice proposed the initial 2008 Assessment of Annual Needs for ephedrine (for sale), ephedrine (for conversion), pseudoephedrine (for sale), phenylpropanolamine (for sale) and phenylpropanolamine (for conversion). All interested persons were invited to comment on or object to the proposed assessments on or before October 11, 2007.

Comments Received

DEA did not receive any comments or objections from the more than 1,050 DEA-registered manufacturers and importers directly impacted by this notice. However, DEA did receive one comment from a law firm representing a DEA-registered distributor of nonprescription (over-the-counter (OTC)) products containing ephedrine, pseudoephedrine, or phenylpropanolamine. When sold at retail, these products are referred to as scheduled listed chemical products.[1] This same commenter commented to DEA's proposed 2007 Assessment of Annual Needs which was published in the **Federal Register** on October 19, 2006 (71 FR 61801). The comment submitted to this notice is virtually identical to that previously considered by DEA in that the comment included the same reports. However, DEA notes that the current comment includes one new report and one new letter. The new report was prepared by an economist who was retained by the DEA-registered distributor being represented by the law firm. The letter was prepared by the statistician whose report was submitted as part of this commenter's comments to the 2007 proposed assessment.

The commenter's comments related to DEA's proposed assessments for ephedrine (for sale) and pseudoephedrine (for sale). These assessments are discussed below within

[1] Title 21 U.S.C. 802(45) defines a scheduled listed chemical product as ''a product that contains ephedrine, pseudoephedrine, or phenylpropanolamine; and * * * may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act as a nonprescription drug.''

the context of the comment received. As DEA did not receive any comments on its proposed Assessment of Annual Needs for ephedrine (for conversion), phenylpropanolamine (for conversion), and phenylpropanolamine (for sale), DEA is finalizing these values as proposed.

Comments Regarding DEA's Proposed Assessments for Ephedrine (For Sale) and Pseudoephedrine (For Sale)

The commenter indicated its belief that the proposed ephedrine assessment was insufficient to meet market demands for ephedrine-containing OTC products. The commenter also questioned the sufficiency of the assessment for pseudoephedrine. The commenter included in its comment a report from a statistician, a report from an economist, and a report from a physician to assess the impact of the proposed quota on medical, industrial, scientific and other legitimate demand for the two chemicals. The commenter's comments, and DEA's responses, are discussed below.

Economic Impact Analysis and Impact on Small Businesses

The commenter claimed that DEA underestimated the economic impact of the proposed quota limits. The commenter also claimed that DEA failed to consider the quota impact on small businesses. To support its claims, the commenter provided a new report from an economist. The commenter claimed that ''DEA has violated statutory requirements by relying on inaccurate and incomplete data to produce its economic impact.'' Based on the new report, the commenter asserted that the economic impact of DEA's proposal ''* * * will be a reduction of revenues of $2 billion dollars per year (from the effective ban on ephedrine product sales) and will result in the termination of 25–50 American workers' jobs per firm.''

DEA Response: The economic information submitted by the commenter in support of its claims is flawed. The commenter has made the fundamental mistake of assuming that its sales are representative of the industry as a whole, an assumption which broader industry numbers do not support. In addition, the commenter has overstated the number of convenience stores that are selling these products, which further magnifies the errors in its analyses. The commenter's estimates of the convenience store market for scheduled listed chemical products are shown in Table 1.

TABLE 1.—COMMENTER'S ESTIMATES OF ANNUAL VALUE OF THE EPHEDRINE MARKET

	Lower bound	Upper bound
Ephedrine	$166 million	$237 million.
Number of Convenience Stores Selling the Products*.	72,500.	

* Commenter did not provide an upper bound.

These numbers are at serious variance with the most comprehensive data available on sales of nonprescription medications (OTC drugs) at convenience and other nonconventional outlets and with estimates of the total size of the ephedrine market; nonconventional outlets include convenience stores, gas stations with convenience stores, gas stations without convenience stores, liquor stores, and novelty and gift stores. Conventional outlets include grocery stores, drug stores, discount stores, superstores and warehouse stores, and general merchandise stores. Internet and mail order stores are a third category. Table 2 presents data on the value of nonprescription medication sales at various retail sectors based on the 2002 Economic Census of the Retail Trade, Product Line, the most recent Census data. The table includes the number of establishments in the sector, the number of those establishments that sell nonprescription drugs, the value of nonprescription sales in the sector, and the value of all sales in drug, health, and beauty aids. Nonprescription drugs are a subset of the larger category; the value of the broader category is listed because it was used to derive an estimate of sales of nonprescription drugs for sectors whose sales the Census did not disaggregate. The final column lists the percentage of an establishment's sales that the Census reported nonprescription drugs represent for those establishments that sell the products.

TABLE 2.—CENSUS DATA ON PRODUCT LINE SALES BY SECTOR

[Thousand $]

Retail sector	Number of establishments	Number of establishments w/OTC drugs	OTC drug sales 2002	All drug, health, and beauty aids	OTC drugs as % of all sales
Grocery	66,150	26,029	$2,670,914	$35,172,224	1.3
Convenience Store	29,212	12,399	133,263	443,116	1.6
Specialty Food	24,485	194	2,551	24,045	1.6
Liquor Store	28,957	1,496	19,344	89,541	2
Drug and Personal Care	81,797	36,797	8,348,218	140,759,601	4.7
Gas Station with Convenience Store	93,691	*24,597	*248,082	824,904	***<0.4
Gas Station	27,755	*685	*7,488	70,577	***<0.1
Discount Store	5,650	2,079	1,439,227	22,025,430	1.1
Superstore + Club	2,912	2,758	2,270,530	21,066,107	1.2
Other general merchandise	28,546	11,840	167,951	3,357,825	1.2
Gift and novelty	35,795	*1,686	*47,973	159,515	***<1
Electronic and Mail Order	15,910	250	565,305	29,618,519	13
Total	440,860	120,810	15,920,846	253,611,404	.....

TABLE 2.—CENSUS DATA ON PRODUCT LINE SALES BY SECTOR—Continued

[Thousand $]

Retail sector	Number of establish-ments	Number of establish-ments w/OTC drugs	OTC drug sales 2002	All drug, health, and beauty aids	OTC drugs as % of all sales
All Nonconventional **	215,410	40,863	456,150	1,587,653	.....

* OTC sales not listed separately in Census data; OTC value estimated based on percentage of OTC to all drug, health, and beauty products sold at regular convenience stores (i.e., convenience stores that are not part of gas stations). Number of stores estimated using ratio of regular convenience stores that carry OTC to those that cover all drug, health, and beauty aids.

** Nonconventional outlets include convenience stores, gas stations with and without convenience stores, liquor stores, and novelty stores.

*** Percentage is the percentage that all drug, health, and beauty aid products sales represent of total sales; the nonprescription medications are a subset of these sales.

The nonconventional outlets—convenience stores, gas stations with and without convenience stores, novelty stores, and liquor stores—make up only about three percent of the total market for nonprescription drugs. Using A.C. Nielsen data [2] on the growth of the OTC market from 2002 to 2006 and the Census data on the value of the market, the annual value of nonprescription drug sales for nonconventional outlets in 2006 is estimated to be about $532 million and the total market for all retail sectors is about $18 billion.

Nonprescription drugs contain a wide range of medications. Data from the Consumer Healthcare Products Association and A.C. Nielsen indicate that cough and cold medications make up about 27 percent to 40 percent of the total OTC market, or about $4.8 billion to $7.3 billion in 2006 (other major groups include analgesics and heartburn medications).[3] The cough and cold medications include a variety of drugs, from cough syrups to antihistamines. Because there is no reason to believe that nonconventional outlets selling nonprescription drugs sell more or less cough or cold medications in proportion to other nonprescription drugs than any other retail outlet, it is reasonable to estimate that the total value of their sales for all cough and cold drugs in 2006 was approximately $142 million to $215 million (3 percent of the total), or somewhat less than the commenter estimated the market for ephedrine alone to be.

Ephedrine and pseudoephedrine constitute a subset of the cough and cold medication market. DEA has not been able to obtain any data on what percentage of the market they represent. In 2006, estimates of the retail value of products containing one of the chemicals that DEA and the Food and Drug Administration obtained from market researchers ranged from $500 million to $1.5 billion, but the estimates involved considerable uncertainty; the estimates were also based on the market before many manufacturers began to market new products that substituted phenylephrine for pseudoephedrine. Data from market research firm Information Resources, Inc. on the top 200 over-the-counter brands (including private label products) sold through grocery stores, drug stores, and mass market stores in 2006 indicate that at least 65 percent of the cough and cold medications do not contain pseudoephedrine; if private label products contain pseudoephedrine at the same rate as brand name products, at least 78 percent of the cough and cold medication sales do not contain pseudoephedrine.[4] No product in the top 200 appears to contain ephedrine; the sales value of the 200th product was about $20.4 million.

The cough and cold medication sector, as defined by A.C. Nielsen, includes a wide variety of tablets, gel capsules, liquids, and cough drops, many of which do not contain either ephedrine or pseudoephedrine. Even if the entire market sector consisted of scheduled listed chemical products, the estimates the commenter submitted and shown in Table 1 are clearly overstated.

Data developed by IMS Health Government Solutions for the Assessment of Annual Needs for 2007, [5] which used a range of industry sources, plus data from a confidential source, indicate that the ephedrine market is at most between 2 percent and 6.6 percent the size of the pseudoephedrine market (i.e., the value of sales of ephedrine products represent 2 percent to 6.6 percent of the value of sales of pseudoephedrine products). In a comment on a previous rule,[6] the commenter submitted estimates that implied that ephedrine sales at convenience stores to which it distributes were about 20 percent of the value of pseudoephedrine sales at convenience stores to which it distributes. Table 3 shows the commenter's implied size of the pseudoephedrine market at convenience stores.

[2] A.C. Nielsen data from Consumer Healthcare Products Association *(http://www.chpainfo.org/ChpaPortal/PressRoom/Statistics/OTCSalesbyCategory.htm)*.

[3] The A.C. Nielsen data were used to estimate only a ratio of the cough and cold medication to the total OTC medication market. The total value of the market was estimated based on the 2002 Census data inflated to 2006 dollars. The Nielsen data do not include Wal-Mart and may not include many convenience stores. In addition, the Nielsen data include a number of product lines that either are not nonprescription drugs (e.g., toothpaste) or mix nonprescription drugs and other products (e.g., first aid ointments and bandaids). The lower value of the range is based on inclusion of every OTC product line listed in the Nielsen data except toothpaste and sunscreens. The higher value excludes eye products, first aid, foot preparations, oral care, sun products, and undefined ''others.'' Note that the higher value will overstate the value of the cough and cold medication market because it includes some non-drug products, such as cough drops.

[4] Data available at *http://www.drugtopics.com*. Note that the data probably do not cover convenience stores and other nonconventional outlets. Even the lower estimate of the pseudoephedrine part of the market is overstated because it includes sales values for product lines that contain 4 to more than 20 products, only one of which contains pseudoephedrine.

[5] As discussed in DEA's October 19, 2006, ''Assessment of Annual Needs for the List I Chemicals Ephedrine, Pseudoephedrine, and Phenylpropanolamine for 2007: Proposed'' (71 FR 61801) and a subsequent notice establishing the assessment for 2007 (72 FR 53908, September 20, 2007), since the manufacture and importation of ephedrine, pseudoephedrine, and phenylpropanolamine were not previously regulated through the establishment of an assessment of annual needs, DEA obtained assistance from a private independent contractor, IMS Health Government Solutions, to develop the initial estimate of the medical needs of the United States of ephedrine and pseudoephedrine. IMS provided DEA with two reports: ''Methodology Used in Developing Preliminary Estimates of Ephedrine and Pseudoephedrine 2005 Legitimate Use'' (and ''2005 Ephedrine/Pseudoephedrine Legitimate Medical Use Methodology and Final Report'' (July 3, 2007). Both reports may be found at *http://www.deadiversion.usdoj.gov/meth/index.html*.

[6] Comment to ''Import and Production Quotas for Certain List I Chemicals'' (72 FR 37439, July 10, 2007) [Docket No. DEA–293, RIN 1117–AB08] available at *http://www.regulations.gov*.

TABLE 3.—COMMENTER'S IMPLIED VALUE OF THE PSEUDOEPHEDRINE (PSE) SALES AT CONVENIENCE STORES

Ephedrine/PSE	Implied PSE market (ephedrine market = $166m)	Implied PSE market (ephedrine market = $237m)
Ephedrine = 2% of PSE Sales	$8.3 billion	$11.85 billion.
Ephedrine = 6.60% of PSE Sales	$2.5 billion	$3.6 billion.
Ephedrine = 20% of PSE Sales	$830 million	$1.185 billion.

Because convenience store sales of these products represent only 3 percent of all sales, even using the lowest number the commenter provided (ephedrine sales of $166 million representing 20 percent of pseudoephedrine sales), the commenter's estimates produce an implied value of the total ephedrine and pseudoephedrine nonprescription market across all retail sectors of $33 billion, or between 4.5 and 7 times the actual retail market for all cough and cold medications and almost twice the size of the entire nonprescription drug retail market of $18 billion.

The commenter claimed that the ephedrine quota, which no importer or manufacturer objected to, would lead to job losses. Even the commenter's own overestimates indicate that job losses are highly improbable. If all ephedrine products were removed from the market at these outlets, which is unlikely, the daily sales loss would be very low even at the commenter's exaggerated levels. At more realistic market values, the daily losses would be trivial. Table 4 presents the average value of daily sales using the commenter's estimates of the value of ephedrine sales ($166 million to $237 million) and the number of convenience stores selling the products based on the commenter's estimate (72,500), Census data (41,000), and DEA data (28,000). The table also presents the more reasonable level of daily sales based on an estimate of the value of ephedrine sales at nonconventional outlets ($24 to $36 million). The more reasonable estimates may still be overestimates because they are based on a series of conservative assumptions: That nonconventional outlets sell 3 percent of nonprescription drugs or $532 million (Census data), that cough and cold medications represent 27 to 40 percent of those sales (Consumer Healthcare Products Association and A.C. Nielsen data) or $142 million to $215 million, and that ephedrine products represent 20 percent of those sales (commenter's implied estimate assuming that only ephedrine and pseudoephedrine products are sold in this category) or $24 million to $36 million.

TABLE 4.—ESTIMATED DAILY SALES OF EPHEDRINE-CONTAINING PRODUCTS AT CONVENIENCE STORES

Source of No. of outlet estimate	Estimate No. of outlets	Estimated total value of ephedrine nonconventional outlet market	Daily sales of ephedrine products
Commenter	72,500	$166–$237 million ephedrine	$6.27–$8.96
Census	41,000		11.09–15.84
DEA Estimate	[7] 28,000		16.24–23.19
Commenter	72,500	24–36 million ephedrine	0.89–1.36
Census	41,000		1.58–2.40
DEA Estimate	28,000		2.32–3.51

It is not reasonable to think that this level of sales loss, which represents considerably less than the cost of a single car buying a tank of gasoline, would affect employment as the commenter claimed. With about 28,000 convenience stores continuing to sell these products, there is no reason to think that all or even most such sales will be lost. As DEA stated in its Interim Final Rule implementing the procedures for import and production quotas for ephedrine, pseudoephedrine, and phenylpropanolamine (72 FR 37439, July 10, 2007), its concern is with a limited number of high dosage unit products that are sold almost exclusively through nonconventional outlets and the Internet, not with low dosage unit products that are sold through both conventional and nonconventional outlets.

The commenter's claim that eliminating sales of ephedrine products at convenience stores, which neither DEA's Interim Final Rule establishing the procedures for implementation of quotas for ephedrine, pseudoephedrine, or phenylpropanolamine, nor this notice would do, would harm the public is also not supported. The IMS Health Government Solutions study that DEA used to adjust the Assessment of Annual Needs for 2007 indicated that ephedrine sales at convenience stores had dropped after states implemented controls on sales, but that sales at conventional stores increased; total sales of ephedrine products actually grew. Although this change may produce minor harm to convenience stores, or serious harm to the commenter, as it claimed, economically it is a transfer. Other stores and distributors have benefited by the shift, and the economy as a whole has not been affected. DEA notes that most stores in both categories—conventional and nonconventional outlets—are small businesses.

The commenter asserted that DEA had failed to consider the impact on small businesses. The only small entities directly affected by the Assessment of Annual Needs are manufacturers and importers, none of whom filed comments or objections to the assessment. The increased sales of ephedrine products shown in the IMS Health Government Solutions data indicate that these entities have not been harmed. The indirect effects of the assessment on downstream users, such as the commenter and its customers, are not subject to review under the

[7] The Combat Methamphetamine Epidemic Act of 2005 states that it is unlawful for any person who is a regulated seller to knowingly or recklessly sell at retail scheduled listed chemical products in violation of the requirements of 21 U.S.C. 830(e), including the requirement that regulated sellers self-certify to the Attorney General regarding compliance with the provisions of the Act (21 U.S.C. 842(a)(13)). As of October 12, 2007, 18,044 convenience stores had self-certified; DEA has identified another 10,000 that are selling the products.

Regulatory Flexibility Act or Executive Order 12866. In any case, as noted above, the data collected indicate that if some small entities have lost sales, others have gained sales, which is in economics terms a transfer. The total sales of ephedrine products appears to have increased (in terms of quantity, not value), which is why DEA adjusted the ephedrine assessment upward when establishing the assessment for ephedrine for 2007 (72 FR 53908, September 20, 2007). If the manufacturers and importers provide data that indicates that the ephedrine market is continuing to grow, DEA will adjust future assessments to meet the medical, scientific, research, industrial, and other legitimate needs of the United States.

In conclusion, the commenter has overestimated the size of the market for ephedrine products at convenience stores by a factor of at least six to ten, has made exaggerated claims about the impact on jobs when the daily sales values even using the commenter's overestimated claims are low, and has claimed damage to the economy when the data indicate that increased sales of the products at conventional outlets have more than offset sales losses at nonconventional outlets. Whatever effect the statutorily mandated restrictions have had on the commenter or nonconventional outlets, the cough and cold medication market continues to grow; there is no evidence to support the commenter's claim of a cost to the United States economy.

Use of the IMS Health Government Solutions Report

The commenter refers to the IMS Health Government Solutions study referenced above on numerous occasions throughout its comment. As discussed in DEA's October 19, 2006, proposed 2007 Assessment of Annual Needs Notice (71 FR 61801) and its September 20, 2007, established 2007 Assessment of Annual Needs Notice (72 FR 53908), DEA obtained assistance from a private independent contractor, IMS Health Government Solutions, to develop the initial estimate of the medical needs of the United States for both ephedrine and pseudoephedrine. The results from IMS' initial study were utilized by DEA to propose the 2007 Assessment of Annual Needs. The commenter claimed that the IMS report underestimated legitimate demand for ephedrine sold in OTC drugs for respiratory ailments via convenience stores. The commenter further claimed that the study did not adequately address sales of ephedrine-based OTC drug products through the convenience store channel of distribution. The commenter claimed that since DEA relied on underestimated values of the medical need (as provided by IMS) when it established the 2007 Assessment of Annual Needs, these same values, as proposed for the 2008 assessment, would lead to inadequate supplies of drug products containing ephedrine and pseudoephedrine.

DEA Response: The commenter's belief that the IMS Health Government Solutions report underestimated the medical needs of ephedrine and pseudoephedrine OTC drug products is flawed in the same way that its belief regarding the economic impact of this notice is flawed, as discussed above. The commenter's conclusion about the IMS Health Government Solutions report is predicated on the assumption that the commenter's sales are representative of the industry as a whole. As explained below, this conclusion is not supported by applications that the DEA has received for individual import, manufacturing, and procurement quotas from DEA-registered importers and manufacturers for 2008.

DEA's Proposed 2008 Assessment of Annual Needs for Ephedrine (For Sale) and Pseudoephedrine (For Sale)

The comment received from the commenter is virtually identical to that submitted to the proposed 2007 Assessment of Annual Needs on October 19, 2006 (71 FR 61801). Then, as now, the commenter asserted that the IMS Health Government Solutions report underestimated the legitimate demand for ephedrine sold in OTC drug products. The commenter further asserted that DEA's Assessment of Annual Needs significantly understated the amount of ephedrine and pseudoephedrine required to satisfy legitimate medical, scientific, research, and industrial purposes and lawful imports. The commenter also claimed that the IMS Health Government Solutions study did not adequately address sales of ephedrine-based OTC drug products through the convenience store channel of distribution. The new information submitted by the commenter in this area is a two-page letter prepared by the statistician who had initially submitted a report to the commenter as part of the commenter's comments to the 2006 proposed assessments. In that letter, the statistician stated that the DEA's proposed medical use estimate (which is a component of the ephedrine (for sale) assessment, which also includes lawful export and inventory requirements) of 11,500 kg for ephedrine ''falls far short of the 130% to 900% range of increases that would be needed to put the earlier proposed quota in line with actual over-the-counter sales of ephedrine products.'' DEA notes the commenter did not provide any quantitative or qualitative data to support its belief that the DEA's Assessment of Annual Needs for pseudoephedrine (for sale) was too low.

DEA Response: The estimated ephedrine (for sale) requirements submitted by the commenter are not supported by the applications received by the DEA pursuant to 21 CFR part 1315. On July 10, 2007, DEA published an Interim Final Rule which established procedures for administering individual quotas to DEA-registered manufacturers and importers of controlled substances (72 FR 37439). Although the rule became effective immediately upon publication, DEA chose not to issue individual import, manufacturing, and procurement quotas to DEA-registered importers and manufacturers of these chemicals in 2007 after finalizing the 2007 Assessment of Annual Needs. DEA concluded that such action would negatively impact the immediate availability of these chemicals and the products derived therefrom. Instead, DEA stated on its web site (*http://www.deadiversion.usdoj.gov/meth/q_a.htm*) that it would solicit applications for individual 2008 quotas from DEA-registered manufacturers and importers with the intent of processing completed applications on or before January 1, 2008.

On July 12, 2007, DEA notified all 1,054 DEA registered manufacturers and importers of both controlled substances and List I chemicals in writing of the publication of the Interim Final Rule and its potential impact on companies' ability to import or manufacture the List I chemicals ephedrine, pseudoephedrine, and phenylpropanolamine, and products containing those chemicals after January 1, 2008. Those that received the letter would have included companies that manufacture ephedrine products for the convenience store market. Specifically, DEA advised each company to submit an individual application(s) for 2008 quota; DEA advised that if no application was received, then DEA would assess each company's importing and manufacturing requirements for 2008 to be zero and, consequently, no quota would be issued. However, applications for quota could be submitted during the 2008 calendar year.

In the first month and a half, prior to proposing the 2008 Assessment of Annual Needs (72 FR 53911, September

20, 2007), DEA received very few 2008 quota applications. Since that time, however, DEA has received significantly more quota applications from DEA registrants. In connection with each application, DEA has been contacting each applicant and gathering additional information necessary to process each of these individual quota applications by the January 1, 2008 deadline. DEA has analyzed the statistical data provided by these registrants and the results of this analysis (below) are not consistent with the commenter's comments.

Analysis of Quota Applications for Ephedrine (For Sale)

Based on an analysis of the inventory, acquisition (purchases) and disposition (sales) data provided by DEA-registered importers and manufacturers of ephedrine products on individual quota applications received since publication of the July 10, 2007 Interim Final Rule, manufacturers of dosage form products containing ephedrine reported sales totaling approximately 3,900 kg in 2007; this represents a 61 percent decrease from sales reported by these firms for 2005 and a 49 percent decrease from the sales reported for 2006, as shown on the same quota applications. During the same period, exports of ephedrine products from the United States, as reported on export declarations (DEA Forms 486) received, are expected to total 245 kg in 2007, a 90 percent decrease from levels observed in 2005. These sales and export trends, when taken along with necessary inventory allowances, may suggest that DEA's 2008 Assessment of Annual Needs for ephedrine, as proposed, is too high, and may require and adjustment downward in the future.

Analysis of Quota Applications for Pseudoephedrine (For Sale)

Based on an analysis of the inventory, acquisition, and disposition data provided by DEA-registered importers and manufacturers of pseudoephedrine products on individual quota applications received since publication of the July 10, 2007 Interim Final Rule, manufacturers of dosage form products containing pseudoephedrine reported sales of these products totaling approximately 277.8 metric tons (MT; 1000 kg equals 1 MT) in 2007; this represents a 38 percent increase from sales data provided by these firms for 2005 and a 2 percent increase from sales reported in 2006, as shown on the same quota applications. During the same period, exports of pseudoephedrine products from the United States, as reported on export declarations (DEA Forms 486) received, are expected to total 29,145 kg in 2007, a 67.6 percent decrease from levels observed in 2005. These sales and export trends, when taken along with necessary inventory allowances, may suggest that DEA's 2008 Assessment of Annual Needs for pseudoephedrine, as proposed, is too high, and may require an adjustment downward in the future.

Although the analysis of quota applications received by DEA would support a decrease in the Assessment of Annual Needs for both ephedrine (for sale) and pseudoephedrine (for sale), DEA cannot ensure that it has applications from all those who may require an individual quota in 2008. Specifically, manufacturers and importers may have purchased increased amounts of these List I chemicals during the 2007 calendar year in anticipation of the establishment of individual quotas for the 2008 calendar year, thereby increasing their inventory position (i.e. stockpiling). As a result, these same DEA registrants may have elected to defer submission of individual quota applications until such time that these inventory levels decrease. Additionally, it remains unclear as to what impact, if any, phenylephrine will have on the market for cough and cold remedies containing pseudoephedrine. Finally, the Food and Drug Administration announced an enforcement action against unapproved drug products containing timed-release guafenesin in combination with other drugs, including ephedrine and pseudoephedrine (72 FR 29517, May 29, 2007). The Notice advises firms which are marketing unapproved products to obtain such drug approvals. As a result of this Notice, DEA believes that it may receive requests for quotas to support FDA validation requirements, thereby increasing the demand for ephedrine and/or pseudoephedrine for research purposes. For these reasons, DEA believes that the needs of the United States are best served by establishing the values initially proposed and therefore concludes the proposed amounts are sufficient to meet the estimated medical, scientific, research, and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks. DEA will propose a revision to, and subsequently finalize, the Assessment of Annual Needs for 2008 during the calendar year, thereby giving interested persons an opportunity to provide substantive data to support or refute any proposed changes to assessments.

Comment Period

The commenter believed that DEA's comment period of 21 days (September 20, 2007, to October 11, 2007,) was too short, making it impossible, the commenter claimed, for affected parties to provide significant comment within a short window of opportunity. The commenter requested that DEA reopen the comment period for an additional sixty days.

DEA Response: When DEA published its July 10, 2007, Interim Final Rule establishing procedures for administering the assessment of annual needs and individual import, manufacturing, and procurement quotas, DEA stated that it had ''good cause'' under the Administrative Procedure Act to implement those regulations without engaging in traditional notice and comment rulemaking. In support of that action, DEA specifically stated:

> Congress, in crafting CMEA, recognized that limiting of product availability at the retail level could potentially encourage diversion of either drug products or the List I chemicals themselves higher in the supply chain—at the import, manufacture, and distribution levels. To address its concern about ''what immediately moves in behind,'' (Rep. Souder, February 28, 2006, CR p. 423) Congress included provisions in CMEA to control the import, export, manufacture, and distribution of the three chemicals and products containing them. These provisions also will make it possible for the United States to meet the recommendations of the International Narcotics Control Board, which encouraged its member countries to provide for pre-export notifications and an assessment of legitimate need for these chemicals. * * *
>
> DEA must implement the quota provisions of the CMEA on an interim basis to ensure that product upstream from the retail level is not diverted for illicit purposes. It would be contrary to the public interest to allow the diversion of large amounts of ephedrine, pseudoephedrine, and phenylpropanolamine at the wholesale level while implementing controls at the retail level to limit sales of these very products.
>
> The broad scope of the new law [CMEA], as well as the expedited effective dates, is a clear reflection of Congress' concerns about the nation's growing methamphetamine epidemic and its [Congress] desire to act quickly to prevent further illicit use of these chemicals.'' (specifically 72 FR 37443–37444)

DEA's decision to provide a 21-day comment period was based on Congress' mandate for DEA to act quickly to implement the requirements of the CMEA including the establishment of an Annual Assessment of Needs and individual import, manufacturing, and procurement quotas. The regulations require that DEA establish the Assessment of Annual Needs prior to the issuance of individual quotas, meaning that DEA must establish the 2008 Assessment of Annual Needs before it can issue individual import,

manufacturing, and procurement quotas. DEA is required to complete the process of issuing individual import, manufacturing, and procurement quotas prior to January 1, 2008, as quotas are issued for a calendar year. DEA believes that a shorter comment period was necessary to review and consider the comments received from the public and then establish the 2008 Assessment of Annual Needs prior to the end of the 2007 calendar year.

DEA also believes that a 21-day comment period was sufficient given that its proposal was neither complex nor technical. DEA notes that two of the 2008 assessments proposed were values initially proposed on October 19, 2006, when DEA proposed the 2007 Assessment of Annual Needs, and the other three values were values significantly higher than the values proposed on October 19, 2006. Additionally, DEA notes that interested persons directly impacted by these quotas (i.e., DEA-registered manufacturers and importers) learned of the factors DEA would consider in the establishment of individual quotas in July when the Interim Final Rule was published. Many of these factors are set forth by statute; any remaining factors parallel the current system which has existed for individual quotas for controlled substances essentially since the inception of the Controlled Substances Act. For these reasons, DEA believes that DEA registrants had ample time to gather the necessary scientific and technical information that would be required to submit substantive comments to the proposed 2008 Assessment of Annual Needs.

Finally, DEA believes that the commenter did not proffer any specific information beyond that which it submitted in its written comments that would be brought to light if the DEA were to extend the comment period.

Withdrawal of 2008 Proposed Assessment of Annual Needs

The commenter requested that the proposed 2008 Assessment of Annual Needs be withdrawn and reproposed, presumably based on its comments.

DEA Response: After considering the commenter's comments, the DEA has determined that the request for a withdrawal of the proposed 2008 Assessment of Annual Needs is unnecessary for the reasons discussed above.

Conclusion

DEA has carefully considered the comment received from the lone commenter in connection with the proposed 2008 Assessment of Annual Needs. Based on information provided in the comment, along with information provided by DEA-registered manufacturers and importers of these List I chemicals on applications for individual import, manufacturing, and procurement quotas pursuant to DEA regulations, DEA has fully addressed the relevant issues set forth in the comment. Therefore, under the authority vested in the Attorney General by section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that the 2008 Assessment of Annual Needs for ephedrine, pseudoephedrine, and phenylpropanolamine, expressed in kilograms of anhydrous acid or base, be established as follows:

List I Chemical	Established 2008 assessment of annual needs (kg)
Ephedrine (for sale)	11,500
Ephedrine (for conversion)	128,760
Pseudoephedrine (for sale)	511,100
Phenylpropanolamine (for sale)	5,545
Phenylpropanolamine (for conversion)	85,470

The Office of Management and Budget has determined that notices of quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have any federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will not have a significant economic impact upon a substantial number of small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601–612. The establishment of Assessment of Annual Needs for ephedrine, pseudoephedrine, and phenylpropanolamine is mandated by law. The assessments are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States; for lawful export requirements; and the establishment and maintenance of reserve stocks. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more (adjusted for inflation) in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act). This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: December 18, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 07–6218 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 21, 2007, and published in the **Federal Register** on September 27, 2007, (72 FR 54929–54930), Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Sufentanil (9740)	II
Fentanyl (9801)	II
Remifentanil (9739)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cedarburg Pharmaceuticals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cedarburg Pharmaceuticals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25044 Filed 12–26–07; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 16, 2007, and published in the **Federal Register** on August 27, 2007, (72 FR 49020), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
4–Methoxyamphetamine (7411).	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25040 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 28, 2007 and published in the **Federal Register** on September 10, 2007, (72 FR 51664), CIMA Labs, Inc., 7325 Aspen Lane, Brooklyn Park, Minnesota 55428 made application by letter to the Drug Enforcement Administration (DEA) to be registered as an importer of Nabilone (7379), a basic class of controlled substance listed in schedule II.

The company plans to import the basic class of controlled substance for clinical trials and research.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of CIMA Labs, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated CIMA Labs, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: December 18, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25038 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated August 16, 2007, and published in the **FEDERAL REGISTER** on August 27, 2007, (72 FR 49021), Cody Laboratories, 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Meperidine (9230)	II
Methadone (9250)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans on manufacturing the listed controlled substances in bulk for sale to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cody Laboratories to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cody Laboratories to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25041 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 24, 2007 and published in the **Federal Register** on October 2, 2007, (72 FR 56102), ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in schedule II.

The company plans to import the Phenylacetone to manufacture Amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of ISP Freetown Fine Chemicals to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freetown Fine Chemicals to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25046 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 12, 2007, and published in the **Federal Register** on September 19, 2007 (72 FR 53606), Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building, P.O. Box 12194, East Institute Drive, Research Triangle, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The Institute will manufacture small quantities of cocaine and marihuana derivatives for use by their customers in analytical kits, reagents, and reference standards as directed by NIDA.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25047 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 21, 2007, and published in the **Federal Register** on September 27, 2007, (72 FR 54931), Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1–Piperidinocyclohexane-carbonitrile (8603).	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Varian, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: December 17, 2007.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E7–25050 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–307E]

Controlled Substances: Established Initial Aggregate Production Quotas for 2008

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of aggregate production quotas for 2008.

SUMMARY: This notice establishes initial 2008 aggregate production quotas for controlled substances in schedules I and II of the Controlled Substances Act (CSA).

EFFECTIVE DATE: December 27, 2007.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, PhD, Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II. This responsibility has been delegated to the Administrator of the DEA by 28 CFR 0.100. The Administrator, in turn, has redelegated this function to the Deputy Administrator, pursuant to 28 CFR 0.104.

The 2008 aggregate production quotas represent those quantities of controlled substances that may be produced in the United States in 2008 to provide adequate supplies of each substance for: the estimated medical, scientific, research and industrial needs of the United States; lawful export requirements; and the establishment and maintenance of reserve stocks (21 U.S.C. 826(a) and 21 CFR 1303.11). These quotas do not include imports of controlled substances for use in industrial processes.

On August 24, 2007, a notice of the proposed initial 2008 aggregate production quotas for certain controlled substances in schedules I and II was published in the **Federal Register** (72 FR 48683). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before September 14, 2007.

Seven responses were received resulting in comments on a total of 17 schedule I and II controlled substances within the published comment period. The commenters stated that the proposed aggregate production quotas for 14-hydroxymorphinone, alfentanil, amphetamine (for conversion), codeine (for sale), fentanyl, gamma hydroxybutyric acid, hydromorphone, lisdexamfetamine, marihuana, methadone, methylphenidate, noroxymorphone (for conversion), oxycodone, oxymorphone, sufentanil, tetrahydrocannabinols and thebaine were insufficient to provide for the estimated medical, scientific, research and industrial needs of the United States for lawful export requirements and for the establishment and maintenance of reserve stocks. The DEA has determined that 14-hydroxymorphinone is considered a morphine derivative controlled under the morphine basic drug class code and therefore the comment received for 14-hydroxymorphinone was treated as a comment for morphine.

One commenter stated that, ''one or more manufacturers are preparing to receive Food and Drug Administration (FDA) approvals for generic version of Marinol. Generic versions of the drug, however, will not be approved for all of the indications for which FDA has found Marinol safe and effective. As a consequence, those newly approved generic versions should not be prescribed and distributed for all of the same indications as Marinol.'' The commenter further stated that if one of the generic Marinol manufacturers seeks an ''upwardly adjusted quota'' beyond that which is necessary for the medical requirements of the United States, then this would be contrary to the DEA's obligations under the Controlled Substances Act. For these reasons, the commenter requested a hearing regarding the aggregate production quota for tetrahydrocannabinols. The commenter believes that the approval of generic versions of Marinol will lead to an inappropriate increase in the ''medical use'' estimate for tetrahydrocannabinols in the United States. This is only one of the factors that DEA must consider when establishing the aggregate production quota. DEA must also consider the industrial and research requirements of the United States, lawful export requirements, and reserve stock requirements.

DEA notes it first established a 312,500 gram aggregate production quota for tetrahydrocannabinols in 2005 (70 FR 120, January 3, 2005). At that time, the increase from the proposed value of 211,000 grams was primarily due to an increase in the research and development efforts of DEA registered manufacturers, which included generic drug development efforts, increased drug requirements necessary to develop new indications of currently marketed drug products, and the development of novel drug delivery systems containing tetrahydrocannabinols. These research efforts continue today. Additionally, the FDA, which provides DEA with estimates of medical use of controlled substances each year, advised DEA that the medical use of Marinol is expected to grow by approximately 8.8 percent from 2006 to 2009. Export and industrial requirements are minimal and thus inconsequential to DEA's final analysis.

Pursuant to 21 CFR 1303.11(c), the DEA has determined that a hearing is not required in this matter. DEA has fully considered the comments received in connection with the hearing request within the context of the applications for manufacturing and procurement quotas received from DEA registered manufacturers and information provided by the FDA, and concludes that the amount proposed is sufficient to provide for the estimated medical, scientific, research and industrial needs of the United States, for lawful export requirements and for the establishment and maintenance of reserve stocks. Therefore, DEA is establishing the 2008 aggregate production quota for tetrahydrocannabinols at the proposed value of 312,500 grams.

DEA has taken into consideration the above comments along with the relevant 2007 manufacturing quotas, current 2007 sales and inventories, 2008 export requirements, additional applications received, and research and product development requirements. Based on this information, the DEA has adjusted the initial aggregate production quotas for alfentanil, levorphanol, noroxymorphone (for sale), oxycodone (for conversion), and oxymorphone to meet the legitimate needs of the United States. The DEA also adjusted the initial aggregate production quota for hydrocodone due to known sales of hydrocodone products to companies that sell hydrocodone illegally through the Internet.

Regarding amphetamine (for conversion), codeine (for sale), fentanyl, gamma hydroxybutyric acid, hydromorphone, lisdexamfetamine, marihuana, methadone, methylphenidate, morphine, noroxymorphone (for conversion), oxycodone, sufentanil,

tetrahydrocannabinols and thebaine, the DEA has determined that the proposed initial 2008 aggregate production quotas are sufficient to meet the current 2008 estimated medical, scientific, research and industrial needs of the United States.

Pursuant to 21 CFR 1303, the Deputy Administrator of the DEA will, in 2008, adjust aggregate production quotas and individual manufacturing quotas allocated for the year based upon 2007 year-end inventory and actual 2007 disposition data supplied by quota recipients for each basic class of schedule I or II controlled substance.

Therefore, under the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), and delegated to the Administrator of the DEA by 28 CFR 0.100, and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby orders that the 2008 initial aggregate production quotas for the following controlled substances, expressed in grams of anhydrous acid or base, be established as follows:

Basic class—Schedule I	Established initial 2008 quotas
2,5-Dimethoxyamphetamine	2 g
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2 g
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7)	10 g
3-Methylfentanyl	2 g
3-Methylthiofentanyl	2 g
3,4-Methylenedioxyamphetamine (MDA)	20 g
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10 g
3,4-Methylenedioxymethamphetamine (MDMA)	22 g
3,4,5-Trimethoxyamphetamine	2 g
4-Bromo-2,5-dimethoxyamphetamine (DOB)	2 g
4-Bromo-2,5-dimethoxyphenethylamine (2–CB)	7 g
4-Methoxyamphetamine	77 g
4-Methylaminorex	2 g
4-Methyl-2,5-dimethoxyamphetamine (DOM)	12 g
5-Methoxy-3,4-methylenedioxyamphetamine	2 g
5-Methoxy-N,N-diisopropyltryptamine	5 g
Acetyl-alpha-methylfentanyl	2 g
Acetyldihydrocodeine	2 g
Acetylmethadol	2 g
Allylprodine	2 g
Alphacetylmethadol	2 g
Alpha-ethyltryptamine	2 g
Alphameprodine	2 g
Alphamethadol	3 g
Alpha-methylfentanyl	2 g
Alpha-methylthiofentanyl	2 g
Alpha-methyltryptamine	5 g
Aminorex	8 g
Benzylmorphine	2 g
Betacetylmethadol	2 g
Beta-hydroxy-3-methylfentanyl	2 g
Beta-hydroxyfentanyl	2 g
Betameprodine	2 g
Betamethadol	2 g
Betaprodine	2 g
Bufotenine	8 g
Cathinone	3 g
Codeine-N-oxide	302 g
Diethyltryptamine	2 g
Difenoxin	50 g
Dihydromorphine	2,549,000 g
Dimethyltryptamine	3 g
Gamma-hydroxybutyric acid	23,600,000 g
Heroin	5 g
Hydromorphinol	3,000 g
Hydroxypethidine	2 g
Ibogaine	1 g
Lysergic acid diethylamide (LSD)	61 g
Marihuana	4,500,000 g
Mescaline	2 g
Methaqualone	10 g
Methcathinone	4 g
Methyldihydromorphine	2 g
Morphine-N-oxide	310 g
N,N-Dimethylamphetamine	7 g
N-Ethylamphetamine	2 g
N-Hydroxy-3,4-methylenedioxyamphetamine	2 g
Noracymethadol	2 g
Norlevorphanol	52 g
Normethadone	2 g
Normorphine	16 g

Basic class—Schedule I	Established initial 2008 quotas
Para-fluorofentanyl	2 g
Phenomorphan	2 g
Pholcodine	2 g
Psilocybin	7 g
Psilocyn	7 g
Tetrahydrocannabinols	312,500 g
Thiofentanyl	2 g
Trimeperidine	2 g

Basic class—Schedule II	Established initial 2008 quotas
1-Phenylcyclohexylamine	2 g
Alfentanil	8,000 g
Alphaprodine	2 g
Amobarbital	3 g
Amphetamine (for sale)	17,000,000 g
Amphetamine (for conversion).	5,000,000 g
Cocaine	286,000 g
Codeine (for sale)	39,605,000 g
Codeine (for conversion)	59,000,000 g
Dextropropoxyphene	106,000,000 g
Dihydrocodeine	1,200,000 g
Diphenoxylate	828,000 g
Ecgonine	83,000 g
Ethylmorphine	2 g
Fentanyl	1,428,000 g
Glutethimide	2 g
Hydrocodone (for sale)	45,200,000 g
Hydrocodone (for conversion)	1,500,000 g
Hydromorphone	3,300,000 g
Isomethadone	2 g
Levo-alphacetylmethadol (LAAM).	3 g
Levomethorphan	5 g
Levorphanol	10,000 g
Lisdexamfetamine	6,200,000 g
Meperidine	9,753,000 g
Metazocine	1 g
Methadone (for sale)	25,000,000 g
Methadone Intermediate	26,000,000 g
Methamphetamine	3,130,000 g
[680,000 grams of levo-desoxyephedrine for use in a non-controlled, non-prescription product; 2,405,000 grams for methamphetamine mostly for conversion to a schedule III product; and 45,000 grams for methamphetamine (for sale)]	
Methylphenidate	50,000,000 g
Morphine (for sale)	35,000,000 g
Morphine (for conversion)	100,000,000 g
Nabilone	3,002 g
Noroxymorphone (for sale)	10,000 g
Noroxymorphone (for conversion).	8,000,000 g
Opium	1,400,000 g
Oxycodone (for sale)	70,000,000 g
Oxycodone (for conversion)	4,820,000 g
Oxymorphone	2,400,000 g
Oxymorphone (for conversion).	11,000,000 g
Pentobarbital	35,200,000 g
Phencyclidine	2,021 g
Phenmetrazine	2 g
Racemethorphan	2 g
Remifentanil	3,000 g
Secobarbital	2 g
Sufentanil	10,300 g
Thebaine	126,000,000 g

The Deputy Administrator further orders that aggregate production quotas for all other schedules I and II controlled substances included in 21 CFR 1308.11 and 1308.12 be established at zero.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866.

This action does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this action does not have federalism implications warranting the application of Executive Order 13132.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of aggregate production quotas for schedules I and II controlled substances is mandated by law and by international treaty obligations. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

This action meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

This action will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This action is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This action will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: December 18, 2007.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E7–25113 Filed 12–26–07; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 19, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is

not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Brian A. Harris-Kojetin, OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

Agency: Bureau of Labor Statistics.

Type of Review: Extension without change of a currently approved collection.

Title of Collection: Census of Fatal Occupational Injuries.

OMB Control Number: 1220–0133.

Agency Form Number: BLS CFOI–1.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government; and individuals or households.

Estimated Number of Respondents: 1,949.

Estimated Total Annual Burden Hours: 3,763.

Estimated Total Annual Costs Burden: $0.

Description: The Census of Fatal Occupational Injuries is authorized by section 24(a) of the Occupational Safety and Health Act of 1970 (Pub. L. 91–596) and provides policymakers and the public with comprehensive, verifiable, and timely measures of fatal work injuries. Data are complied from various Federal, State, and local sources and include information on how the incident occurred as well as various characteristics of the employers and the deceased worker. This information is used for surveillance of fatal work injuries and for developing prevention strategies. For additional information, see related notice published on October 4, 2007 at 72 FR 192.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–25021 Filed 12–26–07; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Solicitor; Agency Information Collection Activities: Proposed Collection; Comment Request; Equal Access to Justice Act

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3505(c)(2)(A)]. The program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Currently the Office of the Solicitor is soliciting comments concerning the proposed extension of the information collection request (ICR) for applications to obtain awards in administrative proceedings subject to the Equal Access to Justice Act.

DATES: Written comments must be submitted by February 25, 2008.

ADDRESSES: Comments are to be submitted to Department of Labor/Office of the Solicitor Attn: Raymond E. Mitten, Jr., 200 Constitution Avenue, NW., Room N–2428, Washington DC 20210. Written comments limited to 10 pages or fewer may be transmitted by facsimile to (202) 693–5538.

FOR FURTHER INFORMATION CONTACT: Contact Raymond E. Mitten, Jr., Counsel for Administrative Law, Division of Management and Administrative Legal Services, Office of the Solicitor, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–5523. Copies of the referenced information collection request are available in room N–1301, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King at (202) 693–4129 or E-mail: *king.darrin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Access to Justice Act provides for the award of fees and expenses to certain parties involved in administrative proceedings with the United States. The statute requires, at 5 U.S.C. sec. 504(a)(2), that a party seeking an award of fees and other expenses in a covered administrative proceeding must submit to the agency ''an application which shows that the party is the prevailing party and is eligible to receive an award'' under the Act. The Department of Labor's regulations implementing the Equal Access to Justice Act contain a subpart which specifies the contents of applications for an award, 29 CFR part 16, Subpart B.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- 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;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; and
- 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.

III. Current Action

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the paperwork requirements for the contents of applications for an award under the Equal Access to Justice Act.

Type of Review: Extension of a currently approved collection of information.

Agency: Office of the Solicitor.

Title: Equal Access to Justice Act.

OMB Number: 1225–0013.

Affected Public: Individuals or household; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: Varies by year; usually less than 10.

Frequency: On occasion.

Total Responses: See Number of Respondents.

Average Time per Response: 5 hours.

Estimated Total Burden Hours: 50 hours.

Total annualized capital/startup costs: $0.

Total Annualized costs (operation and maintenance): $0.

Comments submitted in response to this notice will be summarized and may be included in the request for OMB approval of the final information collection request. The comments will become a matter of public record.

Signed this 19th day of December, 2007.

William W. Thompson, II,

Associate Solicitor for Management and Administrative Legal Services.

[FR Doc. E7–25120 Filed 12–26–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Procedural Guidelines for the Development and Maintenance of the List of Goods From Countries Produced by Child Labor or Forced Labor; Request for Information

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of procedural guidelines for the development and maintenance of a list of goods from countries produced by child labor or forced labor in violation of international standards; Request for information.

SUMMARY: This notice sets forth final procedural guidelines (''Guidelines'') for the development and maintenance of a list of goods from countries that the Bureau of International Labor Affairs (''ILAB'') has reason to believe are produced by child labor or forced labor in violation of international standards (''List''). The Guidelines establish the process for public submission of information, and the evaluation and reporting process to be used by the U.S. Department of Labor's (''DOL'') Office of Child Labor, Forced Labor, and Human Trafficking (''Office'') in maintaining and updating the List. DOL is required to develop and make available to the public the List pursuant to the Trafficking Victims Protection Reauthorization Act of 2005. This notice also requests information on the use of child labor and/or forced labor in the production of goods internationally, as well as information on government, industry, or third-party actions and initiatives to address these problems. This information will be used by DOL as appropriate in developing the initial List.

DATES: This document is effective immediately upon publication of this notice. Information submitted in response to this notice must be received by the Office no later than March 26, 2008. Information received after that date may not be taken into consideration in developing DOL's initial List, but such information will be considered by the Office as the List is maintained and updated in the future.

TO SUBMIT INFORMATION, OR FOR FURTHER INFORMATION, CONTACT: Director, Office of Child Labor, Forced Labor, and Human Trafficking, Bureau of International Labor Affairs, U.S. Department of Labor at (202) 693–4843 (this is not a toll-free number). Information may be submitted by the following methods:

- *Facsimile (fax):* ILAB/Office of Child Labor, Forced Labor, and Human Trafficking at 202–693–4830.
- *Mail, Express Delivery, Hand Delivery, and Messenger Service:* Charita Castro or Rachel Rigby at U.S. Department of Labor, ILAB/Office of Child Labor, Forced Labor, and Human Trafficking, 200 Constitution Ave., NW., Room S–5317, Washington, DC 20210.
- *E-mail: ilab-tvpra@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 105(b)(1) of the Trafficking Victims Protection Reauthorization Act of 2005 (''TVPRA of 2005''), Public Law 109–164 (2006), directed the Secretary of Labor, acting through the Bureau of International Labor Affairs, to ''carry out additional activities to monitor and combat forced labor and child labor in foreign countries.'' Section 105(b)(2) of the TVPRA, 22 U.S.C. 7112(b)(2), listed these activities as:

(A) Monitor the use of forced labor and child labor in violation of international standards;

(B) Provide information regarding trafficking in persons for the purpose of forced labor to the Office to Monitor and Combat Trafficking of the Department of State for inclusion in [the] trafficking in persons report required by section 110(b) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7107(b));

(C) Develop and make available to the public a list of goods from countries that the Bureau of International Labor Affairs has reason to believe are produced by forced labor or child labor in violation of international standards;

(D) Work with persons who are involved in the production of goods on the list described in subparagraph (C) to create a standard set of practices that will reduce the likelihood that such persons will produce goods using the labor described in such subparagraph; and

(E) Consult with other departments and agencies of the United States Government to reduce forced and child labor internationally and ensure that products made by forced labor and child labor in violation of international standards are not imported into the United States.

The Office carries out the DOL mandates in the TVPRA. These Guidelines provide the framework for ILAB's implementation of the TVPRA mandate, and establish procedures for the submission and review of information and the process for developing and maintaining the List. In addition to the Office's efforts under the TVPRA, the Office conducts and publishes research on child labor and forced labor worldwide. The Office consults such sources as DOL's *Findings on the Worst Forms of Child Labor;* the Department of State's annual *Country Reports on Human Rights Practices* and *Trafficking in Persons Reports;* reports by governmental, non-governmental, and international organizations; and reports by academic and research institutions and other sources.

In addition to reviewing information submitted by the public in response to this Notice, the Office will also conduct a public hearing to gather information to assist in the development of the List. The Office will evaluate all information received according to the processes outlined in these Guidelines. Goods that meet the criteria outlined in these Guidelines will be placed on an initial List, published in the **Federal Register** and on the DOL Web site. DOL intends to maintain and update the List over time, through its own research, interagency consultations, and additional public submissions of information. Procedures for the ongoing maintenance of the List, and key terms used in these Guidelines, are described in detail below.

Public Comments

On October 1, 2007, ILAB published a **Federal Register** notice of proposed procedural guidelines, requesting public comments on the proposed guidelines (72 FR 55808 (Oct. 1, 2007)). The notice provided a 30-day period for submitting written comments, which closed on Oct. 31, 2007. Written comments were received from nine parties. Several of the comments strongly supported the Department's efforts to combat child labor and forced labor. All of the comments were given careful consideration and where appropriate, changes were made to the Guidelines. The comments and any revisions to the proposed Guidelines are explained in detail below.

A. Comments Concerning the Office's Evaluation of Information

Several commenters questioned the Department's decision to consider information up to seven years old. One commenter asserted that even one-year-old information should be considered too dated to be relevant. The Department appreciates the importance of using up-to-date information. It is also the Office's experience that the use of child labor and forced labor in a country or in the production of a particular good typically persists for several years, particularly when no meaningful action is taken to combat it. Information about such activities is often actively concealed. Information that is several years old therefore can provide useful context for more current information. The Office will consider the date of all available information, and, as stated in the proposed Guidelines, ''more current information will generally be given priority.''

One commenter questioned how the Office would treat information on government efforts to combat the use of child labor and forced labor, stating that where a government undertakes voluntary efforts to regulate the production of goods and/or prosecutes incidents of child labor or forced labor, such government initiatives should not result in designating a particular good on the List. In response, the Office affirms the important role of government law enforcement, as well as other government, private sector, and third-party voluntary actions and initiatives to combat child labor and forced labor such as company and industry codes of conduct. However, the Office notes that some voluntary actions, as with some enforcement actions, are more effective than others. For example, some prosecutions may result in minimal or suspended sentences for the responsible parties, and some voluntary actions by government, industry, or third parties, may be ineffective in combating the violative labor practices at issue. Accordingly, in determining whether to include a good and country on the List, the Office will consider particularly relevant and probative any available evidence of government, industry, and third-party actions and initiatives that are effective in significantly reducing if not eliminating child labor and forced labor.

Two commenters questioned why the Office would not consider confidential information in a submission, with one commenter stating that a submitter should have the option of providing information containing confidential information to the Office while also providing a redacted version for public release. In response, the Office has clarified its handling of submissions containing confidential, personal, or classified information. In the interest of maintaining a transparent process, the Office will not accept classified information in developing the List. The Office may request that any such information brought to its attention be declassified. The Office will accept submissions containing confidential or personal information, but pursuant to applicable laws and regulations may redact such submissions before making them publicly available.

B. Comments Concerning the List of Goods and Countries

Several commenters questioned why the List includes raw materials and/or components directly produced using child labor and forced labor, but not final goods made in part (indirectly produced) with such materials or components. Another commenter suggested that any final good produced indirectly with child labor or forced labor at any point in its production chain should be placed on the List, and that the List should specify where in the production chain the child labor or forced labor occurred. While the Office appreciates the importance of tracking raw materials or components produced in violation of international child labor or forced labor standards through the production chain, the difficulty of accurately conducting such tracking places it beyond the scope of these Guidelines. Ideally, the Office would have access to public information that would permit the comprehensive tracking of raw materials and component parts in the global supply chain, but the Office is unaware of any such publicly available information. Moreover, the Office is aware that many goods used as raw materials or components in the production of other goods may be sourced from multiple locations within a country or even from several different countries. Consequently, it would likely be extremely difficult to develop reliable information on the final destination or use of every good produced with child labor or forced labor. Inasmuch as the primary purpose of the List is to promote efforts at the country level to combat child labor and forced labor, that purpose is best served by identifying goods directly produced with child labor and forced labor. The Office observes that nothing in these Guidelines would prevent a member of the public from tracking the final destination or use of any good on the List.

Several commenters requested that the List name individual companies using child labor or forced labor, with two commenters suggesting that this practice would protect entities that do not use child labor or forced labor in their supply chains, or that might otherwise unknowingly trade in such goods. One commenter suggested that, in addition to listing goods and countries, the Office name industries using such goods. Another commenter suggested that the Office distinguish among individual factories within a country on the List, to ensure that goods not produced with child labor or forced labor are not subject to the same treatment as goods that are so produced. Another commenter suggested that the Department hold individual violators publicly accountable.

The TVPRA mandated a List of goods and countries, not company or industry names. It would be immensely difficult for the Office to attempt to track the identity of every company and industry using a good produced with child labor or forced labor. In addition, it is the Office's experience that child labor and forced labor frequently occur in small local enterprises, for which company names, if they are available, have little relevance. The Office is also aware that it is often a simple matter to change or conceal the name of a company. Consequently, the Office has concluded that seeking to track and name individual companies would be of limited value to the primary purpose of the List, which is to promote ameliorative efforts at the country level. Moreover, holding individual violators accountable would exceed the mandate of the TVPRA of 2005. However, the TVPRA of 2005 requires that the Department work with persons who are involved in the production of goods on the List to create a standard set of

practices to reduce the likelihood that such persons will produce goods using such labor. The Department intends to work with such persons once the initial List is developed.

C. Comments Concerning the Development and Maintenance of the List

One commenter suggested that the List be updated at regular intervals, and at least annually. Another commenter noted that the proposed Guidelines do not set a limit on how long a good may remain on the List, or a time period within which DOL must review the designation of a particular good. The Office anticipates that the addition, maintenance, or removal of an item on the List will be driven largely by the availability of accurate information. The Office will conduct its own research on goods produced with child labor and forced labor, and anticipates that additional information used to develop and maintain the List will be provided by the public. Consequently, the Office considers it a more efficient use of resources to re-examine goods on the List as pertinent information becomes available, rather than adhering to a fixed review schedule.

One commenter suggested that the Office provide a fixed time period within which it will decide whether to accept a submission of information. The Office has revised section B.3 of the Guidelines to remove the possibility that a submission of information will not be accepted. All submissions of information (with the exception of those containing classified information) will be accepted and evaluated for their relevance and probative value.

One commenter suggested that the Guidelines provide that the Office make a final determination whether to place a good on the List within a specific timeframe, such as within 120 days of receiving the submission. Although the Office intends to expedite its evaluation of any information submitted in response to this notice, it cannot guarantee that the Office's evaluation of a particular submission will be completed within a set timeframe. Some submissions may require further investigation by the Office, and other submissions may result in responsive submissions by other parties. Setting a fixed deadline may result in the inclusion or exclusion of a good on the List without the most comprehensive review possible.

One commenter suggested that before an entry is removed from the List, the Office should publish a notice in the **Federal Register** announcing its intention to consider removal of the entry and giving interested parties an opportunity to comment. The Office does not intend to provide advance notice before an item is added to or removed from the List; however, if information is submitted that tends to support a change to the List, that information will be publicly available on the Office's Web site and will provide notice to the public that the status of a particular good is under review. Moreover, the Office retains the discretion to request additional information from time to time concerning a particular good; such a request will also provide notice to the public that the status of a good is under active consideration.

One commenter suggested that the Office ensure that any information indicating a possible violation of U.S. law is referred to an appropriate law enforcement agency. The Department has well-established procedures for the referral of information indicating a possible violation of U.S. laws to appropriate law enforcement agencies, and these procedures will be followed throughout the development and maintenance of the List.

D. Comments Concerning Definitions and Terms

Two commenters were concerned about the definitions of child labor and forced labor in the proposed Guidelines, questioning why they did not expressly reference International Labor Organization (ILO) conventions addressing child labor and forced labor. The commenters questioned why there were apparent differences between the definitions of terms in the proposed Guidelines and the corresponding definitions in the relevant ILO conventions. The Office has carefully considered these comments. Consequently, the definitions used in the final Guidelines have been revised to clarify that the Office will apply international standards.

Four commenters questioned the use of the terms ''significant incidence'' and ''isolated incident'' in the proposed Guidelines. One commenter raised an apparent inconsistency between the terms ''significant,'' ''prevalent,'' and ''pattern of practice,'' in the proposed Guidelines' description of the amount of evidence that would weigh in favor of a finding that a particular good is produced in violation of international standards. Another commenter stated that the terms ''significant'' and ''prevalent'' provide inadequate guidance, because they do not address the percentage of workplaces in a country producing a particular good in violation of international standards, or whether a good produced in one location represents a large or small share of a country's total exports of the good. One commenter recommended that the terms ''significant'' and ''prevalent'' be replaced with ''recurring.'' Another commenter recommended that a more precise guideline be developed with respect to how much child labor or forced labor warrants the placement of a good on the List. One final commenter on this issue suggested that a good be removed from the List only if the use of child labor or forced labor is ''insignificant,'' stating that that term is more precise than the terms used in the proposed Guidelines.

It is neither possible nor useful to precisely quantify the amount or percentage of child labor or forced labor that will be considered ''significant,'' since what is considered ''significant'' will vary with a number of other factors. For that reason, the Guidelines provide that a ''significant incidence'' of child labor or forced labor occurring in the production of a particular good is only one among several factors that would be weighed before a good is added to, or removed from, the List. Other factors include whether the situation described meets the definitions of child labor or forced labor; the probative value of the evidence submitted; the date and source(s) of the information; and the extent to which the information is corroborated. The Guidelines also make clear that the Office will consider any available evidence of government, industry, and third-party actions and initiatives that are effective in significantly reducing if not eliminating child labor and forced labor. However, in response to these comments, the Office has decided to clarify the nature of the information sought by deleting the use of the term ''prevalent.'' The Office will also change the phrase, ''pattern of practice,'' to ''pattern or practice.'' The suggested terms ''recurring'' or ''insignificant'' provide no additional precision.

Two commenters requested that the goods on the List be identified as specifically as possible, to avoid confusion with similar goods that have not been produced using child labor or forced labor in violation of international standards. Some commenters suggested that the List use product codes developed for the Harmonized Tariff Schedule (HTS), reasoning that the use of such codes would both provide more specificity and improve interagency consultation. The Office intends to identify all goods on the List as specifically as possible, depending on available information. However, parties submitting information on a particular

good may not have the necessary expertise to properly utilize the product codes developed for the HTS.

Another commenter suggested that the Office specifically include agricultural commodities in the definition of ''goods.'' The Office considers that the term ''goods'' includes agricultural products and the definition of ''produced'' in the Guidelines expressly covers goods that are harvested or farmed.

Final Procedural Guidelines

A. Sources of Information and Factors Considered in the Development and Maintenance of the List

The Office will make use of all relevant information, whether gathered through research, public submissions of information, a public hearing, interagency consultations, or other means, in developing the List. In the interest of maintaining a transparent process, the Office will not accept classified information in developing the List. The Office may request that any such information brought to its attention be declassified. If submissions contain confidential or personal information, the Office may redact such information in accordance with applicable laws and regulations before making the submission available to the public.

In evaluating information, the Office will consider and weigh several factors, including:

1. *Nature of information.* Whether the information about child labor or forced labor gathered from research, public submissions, hearing testimony, or other sources is relevant and probative, and meets the definitions of child labor or forced labor.

2. *Date of information.* Whether the information about child labor or forced labor in the production of the good(s) is no more than 7 years old at the time of receipt. More current information will generally be given priority, and information older than 7 years will generally not be considered.

3. *Source of information.* Whether the information, either from primary or secondary sources, is from a source whose methodology, prior publications, degree of familiarity and experience with international labor standards, and/or reputation for accuracy and objectivity, warrants a determination that it is relevant and probative.

4. *Extent of corroboration.* The extent to which the information about the use of child labor or forced labor in the production of a good(s) is corroborated by other sources.

5. *Significant incidence of child labor or forced labor.* Whether the information about the use of child labor or forced labor in the production of a good(s) warrants a determination that the incidence of such practices is significant in the country in question. Information that relates only to a single company or facility; or that indicates an isolated incident of child labor or forced labor, will ordinarily not weigh in favor of a finding that a good is produced in violation of international standards. Information that demonstrates a significant incidence of child labor or forced labor in the production of a particular good(s), although not necessarily representing a pattern or practice in the industry as a whole, will ordinarily weigh in favor of a finding that a good is produced in violation of international standards.

In determining which goods and countries are to be placed on the List, the Office will, as appropriate, take into consideration the stages in the chain of a good's production. Whether a good is placed on the List may depend on which stage of production used child labor or forced labor. For example, if child labor or forced labor was only used in the extraction, harvesting, assembly, or production of raw materials or component articles, and these materials or articles are subsequently used under non-violative conditions in the manufacture or processing of a final good, only the raw materials/component articles and the country/ies where they were extracted, harvested, assembled, or produced, as appropriate, may be placed on the List. If child labor or forced labor was used in both the production or extraction of raw materials/component articles and the manufacture or processing of a final good, then both the raw materials/component articles and the final good, and the country/ies in which such labor was used, may be placed on the List. This is to ensure a direct correspondence between the goods and countries which appear on the List, and the use of child labor or forced labor.

Information on government, industry, or third-party actions and initiatives to combat child labor or forced labor will be taken into consideration, although they are not necessarily sufficient in and of themselves to prevent a good and country from being listed. In evaluating such information, the Office will consider particularly relevant and probative any evidence of government, industry, and third-party actions and initiatives that are effective in significantly reducing if not eliminating child labor and forced labor.

Goods and countries (''entries'') that meet the criteria outlined in these procedural Guidelines will be placed on an initial List, to be published in the **Federal Register** and on the DOL Web site. This initial List will continue to be updated as additional information becomes available. Before publication of the initial List or subsequent versions of the List, the Office will inform the relevant foreign governments of their presence on the List and request their responses. The Office will review these responses and make a determination as to their relevance. The List, along with a listing of the sources used to identify the goods and countries on it, will be published in the **Federal Register** and on the DOL Web site. The List will represent DOL's conclusions based on all relevant information available at the time of publication.

For each entry, the List will indicate whether the good is made using child labor, forced labor, or both. As the List continues to be maintained and updated, the List will also indicate the date when each entry was included. The List will not include any company or individual names. DOL's postings on its website of source material used in identifying goods and countries on the List will be redacted to remove company or individual names, and other confidential material, pursuant to applicable laws and regulations.

B. Procedures for the Maintenance of the List

1. Following publication of the initial List, the Office will periodically review and update the List, as appropriate. The Office conducts ongoing research and monitoring of child labor and forced labor, and if relevant information is obtained through such research, the Office may add an entry to, or remove an entry from the List using the process described in section A of the Guidelines. The Office may also update the List on the basis of public information submissions, as detailed below.

2. Any party may at any time file an information submission with the Office regarding the addition or removal of an entry from the List. Submitters should take note of the criteria and instructions in the ''Information Requested on Child Labor and Forced Labor'' section of this notice, as well as the criteria listed in Section A of the Guidelines.

3. The Office will review any submission of information to determine whether it provides relevant and probative information.

4. The Office may consider a submission less reliable if it determines that: the submission does not clearly indicate the source(s) of the information presented; the submission does not identify the party filing the submission

or is not signed and dated; the submission does not provide relevant or probative information; or, the information is not within the scope of the TVPRA and/or does not address child labor or forced labor as defined herein. All submissions received will be made available to the public on the DOL Web site, consistent with applicable laws or regulations.

5. In evaluating a submission, the Office will conduct further examination of available information relating to the good and country, as necessary, to assist the Office in making a determination concerning the addition or removal of the good from the List. The Office will undertake consultations with relevant U.S. government agencies and foreign governments, and may hold a public hearing for the purpose of receiving relevant information from interested persons.

6. In order for an entry to be removed from the List, any person filing information regarding the entry must provide information that demonstrates that there is no significant incidence of child labor or forced labor in the production of the particular good in the country in question. In evaluating information on government, industry, or third-party actions and initiatives to combat child labor or forced labor, the Office will consider particularly relevant and probative any available evidence of government, industry, and third-party actions that are effective in significantly reducing if not eliminating child labor and forced labor.

7. Where the Office has made a determination concerning the addition, maintenance, or removal of the entry from the List, and where otherwise appropriate, the Office will publish an updated List in the **Federal Register** and on the DOL Web site.

C. Key Terms Used in the Guidelines

''*Child Labor*''—''Child labor'' under international standards means all work performed by a person below the age of 15. It also includes all work performed by a person below the age of 18 in the following practices: (A) All forms of slavery or practices similar to slavery, such as the sale or trafficking of children, debt bondage and serfdom, or forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict; (B) the use, procuring, or offering of a child for prostitution, for the production of pornography or for pornographic purposes; (C) the use, procuring, or offering of a child for illicit activities in particular for the production and trafficking of drugs; and (D) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety, or morals of children. The work referred to in subparagraph (D) is determined by the laws, regulations, or competent authority of the country involved, after consultation with the organizations of employers and workers concerned, and taking into consideration relevant international standards. This definition will not apply to work specifically authorized by national laws, including work done by children in schools for general, vocational or technical education or in other training institutions, where such work is carried out in accordance with international standards under conditions prescribed by the competent authority, and does not prejudice children's attendance in school or their capacity to benefit from the instruction received.

''Countries''—''Countries'' means any foreign country or territory, including any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands.

''Forced Labor''—''Forced labor'' under international standards means all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily, and includes indentured labor. ''Forced labor'' includes work provided or obtained by force, fraud, or coercion, including: (1) By threats of serious harm to, or physical restraint against any person; (2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (3) by means of the abuse or threatened abuse of law or the legal process. For purposes of this definition, forced labor does not include work specifically authorized by national laws where such work is carried out in accordance with conditions prescribed by the competent authority, including: any work or service required by compulsory military service laws for work of a purely military character; work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; work or service required in cases of emergency, such as in the event of war or of a calamity or threatened calamity, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; and minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives have the right to be consulted in regard to the need for such services.

''*Goods*''—''Goods'' means goods, wares, articles, materials, items, supplies, and merchandise.

''*Indentured Labor*''—''Indentured labor'' means all labor undertaken pursuant to a contract entered into by an employee the enforcement of which can be accompanied by process or penalties.

''*International Standards*''—''International standards'' means generally accepted international standards relating to forced labor and child labor, such as international conventions and treaties. These Guidelines employ definitions of ''child labor'' and ''forced labor'' derived from international standards.

''*Produced*''—''Produced'' means mined, extracted, harvested, farmed, produced, created, and manufactured.

Information Requested on Child Labor and Forced Labor

DOL requests current information about the nature and extent of child labor and forced labor in the production of goods internationally, as well as information on government, industry, or third-party actions and initiatives to address these problems. Information submitted may include studies, reports, statistics, news articles, electronic media, or other sources. Submitters should take into consideration the ''Sources of Information and Factors Considered in the Development and Maintenance of the List'' (Section A of the Procedural Guidelines), as well as the definitions of child labor and forced labor contained in section C of the Guidelines.

Information tending to establish the presence or absence of a significant incidence of child labor or forced labor in the production of a particular good in a country will be considered the most relevant and probative. Governments that have ratified International Labor Organization (''ILO'') Convention 138 (Minimum Age), Convention 182 (Worst Forms of Child Labor), Convention 29

(Forced Labor) and/or Convention 105 (Abolition of Forced Labor) may wish to submit relevant copies of their responses to any Observations or Direct Requests by the ILO's Committee of Experts on the Application of Conventions and Recommendations.

Where applicable, information submissions should indicate their source or sources, and copies of the source material should be provided. If primary sources are utilized, such as research studies, interviews, direct observations, or other sources of quantitative or qualitative data, details on the research or data-gathering methodology should be provided.

Information should be submitted to the addresses and within the time period set forth above. Submissions made via fax, mail, express delivery, hand delivery, or messenger service should clearly identify the person filing the submission and should be signed and dated. Submissions made via mail, express delivery, hand delivery, or messenger service should include an original and three copies of all materials and attachments. If possible, submitters should also provide copies of such materials and attachments on a computer disc. Note that security-related screening may result in significant delays in receiving comments and other written materials by regular mail.

Classified information will not be accepted. The Office may request that classified information brought to its attention be declassified. Submissions containing confidential or personal information may be redacted by the Office before being made available to the public, in accordance with applicable laws and regulations. All submissions will be made available to the public on the DOL Web site, as appropriate. The Office will not respond directly to submissions or return any submissions to the submitter, but the Office may communicate with the submitter regarding any matters relating to the submission.

Announcement of Public Hearing

DOL intends to hold a public hearing in 2008 to gather further information to assist in the development of the List. DOL expects to issue a **Federal Register** Notice announcing the hearing at least 30 days prior to the hearing date. The scope of the hearing will focus on the collection of information on child labor and forced labor in the production of goods internationally, and information on government, industry, or third-party actions and initiatives to combat child labor and forced labor. Information tending to demonstrate the presence or absence of a significant incidence of child labor or forced labor in the production of a particular good in a country will be considered the most relevant and probative.

Signed at Washington, DC, this 20th day of December, 2007.

Charlotte M. Ponticelli,

Deputy Undersecretary for International Affairs.

[FR Doc. E7–25036 Filed 12–26–07; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the ''Current Population Survey (CPS).'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before February 25, 2008.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll-free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The CPS has been the principal source of the official Government statistics on employment and unemployment for over 60 years. The labor force information gathered through the survey is of paramount importance in keeping track of the economic health of the Nation. The survey is the only source of monthly data on total employment and unemployment, with the Employment Situation report containing data from this survey being a Primary Federal Economic Indicator (PFEI). Moreover, the survey also yields data on the basic status and characteristics of persons not in the labor force. The CPS data are used monthly, in conjunction with data from other sources, to analyze the extent to which, and with what success, the various components of the American population are participating in the economic life of the Nation.

The labor force data gathered through the CPS are provided to users in the greatest detail possible, in conjunction with the demographic information obtained in the survey. In brief, the labor force data can be broken down by sex, age, race and ethnic origin, marital status, family composition, educational level, and other characteristics. Beginning in 2009, a breakdown by disability status will also be possible. Through such breakdowns, one can focus on the employment situation of specific population groups as well as on general trends in employment and unemployment. Information of this type can be obtained only through demographically oriented surveys such as the CPS.

The basic CPS data also are used as an important platform on which to base the data derived from the various supplemental questions that are administered in conjunction with the survey. By coupling the basic data from the monthly survey with the special data from the supplements, one can get valuable insights on the behavior of American workers and on the social and economic health of their families.

There is wide interest in the monthly CPS data among Government policymakers, legislators, economists, the media, and the general public. While the data from the CPS are used in conjunction with data from other surveys in assessing the economic health of the Nation, they are unique in various ways. Specifically, they are the basis for much of the monthly Employment Situation report, a PFEI. They provide a monthly, nationally representative measure of total employment, including farm work, self-employment and unpaid family work; other surveys are generally restricted to the nonagricultural wage and salary sector, or provide less timely

information. The CPS provides data on all jobseekers, and on all persons outside the labor force, while payroll-based surveys cannot, by definition, cover these sectors of the population. Finally, the CPS data on employment, unemployment, and on persons not in the labor force can be linked to the demographic characteristics of the many groups that make up the Nation's population, while the data from most other surveys are devoid of demographic information. Many groups, both in the government and in the private sector, are eager to analyze this wealth of demographic and labor force data for the populations of persons with and without disabilities.

II. Current Action

Office of Management and Budget clearance is being sought for the Current Population Survey (CPS). Questions are being added to the instrument in June 2008 to gather information on disability status of household members. The new questions ask if anyone in the household is deaf or has a serious difficulty hearing; if anyone is blind or has serious difficulty seeing, even when wearing glasses; if anyone has serious difficulty concentrating, remembering, or making decisions because of a physical, mental, or emotional condition; if anyone has serious difficulty walking or climbing stairs; if anyone has difficulty dressing or bathing; and if anyone has difficulty doing errands alone such as visiting a doctor's office or shopping because of a physical, mental, or emotional condition. When an affirmative answer is received, a follow up question is asked to determine which of the household members is/are affected. These new questions may be used in conjunction with the other demographic and labor force data collected in the CPS to examine the characteristics of the population of persons with disabilities and to make comparisons to the population of persons without disabilities and other groups.

These six new questions will be asked of all households in June 2008 to generate baseline data and will thereafter be asked only of households in months 1 and 5 of the interview cycle and of replacement households. Because of the initial June collection, burden hours will be higher in 2008 than in later years. In 2008, total burden for the labor force section of the CPS will be 84,000 hours (of which 7,000 hours are for the disability questions.) In 2009 and 2010, burden will fall to 82,600 hours (of which 5,600 hours are for the disability questions.)

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- 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.
- 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.
- Enhance the quality, utility, and clarity of the information to be collected.
- 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 submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Current Population Survey (CPS).

OMB Number: 1220–0100.

Affected Public: Households.

Total Respondents: 55,000 per month.

Frequency: Monthly.

Total Responses: 660,000.

Average Time per Response: 7.6 minutes.

Estimated Total Burden Hours: 84,000 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Signed at Washington, DC, this 19th day of December, 2007.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. E7–24995 Filed 12–26–07; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustment for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustment.

SUMMARY: This notice describes MSHA's revised fee schedule for testing, evaluating, and approving mining products as permitted by 30 CFR 5.50. MSHA charges applicants a fee to cover its costs associated with testing and evaluating equipment and materials manufactured for use in the mining industry. The new fee schedule, effective January 1, 2008, is based on MSHA's direct and indirect costs for providing services during fiscal year (FY) 2007.

DATES: This fee schedule is effective January 1, 2008.

FOR FURTHER INFORMATION CONTACT: John P. Faini, Chief, Approval and Certification Center, 304–547–2029 or 304–547–0400.

SUPPLEMENTARY INFORMATION:

I. Background

Under 30 CFR 5.50, MSHA may revise the fee schedule for testing, evaluation, and approval of mining products at least once every three years although the fee schedule must remain in effect for at least one year. MSHA last revised the fee schedule December 28, 2006 (71 FR 78224). The fee schedule became effective January 1, 2007.

Under 30 CFR 5.30(a), this fee adjustment does not apply to the 30 CFR part 15 testing (explosives and sheathed explosive units) that outside organizations perform on MSHA's behalf. In addition, under 30 CFR 5.40, this fee adjustment does not apply to travel expenses incurred under this Part. When the nature of the product requires MSHA to test and evaluate the product at a location other than on MSHA premises, MSHA must be reimbursed for the travel, subsistence, and incidental expenses of its representative according to Federal government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing.

II. Fee Computation

MSHA computed the 2008 fees using FY 2007 costs for baseline data. MSHA calculated a weighted-average based on the direct and indirect costs to applicants for testing, evaluation, and approval services rendered during FY 2007. From this average, MSHA computed a single hourly rate, which applies uniformly to all applications.

As a result of this process, MSHA has determined that as of January 1, 2008, the fee will be $84 per hour of services rendered.

III. Applicable Fee

• *Applications postmarked before January 1, 2008:* MSHA will process these applications under the 2007 hourly rate of $80. This information is also available on MSHA's Web site at *http://www.msha.gov/REGS/FEDREG/NOTICES/2006MISC/E6-22317.asp*.

• *Applications postmarked on or after January 1, 2008:* MSHA will process these applications under the 2008 hourly rate of $84.

Dated: December 19, 2007.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

[FR Doc. E7–25079 Filed 12–26–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Notice of Proposed Information Collection: IMLS Digital Collections and Content

AGENCY: Institute of Museum and Library Services, National Foundation for the Arts and the Humanities.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services (IMLS) as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study to assess the impact of access to computers and the Internet and to related services at public libraries on individuals, families, and communities.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 26, 2008. IMLS is particularly interested in comments that help the agency to:

• 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;

• 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;

• Enhance the quality, utility, and clarity of the information to be collected; and

• 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 submissions of responses.

ADDRESSES: Send comments to: Barbara G. Smith, E-Projects Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th floor, Washington, DC 20036, by telephone: 202–653–4688; fax: 202–653–4625; or by e-mail at *bsmith@imls.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is authorized by the Museum and Library Services Act, Public Law 108–81, and is the primary source of federal support for the nation's 122,000 libraries and 17,500 museums. The Institute's mission is to create strong libraries and museums that connect people to information and ideas. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development.

II. Current Actions

The purpose of the collections is to continue the development of the Institute of Museum and Library Services' Digital Collections and Content (DCC) project, which, in its first phase, created a publicly available registry of IMLS National Leadership Grant (NLG) and Library Services and Technology Act (LSTA) digital collections and a repository of item-level metadata available from these collections. The DCC, which is available to the public via the Internet, provides important information about and access to the digital collections funded through IMLS grant programs.

Agency: Institute of Museum and Library Services.

Title: IMLS Digital Collections and Content.

OMB Number: To be determined.

Agency Number: 3137.

Frequency: Two surveys per funded grant project.

Affected Public: General public, libraries, museums, State Library Administrative agencies.

Number of Respondents: To be determined.

Estimated Time per Respondent: To be determined.

Total Annualized Capital/Startup Costs: To be determined.

Total Costs: To be determined.

FOR FURTHER INFORMATION CONTACT: Rachel Frick, Senior Program Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC 20036. Telephone: 202/653–4667. E-mail: *rfrick@imls.gov*.

Dated: December 20, 2007.

Barbara G. Smith,

E-Projects Officer, Institute of Museum & Library Services.

[FR Doc. E7–25117 Filed 12–26–07; 8:45 am]

BILLING CODE 7036–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–012 and 52–013]

South Texas Project Nuclear Operating Company; Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License for the South Texas Project Units 3 and 4

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10 of the Code of Federal Regulations (10 CFR) Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR part 52, ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants,'' notice is hereby given that a hearing will be held, at a time and place to be set in the future by the U.S. Nuclear Regulatory Commission (NRC, the Commission) or designated by the Atomic Safety and Licensing Board (Board). The hearing will consider the application dated September 20, 2007, filed by South Texas Project Nuclear Operating Company, pursuant to Subpart C of 10 CFR part 52 for a combined license (COL). The application, which was supplemented by letters dated September 26, 2007, October 15, 2007, October 18, 2007, November 8, 2007, November 12, 2007, November 13, 2007, and November 21, 2007, requests approval of a COL for South Texas Project Units 3 and 4 located in Matagorda County, Texas. The application was accepted for docketing on November 29, 2007. The

docket numbers established for this application are 52–012 and 52–013.

The hearing will be conducted by a Board that will be designated by the Chairman of the Atomic Safety and Licensing Board Panel or by the Commission. Notice as to the membership of the Board will be published in the **Federal Register** at a later date. The NRC staff will complete a detailed technical review of the application and will document its findings in a safety evaluation report (SER). The Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, ''Referral to the Advisory Committee on Reactor Safeguards (ACRS),'' and the ACRS will report on those portions of the application that concern safety.

Any person whose interest may be affected by this proceeding and desire to participate as a party to this proceeding, must file a written petition for leave to intervene in accordance with 10 CFR 2.309.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which was promulgated by the NRC on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding even in instances in which the petitioner/requestor (or its counsel or representative) already holds a NRC-issued digital ID certificate. Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Standard Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Standard Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filing must be submitted no later than 11:59 p.m. Eastern Standard Time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Procedding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in the filing. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filing and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice in the **Federal Register**. Non-timely filings will not be entertained absent a determination by the Commission, or Board designated to rule on the petition, pursuant to the requirements of 10 CFR 2.309(c)(1)(i)–(viii).

A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor),

Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing 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 to *pdr@nrc.gov.* The application is also available at *http://www.nrc.gov/reactors/new-licensing/col.html.* The ADAMS accession number for the application is ML072830407. The ADAMS accession numbers for the supplements to the application are ML072740461, ML072960352, ML072960489, ML073190645, ML073340618, ML073200992, and ML073310616. Some of the supplements contain information that is sensitive and these supplements are not available to the public.

Dated at Rockville, Maryland, this 19th day of December 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E7–25105 Filed 12–26–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for an Exemption From Certain Inventory-Related Requirements of 10 CFR 74.19(b) and 10 CFR 74.19(c) for Dairyland Power Cooperative (DPR–45) in Genoa, WI

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Kristina L. Banovac, Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–5114; fax number: (301) 415–5369; e-mail: *klb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption to certain inventory-related requirements of 10 CFR 74.19(b) and 10 CFR 74.19(c) for Possession Only License No. DPR–45, issued to Dairyland Power Cooperative (DPC) (the licensee) for the La Crosse Boiling Water Reactor in Genoa, Wisconsin. NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact is appropriate. The exemption will be issued following the publication of this Notice.

II. EA Summary

The proposed action is to grant an exemption to DPC from certain inventory-related requirements of 10 CFR 74.19(b) and 10 CFR 74.19(c), until the time the spent fuel is moved from the spent fuel pool to dry cask storage.

The staff has prepared the EA in support of the proposed exemption. The proposed action is an administrative action and will not result in any significant environmental impacts. The proposed action will not result in the release of any chemical or radiological constituents to the environment and will not affect any environmental resources. The proposed action will not cause any adverse impacts to local land use, biotic resources, or cultural or historic resources.

III. Finding of No Significant Impact

Pursuant to 10 CFR Part 51, the NRC staff has considered the environmental consequences of granting DPC an exemption from certain inventory-related requirements of 10 CFR 74.19(b) and 10 CFR 74.19(c). On the basis of this assessment, the Commission has concluded that there are no significant environmental impacts from the proposed action, and the Commission is making a finding of no significant impact. Accordingly, preparation of an environmental impact statement is not warranted.

IV. Further Information

Documents related to this action are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Date	Document title/subject	ADAMS accession number
February 4, 1980	License Amendment No. 18 to DPR–45	8002140657 (ADAMS Legacy Library)
June 16, 2006	La Crosse Boiling Water Reactor—NRC Material Control and Accounting Program Inspection Report No. 05000409/2006201 and Notice of Violation.	ML061560040
February 8, 2007	Request for Additional Information on Request for Exemption from Certain Requirements of 10 CFR 74.19(b) and 10 CFR 74.19(c).	ML070330501
March 21, 2007	DPC Response to NRC Request for Additional Information on Request for Exemption from Certain Requirements of NRC Regulations 10 CFR 74.19(b) and (c).	ML071000571

Date	Document title/subject	ADAMS accession number
December 14, 2007	Environmental Assessment Related to Granting of Exemption from Certain Inventory-Related Requirements of 10 CFR 74.19(b) and 10 CFR 74.19(c) for NRC License No. DPR–45, Dairyland Power Cooperative in Genoa, Wisconsin.	ML072830280

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD this 14th day of December, 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. E7–25022 Filed 12–26–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Standard Form 2808

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995, this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2808, Designation of Beneficiary: Civil Service Retirement System (CSRS), is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Approximately 2,000 forms will completed annually. The form takes approximately 15 minutes to complete. The annual burden is estimated at 500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500; and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. 07–6219 Filed 12–26–07; 8:45 am]

BILLING CODE 6325–38–M

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension of a Currently Approved Information Collection: OPM 1530

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted to the Office of Management and Budget (OMB) a request for extension of a currently approved information collection. OPM Form 1530, Report of Medical Examination of Person Electing Survivor Benefit Under the Civil Service Retirement System, is used to collect information regarding an annuitant's health so that OPM can determine whether the insurable interest survivor benefit election can be allowed.

Approximately 500 OPM Form 1530 will be completed annually. We estimate it takes approximately 90 minutes to complete the form. The annual burden is 750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–25062 Filed 12–26–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. The Federal Employees Health Benefits (FEHB) Open Season Express Interactive Voice Response (IVR) System and the Open Season Web site, Open Season Online, are used by retirees and survivors. They collect information for changing FEHB enrollments, collecting dependent and other insurance information for self and family enrollments, requesting plan brochures, requesting a change of address, requesting cancellation or suspension of FEHB benefits, asking to make payment to the Office of Personnel Management when the FEHB payment is greater than the monthly annuity amount, or for requesting FEHB plan accreditation and Customer Satisfaction Survey information.

We receive approximately 215,000 responses per year to the IVR system and the online web. Each response takes approximately 10 minutes to complete. The annual burden is 35,833 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–25063 Filed 12–26–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–14 and RI 25–14A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–14, Self-Certification of Full-Time School Attendance For The School Year, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. RI 25–14A, Information and Instructions for Completing the Self-Certification of Full-Time School Attendance, provides instructions for completing the Self-Certification of Full-Time School Attendance For The School Year Survey form.

Approximately 14,000 RI 25–14 forms are completed annually. We estimate it takes approximately 12 minutes to complete the form. The annual burden is 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or e-mail to *MaryBethSmith-Toomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–25093 Filed 12–26–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection; SF 2802 and SF 2802A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2802, Application for Refund of Retirement Deductions (Civil Service Retirement System) is used to support the payment of monies from the Retirement Fund. It identifies the applicant for refund of retirement deductions. SF 2802A, Current/Former Spouse's Notification of Application for Refund of Retirement Deductions, is used to comply with the legal requirement that any spouse or former spouse of the applicant has been notified that the former employee is applying for a refund.

Approximately 3,741 SF 2802 forms are completed annually. We estimate it takes approximately one hour to complete the form. The annual estimated burden is 3,741 hours. Approximately 3,389 SF 2802A forms are processed annually. We estimate it takes approximately 15 minutes to complete this form. The annual burden

is 847 hours. The total annual burden is 4,588 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Deputy Assistant Director, Retirement Services Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500, and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E7–25095 Filed 12–26–07; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extensions:

Form 6–K; OMB Control No. 3235–0116, SEC File No. 270–107.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Form 6–K (17 CFR 249.306) elicits material information from foreign private issuers of publicly traded securities promptly after the occurrence of specified or other important corporate events so that investors have current information upon which to base investment decisions. The purpose of Form 6–K is to ensure that U.S. investors have access to the same information that foreign investors do when making investment decisions. Form 6–K is a public document and all information provided is mandatory. Form 6–K takes approximately 8.7 hours per response and is filed by approximately 12,022 issuers annually. We estimate 75% of the 8.7 hours per response (6.525 hours) is prepared by the issuer for a total annual reporting burden of 78,444 hours (6.525 hours per response × 12,022 responses). The remaining burden hours are reflected as a cost to the foreign private issuers.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *Alexander_T._Hunt@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 17, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24996 Filed 12–26–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56982; File No. SR–Amex–2007–79]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change as Modified by Amendments No. 1 and 2 Relating to Independent Directors and Audit Committee Members

December 18, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Amex. On November 8, 2007, Amex submitted Amendment No. 1 to the proposed rule change.[3] On November 16, 2007, Amex submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend sections 802 and 803 of the Amex Company Guide (''Company Guide'') in order to modify the cure period available to a listed issuer that loses an independent director or audit committee member. In addition, the Exchange proposes to reorganize sections 121, 126, 801, 802, 803, 804 and 805 of the Company Guide to consolidate the provisions related to independent director and audit committee requirements.

The text of the proposed rule change is available at Amex's Office of the Secretary, at the Commission's Public Reference Room, and on Amex's Web site at *http://www.amex.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Most listed issuers are required to maintain a majority independent board and an audit committee comprised of at least three independent directors who

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

meet the general Amex independence criteria specified in section 121 of the Company Guide, as well as the audit committee independence requirements mandated by Rule 10A–3 under the Act[5] and section 803 of the Company Guide. Section 121B(2)(c) of the Company Guide provides an exemption for small business issuers (''Small Business Issuers'')[6] which states that Small Business Issuers are only required to maintain a board of directors comprised of at least 50% independent directors and an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A–3 under the Act.[7]

Issuers that lose an independent audit committee member because the director ceases to be ''independent'' pursuant to Rule 10A–3 of the Act[8] or section 121A of the Company Guide for reasons outside his or her reasonable control are afforded a cure period to replace the director.[9] The cure period lasts until the earlier of the company's next annual shareholders' meeting or one year from the date of the event that caused the noncompliance and is based on Rule 10A–3(a)(3) under the Act,[10] which permits an exchange to provide such a cure period.

Currently, the Company Guide does not provide an explicit cure period for a listed issuer that fails to comply with the audit committee requirements due to a vacancy on its audit committee. Further, the Company Guide does not provide an explicit cure period for a listed issuer that fails to comply with the majority independent board requirements due to a vacancy or if a director ceases to be independent due to circumstances beyond his or her reasonable control. The Exchange proposes to provide a cure period to apply to situations in which an issuer becomes non-compliant with the audit committee requirements due to a vacancy[11] or the majority independent board requirements as a result of either (i) a vacancy or (ii) if a director ceases to be independent due to circumstances beyond his or her reasonable control.[12] The proposed rule change would provide that if the annual shareholders' meeting occurs no later than 180 days following the event that caused the issuer's failure to comply with the majority independent board requirement or the audit committee composition requirement, the listed issuer (other than a Small Business Issuer) will instead have 180 days from the event to regain compliance.[13] The 180-day minimum cure period will help assure adequate time for companies to conduct an appropriate search process for a qualified replacement for an independent director or audit committee member.

Currently, the Nasdaq Stock Market, Inc. (''Nasdaq'') provides a similar cure period for its listed issuers with a vacancy on the board or audit committee,[14] though Nasdaq does not provide an exemption for Small Business Issuers. Section 121B(2)(c) of the Company Guide provides an exemption for Small Business Issuers in that they are only required to maintain a board of directors comprised of at least 50% independent directors, and an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A–3 under the Act.[15] In the event that a Small Business Issuer elects to have more than two members on its audit committee, a vacancy of one of the audit committee members will not trigger a violation of the audit committee requirements under section 121B(2)(c) of the Company Guide. If, on the other hand, a Small Business Issuer decides to have only two members on its audit committee, it becomes imperative that a vacancy on the audit committee be filled as quickly and efficiently as possible. Thus, in light of the exemption provided to Small Business Issuers, Amex proposes that if the annual shareholders' meeting of a Small Business Issuer occurs no later than 75 days following the event that caused the failure to comply with the audit committee composition requirement, that such Small Business Issuer have 75 days from the event to regain compliance.[16]

Amex also proposes to reorganize sections 121, 126, 801, 802, 803, 804, and 805 of the Company Guide to consolidate the provisions related to independent director and audit committee requirements.

The Exchange believes that the proposed changes strike an appropriate balance between the shareholder protections provided by an independent board and audit committee and the time that is generally needed to replace an independent director and/or audit committee member. Moreover, the Exchange expects the use of the explicit cure period to provide greater transparency and clarity to the process, as well as greater uniformity with the corporate governance standards of other national securities exchanges.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[17] in general, and furthers the objectives of section 6(b)(5) of the Act,[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[5] 17 CFR 240.10A–3.

[6] A ''small business issuer'' is generally defined as a company whose annual revenue is less than $25 million and whose ''public float'' is less than $25 million. *See* Item 10(a)(1) of SEC Regulation S–B (17 CFR 228.10(a)(1)).

[7] 17 CFR 240.10A–3.

[8] *Id.*

[9] *See* Section 803(a) of the Company Guide.

[10] 17 CFR 240.10A–3(a)(3).

[11] *See* proposed Section 803B(6)(b) of the Company Guide.

[12] *See* proposed Section 802(b) of the Company Guide.

[13] *See* proposed Sections 803B(6)(b) and 802(b) of the Company Guide.

[14] *See* Nasdaq Rule 4350(d)(4)(B). *See also* Securities Exchange Act Release No. 54421(September 11, 2006), 71 FR 54698 (September 18, 2006) (SR–NASDAQ–2006–011).

[15] 17 CFR 240.10A–3.

[16] *See* proposed Section 803B(6)(b).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2007–79 on the subject line.

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 SR–Amex–2007–79. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–79 and should be submitted on or before January 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56985; File No. SR–NASDAQ–2007–098]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Trading of Certain Securities Outside of the Regular Market Session

December 18, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 7, 2007, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been substantially prepared by the Exchange. This order provides notice of and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (1) Amend NASDAQ Rules 4420(i), 4420(j), and 4630 to permit the trading of Portfolio Depository Receipts, Index Fund Shares, and Commodity-Related Securities (collectively, ''ETFs''), respectively, during NASDAQ's Pre- and Post-Market Sessions; [3] (2) add new NASDAQ Rule 4631, which would require certain disclosures to be made by members to their non-member customers prior to accepting orders for trading as a result of the proposed extended trading hours for ETFs; (3) allow certain ETFs currently approved for trading on the Exchange pursuant to unlisted trading privileges (''UTP'') to trade during NASDAQ's Pre- and Post-Market Sessions; and (4) make certain technical, clarifying changes to NASDAQ Rules 4420(i) and 4420(j) relating to the dissemination of the underlying index value with respect to Non-US Component Stocks [4] included in the index. The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://nasdaq.complinet.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ states that its members currently trade a wide variety of ETFs on the Exchange pursuant to UTP in accordance with NASDAQ Rules 4420(i), 4420(j), and 4630 and has confined member trading in such ETFs to only the Exchange's Regular Market Session. This trading restriction is premised on the unavailability of an updated current index value and/or Intraday Indicative Value [5] during the Pre- and Post-Market Sessions. Under the proposal, NASDAQ seeks to permit trading in ETFs during the Pre-Market and Post-Market Sessions, provided that its members provide non-members certain pre-trade disclosures prior to accepting non-member orders in such ETFs. Accordingly, the Exchange proposes to amend NASDAQ Rules 4420(i), 4420(j), and 4630 to allow members to trade ETFs during all three Market Sessions and limit the hours during which the dissemination of applicable current index values and updated Intraday Indicative Values [6] are required. Because the applicable current

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ defines the Pre-Market Session as the trading session that begins at 7 a.m. and continues until 9:30 a.m. The Post-Market Session means the trading session that begins at 4 p.m. or 4:15 p.m. and continues until 8 p.m. The Regular Market Session means the trading session from 9:30 a.m. until 4 p.m. or 4:15 p.m. *See* NASDAQ Rule 4120(b)(4).

[4] Non-US Component Stocks are equity securities that: (1) Are not registered under Sections 12(a) or 12(g) of the Act (15 U.S.C. 78l(a) and 15 U.S. 78*l*(g)); (2) are issued by an entity that is not organized, domiciled, or incorporated in the United States; and (3) are issued by an entity that is an operating company (including Real Estate Investment Trusts and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives). *See* NASDAQ Rules 4420(i)(1)(D) and 4420(j)(1)(D).

[5] The Intraday Indicative Value is also sometimes referred to as the Indicative Optimized Portfolio Value, the Indicative Fund Value, the Indicative Trust Value, and the Indicative Partnership Value, depending on the type of ETF being traded and the terminology used.

[6] *See* NASDAQ Rules 4420(i)(3)(C) and 4420(j)(3)(C) (describing the Intraday Indicative Value and its dissemination requirements).

index values and updated Intraday Indicative Values may not be available during the Pre- and Post-Market Sessions, the Exchange will require such updated values to be disseminated only during the Regular Market Session and the last computed index value and Intraday Indicative Value to be disseminated when such values do not change. Specifically with respect to NASDAQ Rule 4630, NASDAQ proposes to clarify that all securities approved pursuant to this rule are eligible for trading during all Exchange Market Sessions, provided that its members provide non-member customers certain disclosures prior to accepting non-member customer orders for execution in the Pre-Market and Post-Market Sessions.

NASDAQ proposes to add new Rule 4631, which would require Exchange members to disclose to non-member customers the risks associated with trading in the Pre-Market and Post-Market Sessions, including the lack of dissemination of the applicable updated index value and the Intraday Indicative Value for ETFs during such sessions. In particular, new NASDAQ Rule 4631 will require members to disclose that, because the Intraday Indicative Value is not calculated or widely disseminated during the Pre-Market and Post-Market Sessions, an investor who is unable to calculate an implied value for an ETF in those sessions may be at a disadvantage to market professionals. The Exchange believes that requiring members to disclose this risk to non-member customers will facilitate informed participation in extended-hours trading. NASDAQ notes that NYSE Arca, Inc. has amended its rules to similarly allow for extended-hours trading in ETFs, as long as similar mandatory disclosures are made by its members prior to accepting non-member customer orders.[7]

The Exchange also proposes to make certain technical changes to NASDAQ Rules 4420(i) and 4420(j) to make clear that, with respect to Non-US Component Stocks that are included in an underlying combination index, the impact on such combination index must be disseminated at least every 60 seconds during the Regular Market Session. This proposed change to NASDAQ Rules 4420(i) and 4420(j) corresponds to the dissemination requirements for indexes based on Non-US Component Stocks.

In addition to amending NASDAQ Rules 4420(i), 4420(j), 4630 and adding new NASDAQ Rule 4631, the Exchange proposes to permit the trading of ETFs, previously approved by the Commission, during the Pre-Market and Post-Market Sessions, subject to the mandatory disclosure requirements proposed in new NASDAQ Rule 4631. Specifically, the Exchange proposes that the following ETFs be eligible for trading during the Pre-Market and Post-Market Sessions upon approval of the proposed amendments to NASDAQ Rules 4420(i), 4420(j), 4630, and new NASDAQ Rule 4631:

- iShares GSCI Commodity-Indexed Trust; [8]
- the PowerShares DB Energy Fund; the PowerShares DB Oil Fund; the PowerShares DB Precious Metals Fund; the PowerShares DB Gold Fund; the PowerShares DB Silver Fund; the PowerShares DB Base Metals Fund; and the PowerShares DB Agriculture Fund; [9]
- United States Natural Gas Fund; [10]
- PowerShares DB Commodity Index Tracking Fund; [11]
- PowerShares DB G10 Currency Harvest Fund; [12]
- Claymore MACROshares Oil Up Tradeable Shares and Claymore MACROshares Oil Down Tradeable Shares; [13]
- iPath Exchange-Traded Notes Linked to the Performance of the GSCI Total Return Index; iPath Exchange-Traded Notes Linked to the Performance of the Dow Jones—AIG Commodity Index Total Return; and iPath Exchange Traded Notes Linked to the Performance of the Goldman Sachs Crude Oil Total Return Index; [14]
- United States Oil Fund, LP; [15]
- PowerShares DB U.S. Dollar Index Bullish Fund and PowerShares DB U.S. Dollar Index Bearish Fund; [16]
- iShares Silver Trust; [17]
- iShares COMEX Gold Trust; [18]
- Four Ultra Funds listed and traded on the American Stock Exchange LLC (''Amex'') pursuant to Commission order on May 10, 2006: (1) Ultra S&P 500; (2) Ultra Nasdaq-100; (3) Ultra Dow 30; and (4) Ultra S&P MidCap 400; and 27 Ultra Funds listed and traded on Amex pursuant to Commission order on January 17, 2007: (1) Ultra Russell 2000; (2) Ultra S&P SmallCap 600; (3) Ultra S&P500/Citigroup Value; (4) Ultra S&P500/Citigroup Growth; (5) Ultra S&P MidCap 400/Citigroup Value; (6) Ultra S&P MidCap 400/Citigroup Growth; (7) Ultra S&P SmallCap 600/Citigroup Value; (8) Ultra S&P SmallCap600/Citigroup Growth; (9) Ultra Basic Materials; (10) Ultra Consumer Goods; (11) Ultra Consumer Services; (12) Ultra Financials; (13) Ultra Health Care; (14) Ultra Industrials; (15) Ultra Oil & Gas; (16) Ultra Real Estate; (17) Ultra Semiconductors; (18) Ultra Technology; (19) Ultra Utilities; (20) Ultra Russell Midcap Index; (21) Ultra Russell Midcap Growth Index; (22) Ultra Russell Midcap Value Index; (23) Ultra Russell 1000 Index; (24) Ultra Russell 1000 Growth Index; (25) Ultra Russell 1000 Value Index; (26) Ultra Russell 2000 Growth Index; and (27) Ultra Russell 2000 Value Index; [19]
- Four Short Funds listed and traded on Amex pursuant to Commission order on May 10, 2006: (1) Short S&P 500; (2) Short Nasdaq-100; (3) Short Dow 30; and (4) Short S&P MidCap 400; and 27 Short Funds listed and traded on Amex pursuant to Commission order on January 17, 2007: (1) Short Russell 2000; (2) Short S&P SmallCap 600; (3) Short S&P500/Citigroup Value; (4) Short S&P500/Citigroup Growth; (5) Short S&P MidCap 400/Citigroup Value; (6) Short S&P MidCap 400/Citigroup Growth; (7) Short S&P SmallCap 600/Citigroup Value; (8) Short S&P SmallCap 600/Citigroup Growth; (9) Short Basic Materials; (10) Short

[7] *See* Securities Exchange Act Release Nos. 56625 (October 5, 2007), 72 FR 58144 (October 12, 2007) (SR–NYSEArca–2007–73) (approving certain changes to the generic listing standards for certain ETFs); 56270 (August 15, 2007), 72 FR 47109 (August 22, 2007) (SR–NYSEArca–2007–74) (requiring disclosure by members of additional risks associated with trading ETFs during all trading sessions); and 56627 (October 5, 2007), 72 FR 58145 (October 12, 2007) (SR–NYSEArca–2007–75) (approving extended trading hours for certain ETFs).

[8] *See* Securities Exchange Act Release No. 55861 (June 5, 2007), 72 FR 32153 (June 11, 2007) (SR–NASDAQ–2007–054).

[9] *See* Securities Exchange Act Release No. 55862 (June 5, 2007), 72 FR 32380 (June 12, 2007) (SR–NASDAQ–2007–053).

[10] *See* Securities Exchange Act Release No. 55781 (May 17, 2007), 72 FR 29191 (May 24, 2007) (SR–NASDAQ–2007–052).

[11] *See* Securities Exchange Act Release No. 55767 (May 15, 2007), 72 FR 28733 (May 22, 2007) (SR–NASDAQ–2007–051).

[12] *See* Securities Exchange Act Release No. 55739 (May 10, 2007), 72 FR 27885 (May 17, 2007) (SR–NASDAQ–2007–049).

[13] *See* Securities Exchange Act Release No. 55740 (May 10, 2007), 72 FR 27889 (May 17, 2007) (SR–NASDAQ–2007–048).

[14] *See* Securities Exchange Act Release No. 55760 (May 15, 2007), 72 FR 28736 (May 22, 2007) (SR–NASDAQ–2007–046).

[15] *See* Securities Exchange Act Release No. 55761 (May 15, 2007), 72 FR 28739 (May 22, 2007) (SR–NASDAQ–2007–045).

[16] *See* Securities Exchange Act Release No. 55489 (March 19, 2007), 72 FR 13843 (March 23, 2007) (SR–NASDAQ–2007–023).

[17] *See* Securities Exchange Act Release No. 55385 (March 2, 2007), 72 FR 10797 (March 9, 2007) (SR–NASDAQ–2007–018).

[18] *See* Securities Exchange Act Release No. 55380 (March 1, 2007), 72 FR 10280 (March 7, 2007) (SR–NASDAQ–2007–014).

[19] *See* Securities Exchange Act Release No. 55353 (February 26, 2007), 72 FR 9802 (March 5, 2007) (SR–NASDAQ–2007–011).

Consumer Goods; (11) Short Consumer Services; (12) Short Financials; (13) Short Health Care; (14) Short Industrials; (15) Short Oil & Gas; (16) Short Real Estate; (17) Short Semiconductors; (18) Short Technology; (19) Short Utilities; (20) Short Russell Midcap Index; (21) Short Russell Midcap Growth Index; (22) Short Russell Midcap Value Index; (23) Short Russell 1000 Index; (24) Short Russell 1000 Growth Index; (25) Short Russell 1000 Value Index; (26) Short Russell 2000 Growth Index; and (27) Short Russell 2000 Value Index; [20]

• Four UltraShort Funds listed and traded on Amex pursuant to Commission order on June 23, 2006: (1) UltraShort S&P 500; (2) UltraShort Nasdaq–100; (3) UltraShort Dow 30; and (4) UltraShort S&P MidCap 400; and 27 UltraShort funds listed and traded on Amex pursuant to Commission order on January 17, 2007: (1) UltraShort Russell 2000; (2) UltraShort S&P SmallCap 600; (3) UltraShort S&P500/Citigroup Value; (4) UltraShort S&P500/Citigroup Growth; (5) UltraShort S&P MidCap 400/Citigroup Value; (6) UltraShort S&P MidCap 400/Citigroup Growth; (7) UltraShort S&P SmallCap 600/Citigroup Value; (8) UltraShort S&P SmallCap 600/Citigroup Growth; (9) UltraShort Basic Materials; (10) UltraShort Consumer Goods; (11) UltraShort Consumer Services; (12) UltraShort Financials; (13) UltraShort Health Care; (14) UltraShort Industrials; (15) UltraShort Oil & Gas; (16) UltraShort Real Estate; (17) UltraShort Semiconductors; (18) UltraShort Technology; (19) UltraShort Utilities; (20) UltraShort Russell Midcap Index; (21) UltraShort Russell Midcap Growth Index; (22) UltraShort Russell Midcap Value Index; (23) UltraShort Russell 1000 Index; (24) UltraShort Russell 1000 Growth Index; (25) UltraShort Russell 1000 Value Index; (26) UltraShort Russell 2000 Growth Index; and (27) UltraShort Russell 2000 Value Index; [21]

• iShares Lehman TIPS Bond Fund; iShares Lehman Aggregate Bond Fund; iShares iBoxx $ Investment Grade Corporate Bond Fund; iShares Lehman 20+ Year Treasury Bond Fund; iShares 7–10 Year Treasury Bond Fund; iShares Lehman 1–3 Year Treasury Bond Fund; iShares Lehman Short Treasury Bond Fund; iShares Lehman 3–7 Year Treasury Bond Fund; iShares Lehman 10–20 Year Treasury Bond Fund; iShares Lehman 1–3 Year Credit Bond Fund; iShares Lehman Intermediate Credit Bond Fund; iShares Lehman Credit Bond Fund; iShares Lehman Intermediate Government/Credit Bond Fund; and iShares Lehman Government/Credit Bond Fund; [22] and

• CurrencyShares™ Australian Dollar Trust that issues Australian Dollar Shares; CurrencyShares™ British Pound Sterling Trust that issues British Pound Sterling Shares; CurrencyShares™ Canadian Dollar Trust that issues Canadian Dollar Shares; CurrencyShares™ Euro Trust that issues Euro Shares; CurrencyShares™ Japanese Yen Trust that issues Japanese Yen Shares; CurrencyShares™ Mexican Peso Trust that issues Mexican Peso Shares; CurrencyShares™ Swedish Krona Trust that issues Swedish Krona Shares; and CurrencyShares™ Swiss Franc Trust that issues Swiss Franc Shares.[23]

In support of this proposed rule change, the Exchange states that the representations in the Commission approval orders for the foregoing ETFs continue to apply and would be applicable to trading during all three trading sessions on NASDAQ. Specifically, the Exchange makes the following representations:

1. The Exchange has appropriate rules to facilitate transactions in shares of the above ETFs during all trading sessions. The Exchange deems such shares to be equity securities, thus rendering trading in such shares subject to NASDAQ's existing rules governing the trading of equity securities.

2. NASDAQ's surveillance procedures are adequate to properly monitor trading of shares of the above ETFs in all trading sessions.[24]

3. NASDAQ has distributed an Information Circular to members prior to the commencement of trading of the shares of the above ETFs on the Exchange that explains the terms, characteristics, and risks of trading such shares.

4. NASDAQ will require members with a customer who purchases newly-issued shares of the above ETFs in any trading session on the Exchange to provide that customer with a product description, if available, or a prospectus, and has noted this delivery requirement in the Information Circular.

5. When NASDAQ is the UTP trading market, NASDAQ will cease trading in the shares of ETFs during all trading sessions if (a) the listing market stops trading such shares, or (b) the listing market delists such shares. Additionally, NASDAQ may cease trading the shares if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on NASDAQ inadvisable. UTP trading in the shares of ETFs is also governed by the trading halt provisions of NASDAQ Rules 4120 and 4121.

6. When NASDAQ is the listing market, NASDAQ may consider all relevant factors in exercising its discretion to halt or suspend trading in the shares of an ETF. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares inadvisable. Factors for consideration may include (a) the extent to which trading is not occurring in the securities or other instruments underlying an ETF, or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the shares of listed ETFs are subject to trading halts caused by extraordinary market volatility pursuant to NASDAQ's ''circuit breaker'' rule (NASDAQ Rule 4121) or by the halt or suspension of trading of the underlying securities or other instruments underlying an ETF. If the Intraday Indicative Value or the index value applicable to a series of shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value or the index value occurs. If the interruption to the dissemination of the Intraday Indicative Value or the index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

7. The Intraday Indicative Value and/or index value (or value of the underlying asset or instrument, if not an index) will continue to be disseminated during all three trading sessions, as reflected in the relevant proposed rule changes filed by the Exchange and approved by the Commission.

NASDAQ intends to distribute to its members and make available on its Web site at *http://www.nasdaqtrader.com* a Regulatory Alert titled ''Exchange-Traded Funds—Extended Trading Hours'' that discloses, among other things: (1) That the current underlying index value and Intraday Indicative Value may not be updated during the

[20] *See id.*

[21] *See id.*

[22] *See* Securities Exchange Act Release No. 55300 (February 15, 2007), 72 FR 8227 (February 23, 2007) (SR–NASDAQ–2007–002).

[23] *See* Securities Exchange Act Release No. 55344 (February 23, 2007), 72 FR 9799 (March 5, 2007) (SR–NASDAQ–2006–057).

[24] NASDAQ states that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliate members of ISG. In addition, as referenced in the applicable Commission approval orders, NASDAQ has in place information sharing agreements with the relevant exchange(s).

Pre-Market and Post-Market Sessions; (2) that commodity and currency spot prices are available during the Regular Market Session, and commodity and currency futures prices generally will not be available during the Pre-Market and Post-Market Sessions; [25] (3) that lower liquidity in the Pre-Market and Post-Market Sessions may impact pricing; (4) that higher volatility in the Pre-Market and Post-Market Sessions may impact pricing; (5) that wider spreads may occur in the Pre-Market and Post-Market Sessions; (6) the circumstances that trigger trading halts; (7) required customer disclosures; [26] and (8) suitability requirements.

The Exchange believes that, with this additional disclosure, it is appropriate to permit trading during all three of NASDAQ's trading sessions, notwithstanding the absence of a disseminated updated index value or Intraday Indicative Value during all or part of NASDAQ's trading hours. In addition, NASDAQ notes that, if the official index value does not change during some or all of the period when trading is occurring on the Exchange (for example, because of time zone differences or holidays in countries where the index component stocks trade), then the last calculated official index value must remain available throughout NASDAQ trading hours. Similarly, if the Intraday Indicative Value does not change during any portion of NASDAQ trading hours, then the last official calculated Intraday Indicative Value must remain available throughout NASDAQ trading hours.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[27] in general, and furthers the objectives of section 6(b)(5) of the Act,[28] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2007–098 on the subject line.

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 SR–NASDAQ–2007–098. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NASDAQ–2007–098 and should be submitted on or before January 17, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[30] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposal reasonably balances the removal of impediments to a free and open market with the protection of investors and the public interest, two principles set forth in section 6(b)(5) of the Act. Trading during extended hours carries more risks than during regular business hours. With ETFs in particular, customers who trade when a fund's Intraday Indicative Value is not calculated and publicly disseminated may be at a disadvantage to professional traders who have their own means of calculating a reliable estimate of the fund's net asset value or ''NAV.'' The Exchange has represented that it will distribute to its members a Regulatory Alert that discusses this particular risk and other risks of trading ETFs outside of the Regular Market Session. In view of these additional disclosures, the Commission believes it is reasonable and consistent with the Act for the Exchange to extend the trading hours of

[25] Nasdaq states that, in certain cases, the futures or options markets for a particular commodity may be closed during part of the Regular Market Session, and the Intraday Indicative Value would be static for that particular future or options price, but widely disseminated. In addition, the prices of certain futures contracts in commodities (*e.g.*, gold) and currencies are available on a 24-hour basis.

[26] *See* proposed NASDAQ Rule 4631.

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[30] 15 U.S.C. 78f(b)(5).

the ETFs in the manner described in this proposal.

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that it has previously approved similar proposals made by another national securities exchange.[31] Those proposals were subject to full notice-and-comment periods before Commission action, and no comments were received. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or should preclude the extension of trading hours of the ETFs on the Exchange. Therefore, the Commission believes that accelerating approval of this proposal is reasonable.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[32] that the proposed rule change (SR–NASDAQ–2007–098) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24989 Filed 12–26–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56984; File No. SR–NYSE–2007–110]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of a Proposed Rule Change as Modified by Amendment No. 1 Thereto To Amend Listing Fees for Structured Products, Short-Term Securities, and Debt Securities

December 18, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2007, New York Stock Exchange, LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On December 17, 2007, NYSE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to alter the listing fees applicable to structured products, short-term securities, and debt securities. The text of the proposed rule change is available at the Exchange's principal office, in the Commission's Public Reference Room, and at *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 902 of the Listed Company Manual to alter the Exchange's listing fees applicable to structured products, short-term securities, and debt securities. This filing does not amend the listing fees applicable to equity securities of operating companies.

Annual fees for structured products (Section 902.05) and short-term securities (Section 902.06) are currently subject to a minimum fee of $5,000 per year. The Exchange proposes to charge a supplement to the 2008 Annual Fees for the period from February 1, 2008, until year end. An issuer that would pay less than $15,000 in Annual Fees for 2008 would be required to pay a supplemental amount equal to the difference between its Annual Fee and $15,000. For 2009 and thereafter, the Exchange would increase the minimum annual fee to $15,000, as the Exchange believes that this is more appropriate than the current $5,000 minimum in light of the costs it incurs in connection with the listing of such securities. Annual fees will not be increased for short-term warrants to purchase equity securities (which would continue to be subject to a $5,000 minimum annual fee) and such warrants would not be subject to the supplemental payment for 2008.

The Exchange currently applies the debt securities fee schedule set forth in Section 902.08 to securities listed under Section 703.19 and traded on NYSE Bonds. The Exchange proposes to amend Section 902.08 to impose a flat initial listing fee of $15,000 on all structured products (including short-term securities) listed under Section 703.19 and traded on NYSE Bonds. Currently, NYSE-listed companies and their affiliates pay no fees on structured products that trade on NYSE Bonds; the new proposed $15,000 initial listing fee would apply to all structured products listed on NYSE Bonds going forward. Section 902.08 would also be amended to impose a $15,000 initial listing fee on securities listed under the debt standard of Section 102.03 in place of the current fees. Debt listed under Section 102.03 of NYSE equity issuers and affiliated companies and of issuers exempt from registration under the Exchange Act would continue to be exempt from listing fees.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Exchange Act[3] in general, and furthers the objectives of Section 6(b)(5)[4] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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[31] *See* Securities Exchange Act Release Nos. 56625 (October 5, 2007), 72 FR 58144 (October 12, 2007) (SR–NYSEArca–2007–73) (approving certain changes made to the generic listing standards for certain ETFs) and 56627 (October 5, 2007), 72 FR 58145 (October 12, 2007) (SR–NYSEArca–2007–75) (approving extended trading hours for certain ETFs).

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–110 on the subject line.

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 SR–NYSE–2007–110. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–110 and should be submitted on or before January 17, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24985 Filed 12–26–07; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56975; File No. SR–NYSEArca–2007–87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, To Amend Listing Fees for Structured Products

December 17, 2007.

On August 16, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Schedule of Fees and Charges (''Fee Schedule'') to revise the listing fees applicable to Structured Products[3] listed on NYSE Arca, LLC (''NYSE Arca Marketplace''), the equities facility of NYSE Arca Equities, Inc. (''NYSE Arca Equities''). The proposed revisions would apply retroactively as of October 3, 2007. On October 30, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. On November 7, 2007, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change and Amendment Nos. 1 and 2 thereto was published for comment in the **Federal Register** on November 15, 2007.[5] No comments regarding the proposed rule change have been received. This order approves the proposed rule change, as modified by Amendment No. 2.

NYSE Arca proposes to revise its schedules for listing and annual fees for Structured Products to harmonize its fees with those of the New York Stock Exchange LLC (''NYSE'').[6] The fees for each Structured Product would depend on the number of shares outstanding for such product.[7] The proposed rule change also clarifies the types of products defined as ''Structured Products.'' The proposed revisions would apply retroactively as of October 3, 2007.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposal is consistent with section 6(b)(4) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Commission notes that no comments have been received regarding the proposed rule change, and that the proposed fees are similar to those it approved for other national securities exchanges.[10]

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No.

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For purposes of this proposal, Structured Products include securities qualified for listing and trading on NYSE Arca under the following NYSE Arca Equities Rules: Rule 5.2(j)(1) (Other Securities), 5.2(j)(2) (Equity Linked Notes), Rule 5.2(j)(4) (Index-Linked Exchangeable Notes), Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities) and Rule 8.3 (Currency and Index Warrants), as these rules may be amended from time to time.

[4] Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

[5] Securities Exchange Act Release No. 56767 (November 7, 2007), 72 FR 64265 (''Notice'').

[6] *See* Securities Exchange Act Release No. 56842 (November 27, 2007), 72 FR 67990 (December 3, 2007) (approving retroactively as of October 3, 2007 identical listing and annual fees for structured products listed on the NYSE).

[7] For a detailed description of the revised fees, *see* Notice, *supra* at note 5.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] *See supra* at note 6.

[11] 15 U.S.C. 78s(b)(2).

SR–NYSEArca–2007–87), as modified by Amendment No. 2 thereto, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24986 Filed 12–26–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56983; File No. SR–NYSEArca–2007–128]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of the iShares MSCI Japan Small Cap Index Fund

December 18, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On December 18, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the iShares MSCI Japan Small Cap Index Fund (''Fund'').[3] The text of the proposed rule change is available at the Exchange's principal office, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units (''ICUs'').[4] The Fund seeks to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of publicly traded securities in the aggregate in the Japanese market, as represented by the MSCI Japan Small Cap Index (the ''Index''). The Index, which is designed to measure the small capitalization equity market performance in the Japanese market, consists of small capitalization stocks traded primarily on the Tokyo Stock Exchange.

NYSE Arca represents that the Shares meet each of the ''generic'' listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs based on equity securities comprising international or global indexes, except for the requirement set forth in Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), which states that component stocks that, in the aggregate, account for at least 90% of the weight of the index each must have a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares. The Exchange represents that, as of December 10, 2007, the component stocks comprising 88% of the weight of the Index traded at least 250,000 shares in each of the previous six months. Because the component stocks of the Index fall below the required minimum percentage in Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Exchange has filed the proposed rule change to obtain Commission approval to list and trade the Shares. The Exchange represents that, except for Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3) and further represents that the continued listing standards under NYSE Arca Equities Rule 5.5(g)(2) applicable to Investment Company Units shall apply to the Shares.

Detailed descriptions of the Fund, the Index (including the methodology used to determine the composition of the Index), investment objective of the Fund, management and structure of the Fund, procedures and payment requirements for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, reports to be distributed to beneficial owners of the Shares, availability of information regarding the Shares, and calculation and dissemination of key values can be found in the Registration Statement[5] or on the Web site for the Fund (*http://www.ishares.com*).

Availability of Information. The Exchange states that quotations and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). The Index value is calculated by Morgan Stanley Capital International, Inc. (''MSCI''), the Index provider, for each trading day in the applicable foreign exchange markets based on official closing prices in such exchange markets and publicly disseminates the Index values for the previous day's close.[6] MSCI or third-party major market data vendors will make available at least every 60 seconds

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Shares will be issued by iShares, Inc., an open-ended management investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a).

[4] An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). *See* NYSE Arca Equities Rule 5.2(j)(3)(A).

[5] *See* iShares, Inc.'s Registration Statement on Form N–1A, as amended through July 19, 2007 (File Nos. 33–97598 and 811–09102) (''Registration Statement'').

[6] The Exchange notes that, when a broker-dealer or a broker-dealer's affiliate, such as MSCI, is involved in the development and maintenance of a stock index upon which a product such as iShares is based, the broker-dealer or its affiliate should have procedures designed specifically to address the improper sharing of information. *See* Securities Exchange Act Release No. 52178 (July 29, 2005), 70 FR 46244 n.18 (August 9, 2005) (SR–NYSE–2005–41) (describing the procedures which must be in place to prevent the improper sharing of information). The Exchange represents that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the MSCI, in accordance with the requirements of Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3).

an updated Index value when foreign trading market hours overlap with the Core Trading Session (9:30 a.m. to 4:15 p.m. Eastern Time or ''ET'').[7] When the foreign markets are closed during Exchange trading hours, the Fund will provide closing Index values on *http://www.ishares.com.* iShares, Inc. will cause to be made available daily the names and required number of shares of each of the securities to be deposited in connection with the issuance of the Fund's Shares, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends for the Fund.

In addition, the Indicative Optimized Portfolio Value or ''IOPV'' on a per-Share basis will be calculated by an independent third party and disseminated through the facilities of the CTA at least every 15 seconds during the Core Trading Session.[8] The Exchange states that, because the Fund utilizes a representative sampling strategy, the IOPV likely will not reflect the value of all securities included in the Index or necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular moment. The Exchange notes that the IOPV disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV of the Fund, which is calculated only once a day.

The Fund administrator, State Street Bank and Trust Company, will calculate the net asset value or ''NAV'' for the Fund once a day on each day that the New York Stock Exchange LLC is open for trading, generally at 4 p.m. ET. The NAV will also be available to the public on *http://www.ishares.com*, from the Fund distributor by means of a toll-free phone number, and to participants of the National Securities Clearing Corporation.

Information with respect to recent NAV, number of Shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation,[9] and other data with respect to the Fund will also be disseminated prior to the opening of the Core Trading Session on a daily basis by means of CTA and Consolidated Quote High Speed Lines. In addition, the Web site for the Fund will contain the following information, on a per-Share basis: (1) The prior business day's NAV, the mid-point of the bid-ask price at the time of calculation of such NAV (''Bid/Ask Price''),[10] and a calculation of the premium or discount of such price against such NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Finally, the Exchange states that MSCI's Web site at *http://www.mscibarra.com* will make available the components of the Index, and the holdings of the Fund will be available at *http://www.ishares.com.* The Exchange represents that the information on the Fund Web site will be available to all market participants at the same time.

Trading Rules and Halts. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Shares will trade on the Exchange from 4 a.m. to 8 p.m. ET in accordance with NYSE Arca Equities Rule 7.34. The Exchange represents that it has appropriate rules to facilitate transactions in the Shares during all trading sessions, including rules governing trading halts, as provided in NYSE Arca Equities Rule 5.5(g)(2)(b).

Surveillance. The Exchange intends to utilize its existing surveillance procedures applicable to ICUs to monitor trading in the Shares. The Exchange represents that these procedures, which focus on detecting when securities trade outside their normal patterns, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange further represents that it may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliate members of ISG.[11] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin. Prior to the commencement of trading, the Exchange will inform its ETP Holders[12] in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IOPV is disseminated; (4) the risks involved in trading the shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly available; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement and will also discuss any exemptive, no-action, or interpretive relief granted by the Commission from provisions of the Act and the rules thereunder. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[7] *See* NYSE Arca Equities Rule 7.34.

[8] The Exchange states that there is an overlap in trading hours between the foreign and U.S. markets for the Fund and the foreign market that trades securities in the underlying Index. Therefore, the IOPV calculator will update the IOPV at least every 15 seconds to reflect price changes in the applicable foreign market and convert such prices into U.S. dollars based on the currency exchange rate. When the foreign market is closed and the U.S. markets are open, the IOPV will be updated at least every 15 seconds to reflect changes in currency exchange rates after the foreign market closes.

[9] *See* Registration Statement, *supra* note 5 (providing the definition of Creation Unit Aggregation and the procedures for purchasing and redeeming Shares).

[10] The Bid-Ask Price of the Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of the Fund's NAV.

[11] The Exchange notes that the Tokyo Stock Exchange, which is the exchange on which the stocks comprising the Index are primarily traded, is an affiliate member of ISG. The Exchange further notes that one or more of the securities comprising the Index may trade on exchanges that are not members or affiliate members of ISG, and the Exchange may not have in place comprehensive surveillance sharing agreements with such exchanges.

[12] *See* NYSE Arca Equities Rule 1.1 (defining ETP Holder as a registered broker or dealer that is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit or ''ETP'').

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange states that written comments on the proposed rule change were neither solicited nor recieved.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–128 on the subject line.

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 SR–NYSEArca–2007–128. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–128 and should be submitted on or before January 17, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[16] which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to list and trade ICUs, the Shares do not meet all of the generic listing requirements [17] under such rule because the components of the Index do not meet the requirements of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3). Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) requires that, upon the initial listing of any series of ICUs pursuant to Rule 19b–4(e) under the Act, component stocks that, in the aggregate, account for at least 90% of the weight of the Index or portfolio, must each have a minimum worldwide trading volume during each of the last six months of at least 250,000 shares. According to the Exchange, as of December 10, 2007, those component stocks comprising the Index that individually exceed the minimum worldwide monthly trading volume of 250,000 shares during each of the previous six months, in the aggregate, accounted for only 88% of the weight of the Index. Such percentage misses the minimum required threshold by 2%, and therefore the Shares cannot be listed and traded pursuant to the generic listing standards of NYSE Arca Equities Rule 5.2(j)(3).

The Commission believes, however, that the listing and trading of the Shares is consistent with the Act. The Commission notes that, based on the Exchange's representations, the Shares otherwise meet all of the other applicable generic listing standards under NYSE Arca Equities Rule 5.2(j)(3). The Commission further notes that it has previously approved the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by only a slight margin.[18]

The Commission also finds that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[19] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations and last-sale information for the Shares will be disseminated through the facilities of the CTA. MSCI or third-party major market data vendors will make available at least every 60 seconds an updated Index value during the Exchange's Core Trading Session. In addition, an independent third-party calculator will calculate and disseminate the IOPV through the facilities of the CTA at least every 15 seconds during the Exchange's Core

[15] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] The generic listing requirements under NYSE Arca Equities Rule 5.2(j)(3) permit the listing and trading of ICUs pursuant to Rule 19b–4(e) under the Act (17 CFR 240.19b–4(e)). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1), if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivatives securities product, and the SRO has a surveillance program for the product class.

[18] *See, e.g.*, Securities Exchange Act Release Nos. 55953 (June 25, 2007), 72 FR 36084 (July 2, 2007) (SR–NYSE–2007–46) (approving the listing and trading of shares of the HealthShares™ Orthopedic Repair exchange-traded fund where the component stocks comprising the index that individually exceeded the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months accounted, in the aggregate, for 86.2% of the weight of the index) and 56695 (October 24, 2007), 72 FR 61413 (October 30, 2007) (SR–NYSEArca–2007–111) (approving the listing and trading of shares Shares of the HealthShares™ Ophthalmology exchange-traded fund where the component stocks comprising the index that individually exceeded the minimum worldwide monthly trading volume of 250,000 shares during each of the last six months accounted, in the aggregate, for only 88.2% of the weight of the index).

[19] 15 U.S.C. 78k–1(a)(1)(C)(iii).

Trading Session. Further, the Fund's Web site will disseminate information relating to the NAV and the Bid/Ask Price for the Shares, as well as the specific holdings of the Fund.

The Commission believes that the proposed rule change is reasonably designed to promote fair disclosure of information that may be necessary to appropriately price the Shares. Under Rule 5.2(j)(3)(v), the Exchange is required to obtain a representation from iShares, Inc. that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Exchange represents that the Web site disclosure of the information regarding the Shares and the portfolio composition of the Fund will be made to all market participants at the same time. The Exchange further represents that MSCI has procedures in place that comply with the requirements of Commentary .01(b)(1) to NYSE Arca Equities Rule 5.2(j)(3), which relates to restricted access of information concerning changes and adjustments to the Index.

The Commission further believes that the trading rules and procedures to which the Shares would be subject pursuant to this proposal are consistent with the Act. The Shares would trade as equity securities and be subject to NYSE Arca's rules governing the trading of equity securities. The Commission also believes that the Exchange's trading halt rules under NYSE Arca Equities Rule 5.5(g)(2)(b) are reasonably designed to prevent trading in the Shares when transparency is impaired.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange would utilize its existing surveillance procedures applicable to ICUs to monitor trading of the Shares. The Exchange represents that such surveillance procedures are adequate to properly monitor the trading of the Shares. The Exchange may obtain trading information via the ISG from other exchanges that are members or affiliate members of ISG.[20]

2. Prior to the commencement of trading, the Exchange will inform its ETP Holders in the Bulletin of the special characteristics and risks (including the risks involved in trading the shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly available) associated with trading the Shares. The Bulletin will discuss the procedures for purchases and redemptions of Shares, the Exchange's suitability requirements, information regarding the IOPV, and prospectus delivery requirements.

3. The Exchange represents that iShares, Inc. is required to comply with Rule 10A–3 under the Act[21] for the initial and continued listing of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission notes that the Shares are substantially similar in structure, operation, and function to the shares of other exchange-traded funds, the shares of which are currently listed and trading in the marketplace.[23] As mentioned above, the Commission has previously approved the listing and trading of other derivative securities products based on indices that narrowly missed a quantitative generic listing criterion but satisfied all the others.[24] Given that the Shares comply with all of NYSE Arca's initial generic listing standards for ICUs (except for the one requirement of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3)) and would be subject to NYSE Arca's continued listing requirements for ICUs under NYSE Arca Equities Rule 5.5(g)(2), the listing and trading of the Shares does not appear to present any novel or significant regulatory issues. Therefore, the Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such products. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[25] to approve the proposed rule change, as modified by Amendment No. 1 thereto, on an accelerated basis.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) under the Act,[26] that the proposed rule change (SR–NYSEArca–2007–128), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

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[20] *See supra* note 11.

[21] 17 CFR 240.10A–3.

[22] 15 U.S.C. 78s(b)(2).

[23] *See, e.g.*, Securities Exchange Release Nos. 52178 (July 29, 2005), 70 FR 46244 (August 9, 2005) (SR–NYSE–2005–41) (approving the listing and trading of shares of the iShares MSCI EAFE Growth Index Fund and the iShares MSCI EAFE Value Index Fund, the underlying indices of which are composed of non-U.S. component stocks) and 52761 (November 10, 2005), 70 FR 70010 (November 18, 2005) (SR–NYSE–2005–76) (approving the listing and trading of shares of a number of iShares foreign equity index funds).

[24] *See supra* note 18.

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56987; File No. SR–NYSEArca-2007–119]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade the BearLinx^{SM} Alerian MLP Select Index ETN

December 18, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 16, 2007, NYSE Arca, Inc. (''Exchange''), through its wholly-owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 20, 2007, NYSE Arca filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly-owned subsidiary NYSE Arca Equities, proposes to list and trade the BearLinx^{SM} Alerian MLP Select Index ETN (''Notes'') of Bear Stearns Companies Inc. (''Company''), which are linked to the performance of the Alerian MLP Select Index (''Index''), pursuant to NYSE Arca Equities Rule 5.2(j)(6). The text of the proposed rule change is available at *http://www.nyse.com*, at the Exchange and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under NYSE Arca Equities Rule 5.2(j)(6), the Exchange may approve for listing and trading Equity Index-Linked Securities. The Exchange proposes to list and trade the Notes, which are linked to the performance of the Index, under NYSE Arca Equities Rule 5.2(j)(6). The Index is published by Standard & Poor's, a division of The McGraw-Hill Companies, Inc. (''Sponsor''), in consultation with Alerian Capital Management LLC (''Alerian''). The Notes are currently listed and traded on the New York Stock Exchange LLC (''NYSE'').[3] Following Commission approval of this proposed rule change, the Notes will list and trade on the Exchange and will cease trading on NYSE.

The Exchange represents that the Notes meet each of the ''generic'' listing requirements of NYSE Arca Equities Rule 5.2(j)(6) applicable to listing of Equity Index-Linked Securities, except for one requirement. Specifically, the Index does not meet the requirement of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(2)(ii), that each component security have a trading volume in each of the last six months of not less than one million shares per month. The rule provides an exception for each of the lowest dollar weighted component securities in the Index that in the aggregate account for no more than 10% of the dollar weight of the Index; each of these component securities must have a trading volume of at least 500,000 shares per month in each of the last six months. According to the Exchange, one component security of the Index had a trading volume of 416,447 shares in September 2007.[4]

Description of the Notes

The Notes are a series of medium-term debt of the Company that provide for a cash payment at maturity or upon earlier exchange at the holder's option, based on the performance of the Index subject to the adjustments described below. The principal amount of each Note is $38.8915 (''Principal Amount'').[5] The Notes will trade on the NYSE Arca Marketplace and the Exchange's existing equity trading rules will apply to trading in the Notes. According to the Prospectus, the Notes will not have a minimum principal amount that will be repaid and, accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. In fact, the value of the Index must increase for the investor to receive at least the Principal Amount per Note at maturity or upon exchange or redemption. The Notes will have a term of 20 years. The calculation agent for the Notes will be Bear Stearns & Co. Inc. The Notes may be redeemed in amounts of at least 75,000 Notes subject to adjustment by the calculation agent.[6]

Description of the Index

The Sponsor maintains and calculates the Index in consultation with Alerian, a registered investment adviser that manages portfolios exclusively focused on midstream energy master limited partnerships (''MLPs''). The Index value is a composite of energy MLPs and is calculated by the Sponsor using a float-adjusted, market capitalization-weighted methodology. The Index is disseminated at least every 15 seconds on a price return basis from 9:30 a.m. to 4:00 p.m. Eastern time by the Chicago Mercantile Exchange under the ticker symbol ''AMZS.'' Quotation and last-sale information for the Notes will be widely disseminated pursuant to the CTA Plan.[7]

The Index began publishing on May 16, 2007. In addition, the Sponsor has calculated over 11 years of historical index data on both a price and total return basis based upon the application of the Index methodology described herein. Alerian publishes relevant constituent data points, such as total market capitalization and dividend yield, on a daily basis. MLPs are added or removed by Alerian based on the methodology described below. According to the Prospectus, as of June 21, 2007, shares of 25 of the Index Components are traded on the New York Stock Exchange and shares of 12 of Index Components are traded on The Nasdaq Stock Market. Alerian will announce changes to the Index on its publicly available Web site, *http://www.alerian.com*.

Construction of the Index

All of the following requirements must be met in order for a MLP to be eligible for inclusion in the Index:[8]

- The constituent security must be U.S.-based. The Index uses several factors in determining a MLP's nationality including, but not limited to, registration location, accounting principles used for financial reporting, and location of headquarters.
- The constituent security must be an ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Act,[9] and must be listed on the NYSE, The American Stock Exchange LLC, or The NASDAQ Stock Market LLC.
- The constituent security must have at least six months of trading history.
- The constituent security must be a publicly traded partnership or limited liability company exempt from corporate taxation as a result of the 1986 Tax Reform Act, and engaged in the transportation, storage, processing, or production of energy commodities.
- The constituent security must represent either the limited or general partner interests, or both, of a partnership that is an operating company, or common units of a limited liability company that is an operating company. Closed-end funds, exchange-traded funds, investment vehicles, and royalty or income trusts are not eligible for inclusion.

According to the Prospectus, going forward, additional market

[3] The Notes were originally listed on the NYSE under Rule 703.22 of the NYSE's Listed Company Manual (generic listing standards for Equity Index-Linked Securities). *See* e-mail dated December 14, 2007 from Tim J. Malinowski, Director, NYSE Euronext to Mitra Mehr, Special Counsel, Division of Trading and Markets, Commission (''NYSEArca E-mail'').

[4] This component is among the lowest dollar weighted component securities, requiring a trading volume of at least 500,000 shares per month in each of the last six months as required by NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(b)(2)(ii). *See* NYSE Arca E-mail, *supra* note 3.

[5] Free Writing Prospectus filed pursuant to Rule 433 under the Securities Act of 1933, Registration No. 333–136666, dated July 20, 2007 (incorporating Pricing Supplement to Prospectus dated August 16, 2006 and Prospectus Supplement dated August 16, 2006) (collectively referred to herein as the ''Prospectus'').

[6] For a detailed discussion of coupon payments, payment at maturity, redemption, the discontinuance of and adjustments to the Index, market disruption events, events of default and acceleration, settlement and payment, the calculation agent, float adjustment, Index rebalancing, the computation of the Index, historical data and license agreement, *see* Prospectus, *supra* note 5.

[7] *See* NYSE Arca E-mail, *supra* note 3.

[8] These requirements are in addition to the relevant ''generic'' listing requirements of NYSE Arca Equities Rule 5.2(j)(6).

[9] *See* NYSE Arca E-mail.

capitalization, trading liquidity, and financial viability requirements must also be satisfied. These requirements have not been applied historically so as to eliminate any selection bias in the calculation of the Index. The Index has been created to provide a comprehensive benchmark for the historical performance of the energy MLP universe, necessitating the objectivity and transparency of inclusion of all MLPs engaged in energy-related businesses. All current Index Components will remain in future Index calculations and will be exempt from additional Index criteria, subject to review. New Index Components, however, in addition to the requirements listed above, will also be subject to the following conditions:

• Market capitalization. Each constituent security must have a market capitalization of at least $500 million. This minimum requirement is reviewed from time to time to ensure consistency with market conditions.

• Public float. Each constituent security must have a public float of at least 50% of the total outstanding units.

• Financial viability. Each constituent security must maintain trailing twelve months distributable cash flow that exceeds cash distributions paid to unit-holders, where distributable cash flow is defined as GAAP net income excluding discontinued operations and extraordinary items, plus non-cash charges such as depreciation and amortization, and minus maintenance capital expenditures.[10]

Continued Index membership is not necessarily subject to these guidelines. Alerian will announce changes to the Index on its publicly available Web site, *http://www.alerian.com*.

Continued Listing Criteria

The Exchange represents that the Notes will meet the Continued Listing Standards for equity index-linked securities set forth in NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(2).[11] The Exchange prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Act.[12]

The Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the Notes), under any of the following circumstances:

• If the aggregate market value or the principal amount of the Notes publicly held is less than $400,000;

• If the value of the Index is no longer calculated or widely disseminated through one or more major market data vendors or the Sponsor on at least a 15-second basis from 9:30 a.m. to 4:00 p.m. Eastern time; or

• If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Trading Rules

The Exchange deems the Notes to be equity securities, thus rendering trading in the Notes subject to the Exchange's existing rules governing the trading of equity securities. Notes will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Notes during all trading sessions. The minimum trading increment for Notes on the Exchange will be $0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Notes. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Notes inadvisable. These may include: (1) The extent to which trading is not occurring in the securities underlying the Index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Notes could be halted pursuant to the Exchange's ''circuit breaker'' rule [13] or by the halt or suspension of trading of the underlying securities. If the value of the underlying index is not being disseminated as required, the Exchange may halt trading during the day on which such interruption first occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[14]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Notes. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules. The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[15] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Notes. Specifically, the Information Bulletin will discuss the following: (1) The procedures for redemptions of Notes in amounts of 75,000 Notes or greater (and that Notes are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a),[16] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Notes; (3) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Notes prior to or concurrently with the confirmation of a transaction; and (4) trading information.

The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.[17]

[10] *See* NYSE Arca E-mail, *supra* note 3.

[11] *Id.*

[12] 17 CFR 240.10A–3 (setting forth listing standards relating to audit committees).

[13] *See* NYSE Arca Equities Rule 7.12.

[14] *See* NYSE Arca E-mail.

[15] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*.

[16] NYSE Arca Equities Rule 9.2(a) provides that ETP Holders, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holders shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that they believe would be useful to make a recommendation.

[17] The Exchange intends to rely on the guidance provided by the Commission in a Letter dated July 27, 2006, from James A. Brigagliano, Division of Market Regulation, to George H. White (''Letter''), with respect to transactions in the Notes. The Exchange understands that the Company has advised NYSE of its view that such relief may be relied upon. The Letter provides certain relief with respect to Regulation M, Section 11(d)(1) of the Act and Rule 11d1–2 under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[18] of the Act in general, and furthers the objectives of section 6(b)(5)[19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–119 on the subject line.

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 SR–NYSEArca–2007–119. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–119 and should be submitted on or before January 17, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[21] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Although NYSE Arca Equities Rule 5.2(j)(6) permits the Exchange to either originally list and trade equity index-linked securities, the Notes do not meet the ''generic'' listing requirements of NYSE Arca Rule 5.2(j)(6) (permitting listing in reliance upon Rule 19b–4(e) under the Act[22]) because the components of the Index underlying the Fund do not meet the initial listing requirements of NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1)(b)(ii). This section requires that, upon the initial listing of any series of equity index-linked securities, each component of the index on which the index-linked security is based have a trading volume in each of the last six months of not less than 1,000,000 shares per month. This section provides an exception for each of the lowest dollar weighted component securities in the index that in the aggregate account for no more than 10% of the dollar weight of the index for which the trading volume shall be at least 500,000 shares per month in each of the last six months. The Exchange represents that, in September 2007, one of the lowest dollar weighted component securities in the index that is among the component securities with lowest 10% of the dollar weight of the index, had a trading volume 416,447 shares. Because such percentage misses the minimum required threshold by approximately 83,553 shares, the Notes cannot be listed and traded pursuant to Rule 19b–4(e) under the Act via NYSE Arca Equities Rule 5.2(j)(6). The Commission believes, however, that the listing and trading of the Notes, would be consistent with the Act. The Commission notes that it has previously approved exchange rules that contemplate the listing and trading of derivative securities products based on indices that were composed of securities that did not meet certain quantitative generic listing criteria by only a slight margin.[23]

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 17 CFR 240.19b–4(e).

[23] *See* Securities Exchange Act Release Nos. 55890 (June 8, 2007), 72 FR 33264 (June 15, 2007) (NYSEArca–2007–37) (approving the listing and trading of shares of four funds of StateShares, Inc. where the Underlying Index of each fund did not meet the requirement of NYSE Arca's generic listing standards that component stocks representing at least 90% of the weight of each Underlying Index have a minimum monthly trading volume during each of the last six months of at least 250,000 shares); 55699 (May 3, 2007), 72 FR 26435 (May 9, 2007) (SR–NYSEArca–2007–27) (approving the listing and trading of shares of the iShares FTSE NAREIT Residential Index Fund where the weighting of the five highest components of the underlying index was marginally higher than that required by NYSE Arca's generic listing standards); and 52826 (November 22, 2005), 70 FR 71874 (November 30, 2005) (SR–NYSEArca–2005–67) (approving the listing and trading of shares of the iShares Dow Jones U.S. Energy Sector Index Fund and the iShares Dow Jones U.S. Telecommunications Sector Index Fund where the weightings of the most heavily weighted component stock and the five highest components of the underlying indexes, respectively, were higher than that required by NYSE Arca Inc.'s relevant generic listing standards). *See also* Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the trading pursuant to unlisted trading privileges of shares of Vanguard Total Stock Market VIPERs, iShares Russell 2000 Index Funds, iShares Russell 2000 Value Index Funds and iShares Russell 2000

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Notes will be widely disseminated pursuant to the CTA Plan. Moreover, the Index value will be calculated and disseminated at least every 15 seconds on a price return basis from 9:30 a.m. to 4 p.m. Eastern time by the Chicago Mercantile Exchange. In addition, Alerian will announce any changes to the Index on its publicly available Web site. In sum, the Commission believes that the proposal is reasonably designed to facilitate access to and provide fair disclosure of information that could assist investors in properly valuing the Notes.

The Commission finds that the Exchange's proposed rules and procedures for trading of the Notes are consistent with the Act. The Notes will trade as equity securities, thus rendering trading in the Notes subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange would utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Notes. These procedures are adequate to properly monitor Exchange trading of the Notes in all trading sessions and to deter and detect violations of Exchange rules. The Exchange may obtain information via the ISG from other exchanges that are members or affiliates of the ISG.

2. If the Index value applicable to a series of Notes is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or dissemination of the Index value occurs. If the interruption to the calculation and dissemination of the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

3. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Notes.

This order is conditioned on the Exchange's adherence to the foregoing representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has previously approved exchange rules that contemplate the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain generic listing criteria by similar amounts.[25] Although the Notes do not meet the initial ''generic'' listing requirement of NYSE Arca Equities Rule 5.2(j)(6) and therefore cannot be listed pursuant to Rule 19b–4(e) under the Act, the Commission believes that the Notes are substantially similar to the other equity index-linked securities trading on the Exchange and will otherwise comply with all other ''generic'' listing requirements applicable to Equity Index-Linked Securities under NYSE Arca Equities Rule 5.2(j)(6)(B)(I)(1).[26] The listing and trading of the Notes do not appear to present any new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Notes to trade on the Exchange without undue delay and should generate additional competition in the market for such products.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NYSEArca–2007–119) as modified by Amendment No. 1 thereto, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

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Growth Funds, none of which met the trading volume requirement of the generic listing criteria for NYSE).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] *See supra* note 23.

[26] *Id.*

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56991; File No. SR–OCC–2007–15]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Cleared Contracts Carried in a Proprietary Account

December 19, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 23, 2007, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to section 19(b)(3)(A)(i) of the Act [2] and Rule 19b–4(f)(1) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would clarify that existing provisions of OCC's By-laws and Rules constitute a ''cross-margining or similar arrangement'' for purposes of the United States Bankruptcy Code with respect to cleared contracts carried in any proprietary account at OCC to the extent that commodity contracts and securities contracts are permitted to be carried in such account.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s–1(b)(3)(A)(i).

[3] 17 CFR 240.19b–4(f)(1).

[4] The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add Interpretation and Policy .02 to section 3 of Article VI of OCC's By-laws to clarify that OCC's existing By-laws and Rules constitute ''a cross-margining agreement or similar arrangement'' for purposes of the United States Bankruptcy Code with respect to cleared contracts carried in any proprietary account at OCC to the extent that commodity futures and futures options (collectively ''commodity contracts'') are permitted to be carried in such account along with securities options and other securities (collectively ''securities contracts'').[5] Where such positions are permitted to be so commingled, margin is calculated under Chapter VI of OCC's Rules based on the net risk of all such cleared contracts whether they are securities contracts or commodity contracts. ''Proprietary accounts'' within the scope of Interpretation and Policy .02 include (i) a firm account, (ii) a separate market-maker's account for which the market-maker is a clearing member or a proprietary market-maker trading for his own account, (iii) a combined market-maker's account confined to the exchange transactions of market-makers who are clearing members or proprietary market-makers trading for their own accounts, (iv) an OCC proprietary X–M account, or (v) a proprietary futures professional account. Under OCC's By-laws, all such proprietary accounts must be confined to the transactions of the clearing member itself and of such other persons as are not required to be treated as ''customers'' of the clearing member either under the definition in Commodity Futures Trading Commission (''CFTC'') Regulation 1.3(k)[6] or under Commission Rules 8c–1,[7] 15c2–1,[8] or 15c3–3,[9] or Commission staff interpretations or no-action letters thereunder.[10]

Section 4d of the Commodity Exchange Act (''CEA'')[11] and CFTC regulations thereunder require that futures and futures options traded on a ''designated contract market'' and carried for the account of a ''customer'' as defined in CFTC Regulation 1.3(k) must be segregated by the carrying futures commission merchant (''FCM'') from funds or positions that are ''proprietary'' to the carrying FCM. Although Section 4d and the CFTC regulations permit the property of separate customers of the same FCM to be commingled at the clearinghouse in segregated customer accounts, CFTC Regulation 1.22 provides that ''[c]ustomer funds shall not be used to carry trades or positions of the same commodity and/or option customer other than in commodities or commodity options traded through the facilities of a [CFTC-designated] contract market.''[12] Accordingly, OCC carries trades and positions of commodity customers in separate segregated funds accounts in compliance with the CFTC's regulations and except in accordance with specific cross-margining orders of the CFTC does not commingle these funds with the funds of securities options customers.

However, Section 4d and the cited regulations do not apply to accounts that are ''proprietary'' within the meaning of CFTC Regulation 1.3(y).[13] There is no prohibition against commingling of proprietary funds of an FCM relating to its futures activities with other proprietary funds of the same FCM at the clearinghouse level. Accordingly, a clearing member may maintain both securities contracts and commodity contracts in any proprietary account to the extent that such inclusion is otherwise consistent with the purposes of the account. The result is that clearing level margin requirements applicable to any such proprietary account are determined under OCC Rule 601 based upon the net liquidating value of all positions carried in the account. Therefore, the margin that would otherwise be required on positions in securities contracts may be reduced by offsetting positions in commodity contracts and vice versa.

Section 561(b)(2)(A) of the United States Bankruptcy Code (''Code'')[14] contains certain prohibitions against the offset by a party of obligations to a ''debtor'' (*i.e.*, a person subject to a bankruptcy proceeding under the Code) arising under or in connection with a commodity contract as defined under section 761(4) of the Code[15] against any claim arising under or in connection with other instruments including securities contracts ''except to the extent that the party has positive net equity in its commodity accounts at the debtor.'' Section 561(b)(2)(B) of the Code contains a similar prohibition against such offsets applicable to ''another commodity broker'' having an obligation to the debtor arising under or in connection with a commodity contract entered into on behalf of a ''customer of the debtor.''[16] The legislative history of these provisions states, ''Subsections 561(b)(2)(A) and (b)(2)(B) limit the depletion of assets available for distribution to customers of commodity brokers.''[17]

OCC recently adopted a ''close-out netting'' rule, set forth in section 27 of Article VI of OCC's By-laws.[18] Section 27 is intended to allow clearing members to calculate their credit exposure to OCC on a net basis for balance sheet and regulatory capital purposes to the extent consistent with

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[5] Security futures carried in a proprietary account would be considered to be both securities contracts and commodity contracts for purposes of this rule filing.

[6] 17 CFR 1.3(k).

[7] 17 CFR 240.8c–1.

[8] 17 CFR 240.15c2–1.

[9] 17 CFR 240.15c3–3.

[10] Article VI, Section 3(a) of OCC's By-laws provides that a ''firm account * * * shall be confined to (i) the Exchange transactions in cleared securities other than security futures of such Clearing Member's non-customers [which is defined in terms of rules under the Securities Exchange Act of 1934], (ii) the Exchange transactions in (x) futures other than security futures and (y) futures options of persons whose transactions are not required to be treated as the transactions of futures customers, and (iii) the Exchange transactions in security futures of persons whose transactions are not required to be treated as the transactions either of securities customers or of futures customers.'' The term ''futures customer'' is defined in Article I of OCC's By-Laws as ''a person whose positions are carried by a futures commission merchant * * * in a futures account required to be segregated under Section 4d of the Commodity Exchange Act and regulations of the Commodity Futures Trading Commission thereunder.'' Article VI, Section 3(c) provides that a proprietary combined market-makers' account is confined to transactions of ''proprietary Market-Makers,'' which is defined to include ''any participant, as such, in an account that is not required to be segregated under Section 4d of the Commodity Exchange Act.'' A ''separate Market-Maker's account'' under Section 3(b) is similarly limited to a ''proprietary Market-Maker.'' An ''OCC Proprietary X–M account (together with the corresponding proprietary X–M account at a participating futures clearing organization)'' is defined in the applicable cross-margining agreements to be an account of a person whose account is a ''proprietary account'' within the meaning of Section 1.3(y) of CFTC regulations. Finally, a ''proprietary futures professional account'' is defined in Article I of the By-laws to be an account of a futures professional that is not a futures customer. Accordingly, all of these accounts are defined in terms that exclude any person whose property is required to be segregated under Section 4d of the CEA. Moreover, a futures commission merchant is itself obligated to carry the positions of futures customers in CFTC segregated accounts and would be in violation of that obligation by carrying them in any account at OCC that is not such an account.

[11] 7 U.S.C. 6d.

[12] 17 CFR 1.22.

[13] 17 CFR 1.3(y).

[14] 11 U.S.C. 561(b)(2)(A).

[15] 11 U.S.C. 761(4). This very broad ''commodity contracts'' definition should include commodity futures and futures options and may include security futures as well.

[16] 11 U.S.C. 561(b)(2)(B).

[17] H.R. Rep. No. 109–31, part 1 at 132 (April 8, 2005).

[18] Securities Exchange Act Release No. 56069 (July 13, 2007), 72 FR 39869 (July 20, 2007) (File No. SR–OCC–2006–19).

customer protection rules under the Act and the CEA. Paragraph (d) of section 27 effectively permits netting of assets and liabilities within proprietary accounts without limitation as to whether the assets and liabilities in the account arise from securities contracts or commodity contracts. Absent an applicable exception, the prohibition in section 561(b)(2)(A) could be interpreted to limit such netting and make it unenforceable to the extent that there are both securities contracts and commodity contracts in such accounts.[19] However, an exception to the prohibition in section 561(b)(2)(A) and section 561(b)(2)(B) was created for cross-margining arrangements, and that exception is applicable to the close-out netting provided for in section 27 of Article VI of OCC's By-laws insofar as such netting permits the offset of commodity contracts against securities contracts in proprietary accounts.

Section 561(b)(3)(A) of the Code provides that ''no provision of [Section 561(b)(2)(A) or (B)] shall prohibit the offset of claims and obligations that arise under a cross-margining agreement or similar arrangement that has been submitted to the [CFTC] under paragraph (1) or (2) of section 5c(c) of the [CEA] and has not been abrogated or rendered ineffective by the [CFTC].'' All of OCC's By-laws and Rules have been submitted under Paragraph (1) or (2) of section 5c(c) of the CEA, and none has been abrogated or rendered ineffective by the CFTC. As commonly understood, a ''cross-margining agreement'' includes an arrangement under which commodity contracts and securities contracts are margined together as a single portfolio.[20] This is precisely what takes place under OCC By-laws and Rules and its Rule 601 in particular in all proprietary accounts to the extent that they contain both securities contracts and commodity contracts.

The original cross-margining program, which was initiated between OCC and ICC in 1988, was limited to proprietary accounts.[21] In connection with its approval, the Commission stated that ''it appears that no statutory, Commission or CFTC rule changes are required to implement a cross-margining system for proprietary accounts.'' OCC rule changes were necessary in 1988 in order to implement proprietary cross-margining because OCC and ICC were separate clearing organizations and needed to have special arrangements between them in order to combine securities contracts cleared by OCC and commodity contracts cleared by ICC for margin purposes. However, when OCC itself registered as a derivatives clearing organization under the CEA, cross-margining in proprietary accounts was an automatic consequence of that dual registration. Of course, a rule filing was necessary in order to combine customer positions in security contracts and commodity contracts for margin purposes even where OCC clears both the commodity contracts and the securities contracts. Accordingly, OCC submitted appropriate rule filings to both the Commission and the CFTC and received the necessary approval to create an internal cross-margining program for non-proprietary market professionals.[22] In the case of proprietary cross-margining, however, no such approval is required, and this rule filing is being submitted simply in order to clarify OCC's interpretation of its existing rules.

Since its approval of the first cross-margining program in 1988,[23] the Commission has repeatedly expressed its support for such programs and has found that they are consistent with the Act and in particular with section 17A of the Act. Indeed, there has been wide support for cross-margining systems over many years. For example, the Report of the Presidential Task Force on Market Mechanisms (''Brady Report'') noted that the absence of an effective cross-margining system for futures and securities options markets contributed to payment strains in October 1987. Accordingly, the Brady Report recommended that cross-margining be allowed in order to permit market participants with an investment in futures to receive credit for a hedged investment in stocks or options.[24] The President's Working Group on Financial Markets in its Interim Report concurred recommending that the Commission and CFTC not only approve the OCC/ICC cross-margining program but facilitate cross-margining among other clearing agencies.[25]

The Commission has previously found that cross-margining programs are consistent with clearing agency responsibilities under section 17A of the Act. In so finding, the Commission noted that cross-margining programs reduce the risk that a clearing member would become insolvent in a distressed market and the corresponding risk that one insolvency could lead to multiple insolvencies in a ripple effect and that they therefore enhance the security of the clearing system.[26]

The proposed rule change is not inconsistent with the rules of OCC including any rule proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act[27] and Rule 19b–4(f)(1)[28] promulgated thereunder because the proposal constitutes an interpretation with respect to the meaning, administration, or enforcement of an existing rule of

[19] Section 561(b)(2)(B) should not apply to close-out netting in the event of an insolvency of OCC. Section 561(b)(2)(B) would appear to provide in effect that a clearing member may not net an obligation to OCC arising from a commodity contract entered into on behalf of a ''customer of the debtor'' against amounts owed by OCC to the clearing member arising under a securities contract or other contracts other than commodity contracts. Because OCC would be the debtor, the term ''customer of the debtor'' would appear to refer to a customer of OCC. OCC does not believe that a clearing member would likely be deemed to have entered into any commodity contract on behalf of any party that would also be deemed to be a customer of OCC for purposes of this provision, and we therefore believe that Section 561(b)(2)(B) should not be interpreted as limiting the enforceability of any provisions of Section 27 of Article VI of OCC's By-laws. In any event, however, Section 561(b)(2)(B) would be overridden by the exception in Section 561(b)(3)(A) as set forth in the proposed Interpretation and Policy.

[20] Securities Exchange Act Release No. 26153 (October 3, 1988), 53 FR 39561 (October 3, 1988) (File No. SR–OCC–86–17) approving the first cross-margining program between OCC and its commodity clearing affiliate, The Intermarket Clearing Corporation (''ICC''). CFTC approval of that cross-margining program was memorialized in a letter from Jean A. Webb, Secretary, to George S. Hender, President, ICC (June 1, 1988).

[21] Securities Exchange Act Release No. 26153.

[22] The proposed rule change adopted By-Law Article VI, Section 25. Securities Exchange Act Release No. 50509 (Oct. 8, 2004), 69 FR 61289 (October 15, 2004) (File No. SR–OCC–2004–10) and CFTC order issued November 5, 2004.

[23] Securities Exchange Act Release No. 26153.

[24] Brady Report at 66 (January 1988).

[25] Interim Report of the President's Working Group on Financial Markets, Appendix D at 11 (May 1988).

[26] Securities Exchange Act Release No. 32708 (August 2, 1993) 58 FR 42586 (August 10, 1993) (File No. SR–OCC–93–13).

[27] 15 U.S.C. 78s(b)(3)(A)(i).

[28] 17 CFR 240.19b–4(f)(1).

OCC.[29] At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–OCC–2007–15 on the subject line.

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 SR–OCC–2007–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2007–15 and should be submitted on or before January 17, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[30]

Florence E. Harmon,

Deputy Secretary.

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[29] The Commission neither makes any findings nor expresses any opinion with respect to OCC's representations and interpretations regarding the application of the Bankruptcy Code.

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56998; File No. SR–Amex–2007–104]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of Eleven Funds of the ProShares Trust

December 19, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 18, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. On December 18, 2007, Amex filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of 11 funds (''Funds'') of the ProShares Trust (''Trust'') based on a domestic stock index and several fixed income indexes.

The text of the proposed rule change is available at *http://www.amex.com,* at the Exchange and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list under amended Rule 1000A–AEMI, shares of 10 new funds of the Trust that are designated as Short Funds or UltraShort Funds, and one new fund designated as an Ultra Fund. Amex Rules 1000A–AEMI and Rule 1001A through 1005A provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940 (''1940 Act'') as well as the Act. Index Fund Shares are defined in Rule 1000A–AEMI(b)(1) as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

Rule 1000A–AEMI(b)(2) permits the Exchange to list and trade Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple, or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance. The Commission has recently approved the listing and trading of certain Ultra Funds, Short Funds and UltraShort Funds based on a variety of underlying indexes.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–Amex–2004–62)(''Original Order''); *see also* Securities Exchange Act Release Nos. 54040 (June 23, 2006), 71 FR 37669 (June 30, 2006) (SR–Amex 2006–41); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR–Amex–2006–101).

Each of the Funds will have a distinct investment objective.[4] Each Fund will attempt, on a daily basis, to achieve its investment objective by corresponding to a specified multiple of the performance, the inverse performance, or an inverse multiple of the performance of a particular fixed income or equity securities index (individually referred to as the ''Underlying Index'' and collectively referred to as the ''Underlying Indexes'') as briefly described below. The Funds will be based on the following benchmark indexes:

- Lehman Brothers 7–10 Year U.S. Treasury Index;
- Lehman Brothers 20+ Year U.S. Treasury Index;
- iBoxx $ Liquid Investment Grade Index;
- iBoxx $ Liquid High Yield Index; and
- Dow Jones U.S. Select Telecommunications Index (together, the ''Underlying Indexes'').[5]

Short Funds:

The Exchange proposes to list and trade shares of the Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (−100%) of the Underlying Indexes (''Short Funds''). If each of these Funds is successful in meeting its objective, the net asset value (''NAV'') of shares of each Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when the prices of the securities in the index rise on a given day, before fees and expenses.

UltraShort Funds:

The Exchange also proposes to list and trade shares of the Funds that seek daily investment results, before fees and expenses that correspond to twice the inverse (−200%) of the daily performance of the Underlying Indexes (''UltraShort Funds''). If each of these Funds is successful in meeting its objective, the NAV of shares of each Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the index rise on a given day, before fees and expenses.

The Short Funds and UltraShort Funds each have investment objectives that seek investment results corresponding to an inverse performance of the Underlying Indexes and are collectively referred to as the ''Bearish Funds.''

Ultra Fund:

Finally, the Exchange proposes to list and trade shares of one Fund[6] that seeks daily investment results, before fees and expenses, that corresponds to twice (200%) the daily performance of the Underlying Index (''Ultra Fund'' or ''Bullish Fund''). This Fund, if successful in meeting its investment objective, should gain, on a percentage basis, approximately twice as much as the Fund's Underlying Index when the price of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day.

Underlying Indexes

According to Rule 1000A–AEMI(b)(2), the Exchange may not list and trade Index Fund Shares under its generic listing standards adopted pursuant to Rule 19b–4(e) if the Index Fund Shares are leveraged, that is, they seek to provide investment results that either exceed or correspond to the inverse of the performance of a specified foreign or domestic stock index by a specified multiple.[7] While the Exchange is proposing to list and trade the Funds pursuant to section 19(b)(1) of the Act, the Exchange represents that the indexes and their respective components (as described below) comply with the generic listing standards set forth in Commentary .02 and Commentary .03 to Amex Rule 1000A–AEMI.[8]

Lehman Brothers 7–10 Year U.S. Treasury Index

The index is market capitalization weighted and includes all publicly issued U.S. Treasury Securities that have a remaining maturity of between 7 and 10 years and have more than $250 million par outstanding. The index value is calculated and published daily by 10:00 p.m. Eastern Time (''ET''). The Commission has previously approved the listing and trading on the Amex of an exchange-traded fund based on the iShares Lehman 7–10 Year Treasury Index.[9]

Lehman Brothers 20+ Year U.S. Treasury Index

The index is market capitalization weighted and includes all publicly issued U.S. Treasury Securities that have a remaining maturity greater than 20 years and have more than $150 million par outstanding. The index value is calculated and published daily by 10:00 p.m. ET. The Commission has previously approved the listing and trading on the Amex of an exchange-traded fund based on the Lehman Brothers 20+ Year U.S. Treasury Index.[10]

iBoxx $ Liquid Investment Grade Index

The index is a rules-based index consisting of up to 100 highly liquid, investment grade, U.S. dollar-denominated corporate bonds with a minimum amount outstanding of $500 million that seeks to maximize liquidity while maintaining representation of the broader investment grade corporate bond market. The index consists of issuers domiciled in the U.S., Bermuda, Cayman Islands, Canada, Japan or Western Europe. The index is equally priced weighted and is re-balanced monthly. The index value is calculated and published daily by 4:30 p.m. ET. The Commission has previously approved the listing and trading on the Amex of an exchange-traded fund based

[4] The Funds are as follows: (1) Short Lehman Brothers 7–10 Year U.S. Treasury ProShares; (2) Short Lehman Brothers 20+ Year U.S. Treasury ProShares; (3) Short iBoxx $ Liquid Investment Grade ProShares; (4) Short iBoxx $ Liquid High Yield ProShares; (5) Short Dow Jones Select Telecommunications ProShares; (6) UltraShort Lehman Brothers 7–10 Year U.S. Treasury ProShares; (7) UltraShort Lehman Brothers 20+ Year U.S. Treasury ProShares; (8) UltraShort iBoxx $ Liquid Investment Grade ProShares; (9) UltraShort iBoxx $ Liquid High Yield ProShares; (10) UltraShort Dow Jones Select Telecommunications ProShares; and (11) Ultra Dow Jones Select Telecommunications ProShares.

[5] The Statement of Additional Information (''SAI'') for the Funds discloses that each Fund reserves the right to substitute a different Index. Substitution could occur if the Index becomes unavailable, no longer serves the investment needs of shareholders, the Fund experiences difficulty in achieving investment results that correspond to the Index or for any other reason determined in good faith by the Board of Trustees of the Trust. In such instance, the substitute index would attempt to measure the same general market as the current index. Consistent with applicable law, shareholders will be notified (either directly or through their intermediary) in the event a Fund's current index is replaced.

[6] The Ultra Fund will be based on the Dow Jones U.S. Select Telecommunications Index.

[7] *See* Rule 1000A–AEMI(b)(2)(iii) and Commentary .02 thereto.

[8] The Exchange represents that Shares based on the Underlying Indexes would meet the criteria set forth in Commentary .04 through .06, .08 and .09 to Amex Rule 1000A–AEMI.

[9] *See* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) (SR–Amex–2001–35). The iShares Lehman Brothers 7–10 Year Treasury Bond ETF (IEF) is listed and traded on the Exchange.

[10] *See id*. The iShares Lehman Brothers 20+ Year Treasury Bond ETF (TLT) is listed and traded on the Exchange.

on the iBoxx $ Liquid Investment Grade Index.[11]

iBoxx $ Liquid High Yield Index

The index is a rules-based index consisting of up to 50 of the most liquid, high yield, U.S. dollar-denominated corporate bonds with a minimum amount outstanding of $200 million that seeks to maximize liquidity while maintaining representation of the broader high yield corporate bond market. The index consists of issuers domiciled in the U.S., Bermuda, Cayman Islands, Canada, Japan, or Western Europe. The index is equally priced weighted and is re-balanced monthly. The index value is calculated and published daily by 4:30 p.m. ET. An exchange-traded fund based on the iBoxx $ Liquid High Yield Index is listed and trade on the Exchange.[12]

Dow Jones U.S. Select Telecommunications Index

The Dow Jones U.S. Select Telecommunications Index is a float-adjusted market capitalization weighted index designed to measure the performance of the telecommunications economic sector of the U.S. equity market. Component companies include fixed line and mobile telecommunications companies. Component weights are capped for diversification. The universe for the index includes all common stocks of companies in the Dow Jones U.S. Select Telecommunications Index that are categorized as belonging to the telecommunications sector, based on Industry Classification Benchmark (ICB) definitions. The company at the 90% cumulative market capitalization of the index must have a float adjusted market capitalization of at least $75 million. The Index value is calculated and disseminated every 15 seconds during Amex's trading hours.

The Exchange represents that the Dow Jones U.S. Select Telecommunications Index meets the Exchange's generic listing standards for Index Fund Shares.[13]

The Funds

ProShare Advisors LLC is the investment advisor (''Advisor'') to each Fund. The Advisor is registered under the Investment Advisers Act of 1940.[14] While the Advisor will manage each Fund, the Trust's Board of Trustees (''Board'') will have overall responsibility for the Funds' operations. The composition of the Board is, and will be, in compliance with the requirements of section 10 of the 1940 Act.

SEI Investments Distribution Company (''Distributor''), a broker-dealer registered under the Act, would act as the distributor and principal underwriter of the Shares. JPMorgan Chase Bank, N.A. would act as the index receipt agent (''Index Receipt Agent'') for the Bullish Fund for which it will receive fees. The Index Receipt Agent would be responsible for transmitting a list of names and the required number of shares of each deposit basket of equity securities (''Deposit Securities'') to be included in the Creation Deposit for the Bullish Fund (''Deposit List'') to the National Securities Clearing Corporation (''NSCC'') and for the processing, clearance and settlement of purchase and redemption orders through the facilities of the Depository Trust Company (''DTC'') and NSCC on behalf of the Trust. When applicable, the Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and the NSCC.

Shares of the Funds issued by the Trust will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund.[15] Shares would be registered in book-entry form only and the Trust would not issue individual share certificates. The DTC or its nominee would be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares would be shown on the records of DTC or DTC Participants.

Investment Objective of the Funds

The Bearish Funds would seek daily investment results, before fees and expenses, of the inverse or opposite (−100%) of the Underlying Index while the UltraShort funds would seek daily investment results, before fees and expenses, of twice the inverse or opposite (−200%) of the daily performance of the Underlying Index. The Bearish Funds would not invest directly in the component securities of the relevant Underlying Index, but instead, would create short exposure to such Index. Each Bearish Fund would rely on establishing positions in financial instruments (as defined below) that provide, on a daily basis, the inverse or opposite of, or twice the inverse or opposite of, the performance of the relevant Underlying Index. Normally 100% of the value of the portfolios of each Fund would be devoted to such financial instruments and money market instruments.

The Bullish Fund would seek investment results that corresponds, before fees and expenses, to twice (200%) the daily performance of the Underlying Index and would invest its assets based upon the same strategies as conventional index funds. Rather than holding positions in equity securities and financial instruments intended to create exposure to 100% of the daily performance of an underlying index, the Bullish Fund would hold equity securities and financial instruments positions designed to create exposure equal to twice (200%), before fees and expenses, the daily performance of the Underlying Index. The Bullish Fund generally would hold 85% to 100% of its assets in the component equity securities of the Underlying Index. The remainder of assets would be devoted to Financial Instruments and Money Market Instruments (as defined below) that are intended to create the additional needed exposure to such Underlying Index necessary to pursue its investment objective.

The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts, options on securities and indices, equity caps, collars and floors as well as swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (''Financial Instruments''). Money market instruments include U.S. government securities and repurchase agreements [16] (''Money Market Instruments'').

While the Advisor would attempt to minimize any ''tracking error'' between the investment results of a particular Fund and the performance (and specified multiple thereof) or the inverse performance (and specified multiple thereof) of its Underlying Index, certain factors may tend to cause the investment results of a Fund to vary from such relevant Underlying Index or

[11] *See id.* The iShares iBoxx $ Investment Grade Corporate Bond Fund (LQD) (formerly the GS $ InvesTop Index) is listed and traded on the Exchange.

[12] The iBoxx High Yield Corporate Bond Fund (HYG) is listed and traded on the Exchange pursuant to the Exchange's generic listing standards. *See* Commentary .03 to Rule 1000A–AEMI (setting forth standards for indexes based on fixed income securities).

[13] *See* Commentary .02 to Rule 1000A–AEMI.

[14] The Trust, Advisor and Distributor (''Applicants'') have filed with the Commission an Application to amend the Order under Sections 6(c) and 17(b) of the 1940 Act (the ''Application'') for the purpose of exempting the Funds of the Trust from various provisions of the 1940 Act. (File No. 812–13382).

[15] The Trust is also registered as a business trust under the Delaware Corporate Code.

[16] Repurchase agreements held by the Funds will be consistent with Rule 2a–7 under the 1940 Act.

specified multiple thereof.[17] The Bullish Fund is expected to be highly correlated to the Underlying Index and investment objective (.95 or greater). The Bearish Funds are expected to be highly inversely correlated to each Underlying Index and investment objective (−.95 or greater).[18] In each case, the Funds are expected to have a daily tracking error of less than 5% (500 basis points) relative to the specified multiple, inverse, or inverse multiple of the performance of the relevant Underlying Index.

The Portfolio Investment Methodology

The Advisor would seek to establish an investment exposure in each portfolio corresponding to each Fund's investment objective based upon its Portfolio Investment Methodology. The Portfolio Investment Methodology is a mathematical model based on well-established principles of finance that are widely used by investment practitioners, including conventional index fund managers.

As set forth in the Application, the Portfolio Investment Methodology was designed to determine for each Fund the portfolio investments needed to achieve its stated investment objectives. The Portfolio Investment Methodology takes into account a variety of specified criteria and data (''Inputs''), the most important of which are: (1) Net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day, (2) the amount of required exposure to the Underlying Index, and (3) the positions in equity securities (if applicable), Financial Instruments and/or Money Market Instruments at the beginning of each trading day. The Advisor, pursuant to the methodology, would then mathematically determine the end-of-day positions to establish the required amount of exposure to the Underlying Index (''Solution''), which would consist of equity securities (if applicable), Financial Instruments and/or Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of equity securities (if applicable), Financial Instruments and/or Money Market Instruments that must be bought or sold for the day. The Solution represents the required exposure and, when necessary, is converted into an order or orders to be filled that same day.

Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trade is made. Therefore, the NAV calculated for a Fund on a given day should reflect the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. For the Bearish Funds described herein, these trades would then be reflected in the NAV for that Fund that is generally calculated as of 3 p.m. ET on Tuesday (or earlier as necessary).[19]

The timeline for the Methodology is as follows: Authorized Participants (''APs'' or ''Authorized Participant'') have a 2 p.m. ET cut-off (or earlier as necessary) for orders submitted by telephone, facsimile and other electronic means of communication and a 4 p.m. ET cut-off for orders received via mail.[20] AP orders by mail are exceedingly rare. Orders are received by the Distributor and relayed to the Advisor within 10 minutes. The Advisor would know by 2:10 p.m. ET the number of creation/redemption orders by APs for that day. Subsequently, the Advisor generally puts orders into the market between 2:30 p.m. and 2:55 p.m. ET in order to obtain requisite portfolio exposure consistent with the Solution. At 3 p.m. ET, the Advisor would again look at the exposure to make sure that the orders placed are consistent with the Solution, and as described above, the Advisor would execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

For the Bullish Fund,[21] portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trade is made. Therefore, the NAV calculated for a Fund on a given day should reflect the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades would then be reflected in the NAV for that Fund that is calculated as of 4 p.m. ET on Tuesday.

The timeline for the Methodology is as follows: Authorized Participants have a 3 p.m. ET cut-off for orders submitted by telephone, facsimile and other electronic means of communication and a 4 p.m. ET cut-off for orders received via mail. AP orders by mail are exceedingly rare. Orders are received by the Distributor and relayed to the Advisor within 10 minutes. The Advisor would know by 3:10 p.m. ET the number of creation/redemption orders by APs for that day. Orders are then placed at approximately 3:40 p.m. ET as market-on-close (MOC) orders. At 4 p.m. ET, the Advisor would again look at the exposure to make sure that the orders placed are consistent with the Solution, and as described above, the Advisor would execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

Description of Investment Techniques

In attempting to achieve its individual investment objectives, a Fund may invest its assets in equity securities, Financial Instruments and Money Market Instruments (collectively, ''Portfolio Investments''). The Bullish Fund would hold between 85–100% of its total assets in the equity securities contained in the relevant Underlying Index. The remainder of assets, if any, would be devoted to Financial Instruments and Money Market Instruments that are intended to create additional needed exposure to such

[17] Several factors may cause a Fund to vary from the relevant Underlying Index and investment objective including: (1) A Fund's expenses, including brokerage fees (which may be increased by high portfolio turnover) and the cost of the investment techniques employed by that Fund; (2) less than all of the securities in the benchmark index being held by a Fund and securities not included in the benchmark index being held by a Fund; (3) an imperfect correlation between the performance of instruments held by a Fund, such as futures contracts, and the performance of the underlying securities in the cash market; (4) bid-ask spreads (the effect of which may be increased by portfolio turnover); (5) holding instruments traded in a market that has become illiquid or disrupted; (6) a Fund's share prices being rounded to the nearest cent; (7) changes to the benchmark index that are not disseminated in advance; (8) the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements; and (9) early and unanticipated closings of the markets on which the holdings of a Fund trade, resulting in the inability of the Fund to execute intended portfolio transactions.

[18] Correlation is the strength of the relationship between (1) the change in a Fund's NAV and (2) the change in the benchmark index (investment objective). The statistical measure of correlation is known as the ''correlation coefficient.'' A correlation coefficient of +1 indicates a perfect positive correlation while a value of −1 indicates a perfect negative (inverse) correlation. A value of zero would mean that there is no correlation between the two variables.

[19] The Bearish Funds are based on the following fixed income indexes: (1) The Lehman Brothers 7–10 Year U.S. Treasury Index; (2) the Lehman Brothers 20+ Year U.S. Treasury Index; (3) the iBoxx $ Liquid Investment Grade Index; and (4) the iBoxx $ Liquid High Yield Index.

[20] An Authorized Participant is either (1) A broker-dealer or other participant in the continuous net settlement system of the NSCC or (2) A DTC participant, and which has entered into a participant agreement with the Distributor. Orders for the ten Short Funds and UltraShort Funds described herein may not be placed on days where the equity markets are open, but the fixed income markets are closed.

[21] This fund is based on the Dow Jones U.S. Select Telecommunications Index.

Underlying Index necessary to pursue the Bullish Fund's investment objectives. The Bearish Funds generally would not invest in equity securities but rather would hold only Financial Instruments and Money Market Instruments. To the extent applicable, each Fund would comply with the requirements of the 1940 Act with respect to ''cover'' for Financial Instruments and thus may hold a significant portion of its assets in liquid instruments in segregated accounts.

Each Fund may engage in transactions in futures contracts on designated contract markets where such contracts trade, and would only purchase and sell futures contracts traded on a U.S. futures exchange or board of trade. Each Fund would comply with the requirements of Rule 4.5 of the regulations promulgated by the Commodity Futures Trading Commission (''CFTC'').[22]

Each Fund may enter into swap agreements and/or forward contracts for the purposes of attempting to gain exposure to the equity securities of its Underlying Index without actually transacting such securities. The counterparties to the swap agreements and/or forward contracts would be major broker-dealers and banks. The creditworthiness of each potential counterparty is assessed by the Advisor's credit committee pursuant to guidelines approved by the Board. Existing counterparties are reviewed periodically by the Board or its designee. Each Fund may also enter into repurchase and reverse repurchase agreements with terms of less than one year, and would only enter into such agreements with (i) members of the Federal Reserve System, (ii) primary dealers in U.S. government securities, or (iii) major broker-dealers. Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as ''cover'' for Financial Instruments, as described above, or to earn interest.

The Trust would adopt certain fundamental policies consistent with the 1940 Act and each Fund would be classified as ''non-diversified'' under the 1940 Act. Each Fund, however, intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a ''regulated investment company'' (''RIC'') for purposes of the Internal Revenue Code (''Code''), in order to relieve the Trust and the Funds of any liability for Federal income tax to the extent that its earnings are distributed to shareholders.[23]

Availability of Information about the Shares and Underlying Indexes

The Trust's Web site, which is and would be publicly accessible at no charge, would contain the following information for each Fund's Shares: (a) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (c) its Prospectus and/or Product Description; and (d) other quantitative information such as daily trading volume. The Prospectus and/or Product Description for each Fund would inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.[24]

The Amex would disseminate for each Fund on a daily basis every 15 seconds by means of the Consolidated Tape Association (''CTA'') and CQ High Speed Lines information with respect to an Intra-Day Indicative Value (''IIV'') (as defined and discussed below under ''Dissemination of Intra-Day Indicative Value (IIV)''), recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit.[25] The Exchange would make available on its Web site daily trading volume, closing price, the NAV and final dividend amounts to be paid for each Fund.

Each Fund's total portfolio composition would be disclosed on the Web site of the Trust (*http://www.proshares.com*) or another relevant Web site as determined by the Trust and/or the Exchange (*http://www.amex.com*). Web site disclosure of portfolio holdings would be made by the Trust on a daily basis and would include, as applicable, the names and number of shares held of each equity security (if applicable), the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund would coincide with the disclosure by the Advisor of the ''IIV File'' (described below) and the ''PCF File,'' when applicable (described below). Therefore, the same portfolio information (including accrued expenses and dividends) would be provided on the public Web site as well as in the IIV File and PCF File (when applicable) provided to ''Authorized Participants'' (defined below). The format of the public Web site disclosure and the IIV File and PCF File (when applicable) would differ because the public Web site would list all portfolio holdings while the IIV File and PCF File (when applicable) would similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit.[26] Accordingly, each investor would have access to the current portfolio composition of each Fund through the Trust's Web site, at *http://www.proshares.com*, and/or at the Exchange's Web site at *http://www.amex.com*.

Beneficial owners of Shares (''Beneficial Owners'') would receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They would receive, for example, annual and semi-annual fund reports, written statements

[22] The CFTC Rule 4.5 provides an exclusion for investment companies registered under the 1940 Act from the definition of a ''commodity pool operator'' upon the filing of a notice of eligibility with the National Futures Association.

[23] In order for a fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (i) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code and that are engaged in the same or similar trades or businesses or related trades or businesses other than U.S. government securities or the securities of other regulated investment companies.

[24] The Application requests relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, if a product description is being provided in lieu of a prospectus, Commentary .06 of Amex Rule 1000A–AEMI requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Furthermore, any sales material will reference the availability of such circular and the prospectus.

[25] Quotations and last-sale information for the Funds' Shares are disseminated over the Consolidated Tape.

[26] The composition will be used to calculate the NAV later that day.

accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099–DIVs. Some of these documents would be provided to Beneficial Owners by their brokers, while others would be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index would be publicly available on various websites by independent market data vendors, *e.g., http://www.bloomberg.com*. Data regarding each Underlying Index is also available from the respective index provider to subscribers. With respect to the Lehman Brothers 7–10 Year U.S. Treasury Index, the Lehman Brothers 20+ Year U.S. Treasury Index, the iBoxx $ Liquid Investment Grade Index and the iBoxx $ Liquid High Yield Index, as noted above, the index value would be calculated once daily. With respect to the Dow Jones U.S. Select Telecommunications Index, the value would be updated intra-day on a real time basis as its individual component securities change in price. This intra-day value of this index would be disseminated at least every 15 seconds throughout the trading day by the Amex or another organization authorized by the relevant Underlying Index provider.

Creation and Redemption of Shares

Each Fund would issue and redeem Shares only in initial aggregations of at least 75,000 (''Creation Units''). Purchasers of Creation Units would be able to separate the Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it would not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each Fund is expected to be in the range of $50–$250.

At the end of each business day, the Trust would prepare the list of names and the required number of shares of each Deposit Security to be included in the next trading day's Creation Unit for the Bullish Fund. The Trust would then add to the Deposit List, the cash information effective as of the close of business on that business day and create a portfolio composition file (''PCF'') for the Fund, which it would transmit to NSCC before the open of business the next business day. The information in the PCF would be available to all participants in the NSCC system.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an ''IIV File,'' which it would use to disclose the Funds' holdings of Financial Instruments.[27] The IIV File would contain, for the Bullish Fund (to the extent that it holds Financial Instruments) and Bearish Funds, information sufficient by itself or in connection with the PCF File and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund.

For example, the following information would be provided in the IIV File for a Bullish Fund holding equity securities and a Bearish Fund holding swaps and futures contracts (and a Bullish Fund to the extent it holds such Financial Instruments): (A) The total value of the equity securities held by such Fund (Bullish Fund only), (B) the notional value of the swaps held by such Fund (together with an indication of the index on which such swap is based and whether the Fund's position is long or short), (C) the most recent valuation of the swaps held by the Fund, (D) the notional value of any futures contracts (together with an indication of the index on which such contract is based, whether the Fund's position is long or short and the contract's expiration date), (E) the number of futures contracts held by the Fund (together with an indication of the index on which such contract is based, whether the Fund's position is long or short and the contract's expiration date), (F) the most recent valuation of the futures contracts held by the Fund, (G) the Fund's total assets and total shares outstanding, and (H) a ''net other assets'' figure reflecting expenses and income of the Fund to be accrued during and through the following business day and accumulated gains or losses on the Fund's Financial Instruments through the end of the business day immediately preceding the publication of the IIV File. To the extent that the Bullish or any Bearish Fund holds cash or cash equivalents about which information is not available in a PCF File, information regarding such Fund's cash and cash equivalent positions would be disclosed in the IIV File for such Fund.

The information in the IIV File would be sufficient for participants in the NSCC system to calculate the IIV for Bearish Funds and, together with the information on equity securities contained in the PCF, would be sufficient for calculation of IIV for the Bullish Fund, during the next business day. The IIV File, together with the applicable information in the PCF in the case of the Bullish Fund, would also be the basis for the next business day's NAV calculation.

Under normal circumstances, the Bullish Fund would be created and redeemed either entirely for cash and/or for Deposit Securities, plus a Balancing Amount, as described below. Under normal circumstances, the Bearish Funds would be created and redeemed entirely for cash. The IIV File published before the open of business on a business day would, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit, and the amount of cash that would be paid upon redemption of a Creation Unit, for each Bearish Fund for that business day.

For the Bullish Fund, the PCF File would be prepared by the Trust after 4 p.m. ET and transmitted by the Index Receipt Agent to NSCC by 6:30 p.m. ET. All Authorized Participants who are NSCC participants, and the Exchange would have access to the Web site containing the IIV File. The IIV File would reflect the trades made on behalf of a Fund that business day and the creation/redemption orders for that business day. Accordingly, by 6:30 p.m. ET, Authorized Participants would know the composition of the Fund's portfolio for the next trading day.

The Balancing Amount would also be determined shortly after 4 p.m. ET each business day. Although the Balancing Amount for most exchange-traded funds is a small amount reflecting accrued dividends and other distributions, for the Bullish Fund it is expected to be larger due to changes in the value of the Financial Instruments, *i.e.*, daily mark-to-market. For example, assuming a basket of deposit securities (''Deposit Basket'') of $5 million for a Bullish Fund, if the market increases 10%, the deposit basket would now be equal to $5.5 million at 4 p.m. ET. The Fund shares would increase in value by 20% or $1 million to equal $6 million total. With the Deposit Basket at $5.5 million, the Cash Balancing Amount would be $500,000. The next day's Deposit Basket and cash balancing amount is announced generally by 6:30 p.m. ET each business day.

[27] The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all Authorized Participants and the Exchange will have access to a password and the Web site containing the IIV File. However, the Fund will disclose each business day to the public identical information, but in a format appropriate to public investors, at the same time the Fund discloses the IIV and PCF files, as applicable, to industry participants.

Creation of the Bullish Fund [28]

Typically, persons [29] purchasing Creation Units from a Bullish Fund must make an in-kind deposit of a basket of securities (''Deposit Securities'') consisting of the securities selected by the Advisor from among those securities contained in the Fund's portfolio, together with an amount of cash specified by the Advisor (''Balancing Amount''), plus the applicable transaction fee (''Transaction Fee''). The Deposit Securities and the Balancing Amount collectively are referred to as the ''Creation Deposit.'' The Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit it is used to purchase. The Balancing Amount is an amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.[30] The Balancing Amount may, at times, represent a significant portion of the aggregate purchase price (or in the case of redemptions, the redemption proceeds). This may occur because the mark-to-market value of the Financial Instruments held by the Funds is included in the Balancing Amount. The Transaction Fee is a fee imposed by the Funds on investors purchasing (or redeeming) Creation Units.

The Trust would make available through the DTC or the Distributor on each business day, prior to the opening of trading on the Exchange, a list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Bullish Fund (''Deposit List'').[31] The Trust also would make available on a daily basis information about the previous day's Balancing Amount.

The Bullish Fund reserves the right to permit or require an Authorized Participant to substitute an amount of cash and/or a different security to replace any prescribed Deposit Security.[32] Substitution might be permitted or required, for example, because one or more Deposit Securities may be unavailable, or may not be available in the quantity needed to make a Creation Deposit. Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit are expected to be immaterial, and in any event the Adviser may adjust the relevant transaction fee to ensure that the Fund collects the extra expense from the purchaser.

Orders to create or redeem Shares of the Bullish Fund must be placed through an Authorized Participant, which is either (1) A broker-dealer or other participant in the continuous net settlement system of the NSCC or (2) a DTC participant, and which has entered into a participant agreement with the Distributor.

As noted below in ''Dissemination of Intra-Day Indicative Value (IIV),'' the Exchange would disseminate through the facilities of the CTA, at least in 15 second intervals during the Exchange's regular trading hours, the IIV on a per Share basis. The Funds would not be involved in, or responsible for, the calculation or dissemination of any such amount and would make no warranty as to its accuracy.

Redemption of the Bullish Fund

Bullish Fund Shares in Creation Unit aggregations would be redeemable on any day on which the New York Stock Exchange (''NYSE'') is open in exchange for a basket of securities (''Redemption Securities''). As it does for Deposit Securities, the Trust would make available to Authorized Participants on each business day prior to the opening of trading a list of the names and number of shares of Redemption Securities for each Fund. The Redemption Securities given to redeeming investors in most cases would be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.[33] Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit would either receive from or pay to the Fund a cash amount equal to the difference (''Redemption Balancing Amount'').[34] The redeeming investor also must pay to the Fund a transaction fee to cover transaction costs.[35]

A Fund has the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered at the time of tender, and the Redemption Balancing Amount. The Adviser currently contemplates that Creation Units of the Bullish Fund would be redeemed principally in kind with respect to the Redemption Securities and a Balancing Amount in cash largely resulting from the value of the Financial Instruments included in the Fund.

In order to facilitate delivery of Redemption Securities, each redeeming Authorized Participant, acting on behalf of such Beneficial Owner or a DTC Participant, must have arrangements with a broker-dealer, bank, or other custody provider in each jurisdiction in which any of the Redemption Securities are customarily traded. If neither the redeeming Beneficial Owner nor the Authorized Participant has such arrangements, and it is not otherwise possible to make other arrangements, the Fund may in its discretion redeem the Shares for cash.

Creation and Redemption of the Bearish Funds

The Bearish Funds would be purchased and redeemed entirely for cash (''All-Cash Payments''). The use of an All-Cash Payment for the purchase and redemption of Creation Unit aggregations of the Bearish Funds is due to the limited transferability of Financial Instruments.

The Exchange believes that Shares would not trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the

[28] This is the Bullish Fund based on the Dow Jones U.S. Telecommunications Index.

[29] Authorized Participants are the only persons that may place orders to create and redeem Creation Units. Authorized Participants must be registered broker-dealers or other securities market participants (such as banks and other financial institutions that are exempt from registration as broker-dealers to engage in securities transactions) who are participants in DTC.

[30] While not typical, if the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount would be a negative number, in which case the Balancing Amount would be paid by the Bullish Fund to the purchaser, rather than vice-versa.

[31] In accordance with the Advisor's Code of Ethics, personnel of the Advisor with knowledge about the composition of a Creation Deposit will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

[32] In certain limited instances, a Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Advisor might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases.

[33] There may be circumstances, however, where the Deposit and Redemption Securities could differ. For example, if ABC stock were replacing XYZ stock in a Fund's Underlying Index at the close of today's trading session, today's prescribed Deposit Securities might include ABC but not XYZ, while today's prescribed Redemption Securities might include XYZ but not ABC.

[34] In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount would be equal to the Balancing Amount described above in the creation process.

[35] Redemptions in which cash is substituted for one or more Redemption Securities may be assessed a higher transaction fee to offset the transaction cost to the Fund of selling those particular Redemption Securities. This fee is expected to be between $100 and $1,000.

same or similar securities, increases the efficiency of the markets and serves to prevent potentially manipulative efforts. If the price of a Share deviates enough from the Creation Unit, on a per share basis, to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy Shares at a discount, immediately cancel them in exchange for the Creation Unit and sell the underlying securities in the cash market at a profit, or sell Shares short at a premium and buy the Creation Unit in exchange for the Shares to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.[36]

Creation Unit Aggregation Purchase and Redemption Orders

Creation Unit aggregations of the Funds would be purchased at NAV plus a transaction fee. For the Bearish Funds, the purchaser would make a cash payment by 12 p.m. ET on the third business day following the date on which the request was made (T+3) or earlier. For the Bullish Fund, the purchaser would make an in-kind payment and/or all cash payment generally on the third business day following the date on which the request was made (T+3) or earlier. Purchasers of the Funds in Creation Unit aggregations must satisfy certain creditworthiness criteria established by the Advisor and approved by the Board, as provided in the Authorized Participant Agreement between the Trust and Authorized Participants.

Creation Unit aggregations of the Bullish Fund would be redeemable either in-kind or all in cash equal to the NAV less the transaction fee. Creation Unit aggregations of the Bearish Funds would be redeemable for an All-Cash Payment equal to the NAV less the transaction fee. A Bullish Fund has the right to make redemption payments in cash, in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered for redemption at the time of tender.[37]

Dividends

Dividends, if any, from net investment income would be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Certain Funds may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally would be declared and paid at least once a year.

Dividends and other distributions on the Shares of each Fund would be distributed, on a pro rata basis to Beneficial Owners of such Shares. Dividend payments would be made through the Depository and the DTC Participants to Beneficial Owners then of record with proceeds received from each Fund.

The Trust would not make the DTC book-entry Dividend Reinvestment Service (''Dividend Reinvestment Service'') available for use by Beneficial Owners for reinvestment of their cash proceeds but certain individual brokers may make a Dividend Reinvestment Service available to Beneficial Owners. The SAI would inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of such a service through such broker. The SAI would also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the service and such investors should ascertain from their broker such necessary details. Shares acquired pursuant to such service would be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of Shares. Brokerage commissions charges and other costs, if any, incurred in purchasing Shares in the secondary market with the cash from the distributions generally would be an expense borne by the individual beneficial owners participating in reinvestment through such service.

Dissemination of Intra-Day Indicative Value (IIV)

In order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, the Exchange would disseminate through the facilities of the CTA: (i) Continuously throughout the trading day, the market value of a Share, and (ii) at least every 15 seconds throughout the trading day, a calculation of the IIV[38] as calculated by the Exchange (''IIV Calculator'').[39] Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

The IIV Calculator would calculate an IIV for each Fund in the manner discussed below. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV does not necessarily reflect the precise composition of the current portfolio held by each Fund at a particular point in time. Therefore, the IIV on a per Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that would be disseminated by the Amex is expected to be close to the most recently calculated Fund NAV on a per Share basis, it is possible that the value of the portfolio held by a Fund may diverge from the IIV during any trading day. In such case, the IIV would not precisely reflect the value of the Fund portfolio.

Calculation of the IIV for the Bullish Fund

The IIV Calculator would disseminate the IIV throughout the trading day for the Fund holding equity securities and Financial Instruments. The IIV Calculator would determine such IIV by: (i) Calculating the estimated current value of equity securities held by the Fund (if applicable) by (a) calculating the percentage change in the value of the Deposit List (as provided by the Trust) and applying that percentage value to the total value of the equity securities in the Fund as of the close of trading on the prior trading day (as provided by the Trust) or (b) calculating the current value of all of the equity

[36] In their 1940 Act Application, the Applicants stated that they do not believe that All-Cash Payments will affect arbitrage efficiency. This is because Applicants believe it makes little difference to an arbitrageur whether Creation Unit aggregations are purchased in exchange for a basket of securities or cash. The important function of the arbitrageur is to bid the share price of any Fund up or down until it converges with the NAV. Applicants note that this can occur regardless of whether the arbitrageur is allowed to create in cash or with a Deposit Basket. In either case, the arbitrageur can effectively hedge a position in a Fund in a variety of ways, including the use of market-on-close contracts to buy or sell the Financial Instruments.

[37] In the event an Authorized Participant has submitted a redemption request in good order and is unable to transfer all or part of a Creation Unit aggregation for redemption, a Fund may nonetheless accept the redemption request in reliance on the Authorized Participant's undertaking to deliver the missing Fund Shares as soon as possible, which undertaking shall be secured by the Authorized Participant's delivery and maintenance of collateral. The Authorized Participant Agreement will permit the Fund to buy the missing Shares at any time and will subject the Authorized Participant to liability for any shortfall between the cost to the Fund of purchasing the Shares and the value of the collateral.

[38] The intra-day indicative value or IIV is referred to by other issuers for different exchange-traded funds as an ''Estimated NAV,'' ''Underlying Trading Value,'' ''Indicative Optimized Portfolio Value (IOPV),'' and ''Intraday Value'' in various places such as the prospectus and marketing materials.

[39] The Exchange will calculate the IIV for each Fund.

securities held by the Fund (as provided by the Trust); (ii) calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by the Fund (which previous day's notional value would be provided by the Trust); (iii) calculating the mark-to-market gains or losses from futures, options and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iv) adding the values from (i), (ii) and (iii) above to an estimated cash amount provided by the Trust (which cash amount would include the swap costs), to arrive at a value; and (v) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

Calculation of the IIV for the Bearish Funds

The IIV Calculator would disseminate the IIV throughout the trading day for the Bearish Funds. The IIV Calculator would determine such IIV by: (i) Calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value would be provided by the Trust); (ii) calculating the mark-to-market gains or losses from futures, options and other Financial Instrument positions; by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iii) adding the values from (i) and (ii) above to an estimated cash amount provided by the Trust (which cash amount would include the swap costs), to arrive at a value; and (iv) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. A minimum of two Creation Units (at least 150,000 Shares) would be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading would be comparable to requirements that have been applied to previously listed series of Index Fund Shares. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

The Exchange, pursuant to Rule 1002A(a)(ii), will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per share for each Fund would be calculated daily and made available to all market participants at the same time. The Exchange represents the Trust is required to comply with Rule 10A–3 under the Act[40] for the initial and continued listing of the Shares.

The Amex original listing fee applicable to the listing of the Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under section 141 of the *Amex Company Guide* would be based upon the year-end aggregate number of outstanding Shares in all Funds of the Trust listed on the Exchange.

Amex Trading Rules and Trading Halts

The Shares are equity securities subject to Amex rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities, and account opening and customer suitability. The Funds would trade on the Amex until 4:15 p.m. ET each business day. Shares would trade with a minimum price variation of $.01. In addition, Amex Rule 154–AEMI(c)(ii)[41] and Commentary .04 to Amex Rule 190[42] apply to Index Fund Shares listed on the Exchange, including the Shares.

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors would include, but are not limited to, (1) The extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In the case of the Financial Instruments held by a Fund, the Exchange represents that a notification procedure would be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. Notification from the Advisor would be made by phone, facsimile or e-mail. The Exchange would then determine on a case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in shares of the Funds would also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Amex Rule 1002A(b)(ii) sets forth the trading halt parameters with respect to Index Fund Shares. If the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.

Information Circular

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations, regarding the application of Commentary .06 to Amex Rule 1000A–AEMI to the Funds. The Information Circular will further inform members and member organizations of the prospectus and/or Product Description delivery requirements that apply to the Funds.[43]

The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. In particular, the Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the

[40] 17 CFR 240.10A–3 (setting forth listing standards relating to audit committees).

[41] Amex Rule 154–AEMI(c)(ii) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Amex Rule 950–ANTE(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may be elected by a quotation. The Exchange has designated Index Fund Shares, including the Shares, as eligible for this treatment.

[42] Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security or securities that can be subdivided or converted into the listed security from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

[43] The Exchange states that the product description used in reliance on Section 24(d) of the 1940 Act (15 U.S.C. 80a–24(d)) will comply with all representations and conditions set forth in the Application. *See supra* note 24.

Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus and SAI, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex would rely on its existing surveillance procedures governing Index Fund Shares. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act,[44] in general, and furthers the objectives of section 6(b)(5),[45] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange states that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[44] 15 U.S.C. 78f(b).

[45] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange states that no written comments were solicited or received by the Exchange on this proposal.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or send an e-mail to *rulecomments@sec.gov*. Please include File Number SR–Amex–2007–104 on the subject line.

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 SR–Amex–2007–104. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2007–104 and should be submitted on or before January 17, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[46] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[47] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that it previously approved the original listing and trading of certain inverse leveraged fund shares based on a variety of indexes.[48] The Commission also notes that it has previously approved the listing and trading of exchange-traded funds based on three of the Underlying Indexes.[49] The Commission notes that the Exchange has represented that the two remaining Underlying Indexes meet the Exchange's criteria for indexes underlying Index Fund Shares that may be approved for listing and trading under Amex's generic listing standards adopted pursuant to Rule 19b–4(e) under the Act.[50]

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[51] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange has represented that quotations and last-sale information for the Shares will be disseminated over the Consolidated Tape. In addition, the Exchange will disseminate by means of the CTA and CQ High Speed lines, the IIV at least every 15 seconds on a daily basis

[46] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[47] 15 U.S.C. 78f(b)(5).

[48] *See* Securities Exchange Act Release Nos. 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR–Amex–2007–60) (approving the listing and trading of eight funds of ProShares Trust based on international equity indexes; *see also supra* note 3.

[49] *See supra* notes 9 to 11.

[50] S*ee supra* notes 12 and 13 and accompanying text.

[51] 15 U.S.C. 78k–1(a)(1)(C)(iii).

throughout Amex's trading day, the most recent NAV for each Fund, the number of Shares outstanding for each Fund, and the estimated cash amount and total cash amount per Creation Unit. The Exchange will also make available on its Web site daily trading volume, the closing prices, the NAV, and the final dividend amounts to be paid for each Fund.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index would be publicly available on various websites by independent market data vendors. Data regarding each Underlying Index is also available from the respective index provider to subscribers. For the Funds based on indexes based on fixed income securities, the index value would be calculated once daily.[52] With respect to the Dow Jones U.S. Select Telecommunications Index, the value would be updated intra-day on a real time basis as its individual component securities change in price and would be disseminated at least every 15 seconds throughout the trading day by the Amex or another organization authorized by the relevant Underlying Index provider.

The Trust's Web site will contain a variety of other quantitative information for the Shares of each Fund. Finally, each Fund's total portfolio composition will be disclosed on the Web site of the Trust or another relevant Web site as determined by the Trust and/or the Exchange. Web site disclosure of portfolio holdings will be made by the Trust on a daily basis and will include, as applicable, the specific types of Financial Instruments and characteristics of such instruments, the cash equivalents and amount of cash held in the portfolio of each Fund.

Furthermore, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the Trust (for each Fund), prior to listing, that the NAV per Share for each Fund will be calculated daily and made available to all market participants at the same time.[53] In addition, the Exchange represents that the Web site disclosure of the portfolio composition of each Fund and the disclosure by the Advisor of the IIV File and the PCF will occur at the same time. Commentaries .02(b)(i) and .03(b)(i) to Amex Rule 1000A–AEMI provides for ''fire wall'' procedures with respect to personnel who have access to information concerning changes and adjustments to the Underlying Index, among other things. Commentary .09 to Amex Rule 1000A–AEMI restricts members or persons associated with members who have knowledge of all material terms and conditions of an order being facilitated or orders being crossed to enter, based on such knowledge, an order to buy or sell a Share that is the subject of the order, an order to buy or sell the overlying option class, or an order to buy or sell any related instrument[54] until all the terms of the order are disclosed to the trading crowd or the trade is no longer imminent in view of the passage of time since the order was received.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. Amex Rule 1002A(b)(ii) provides that the Exchange will halt trading in the Shares if the circuit breaker parameters of Amex Rule 117 have been reached. In exercising its discretion to halt or suspend trading in the Shares, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) and other relevant factors. In addition, Amex Rule 1002A(b)(ii) provides that, if the IIV or the Underlying Index value applicable to that series of Index Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the Underlying Index value occurs. If the interruption to the dissemination of the IIV or the Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that the Shares are equity securities subject to Amex's rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, Amex will rely on its existing surveillance procedures governing Index Fund Shares.

2. Prior to the commencement of trading, the Exchange will inform its members and member organizations in an Information Circular regarding the application of Commentary .06 to Amex Rule 1000A–AEMI to the Funds and the prospectus and/or product description delivery requirements that apply to the Funds. The Information Circular will also provide guidance with regard to member firm compliance responsibilities when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares, as well as applicable Exchange rules. In addition, the Information Circular will disclose that the procedures for purchases and redemptions of Shares in Creation Units are described in each Fund's prospectus, and that Shares are not individually redeemable, but are redeemable only in Creation Unit aggregations or multiples thereof.

3. The Exchange represents that the Trust is required to comply with Rule 10A–3 under the Act[55] for the initial and continued listing of the Shares.

4. This Order is conditioned on Amex's adherence to the foregoing representations.

The Commission finds good cause to approve the proposed rule change, prior to the thirtieth day after publication for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act.[56] The Commission does not believes that the proposed rule change, as modified by Amendment No. 1, raises any novel regulatory issues. Accelerating approval will allow the Shares to trade on the Exchange without undue delay and should generate additional competition in the market for such products.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[57] that the proposed rule change (SR–Amex–2007–104), as modified by Amendment No. 1, be and it hereby is, approved on an accelerated basis.

[52] The value for the Underlying Indexes consisting of Fixed Income Securities (*i.e.*, the Bearish Funds) are calculated once daily.

[53] *See* Amex Rule 1002A(a)(ii).

[54] For purposes of Commentary .09, an order to buy or sell a ''related instrument'' means an order to buy or sell securities comprising ten percent or more of the component securities in the Underlying Index or an order to buy or sell a futures contract on any economically equivalent index. *See* Commentary .09 to Amex Rule 1000A–AEMI.

[55] 17 CFR 240.10A–3.

[56] 15 U.S.C. 78s(b)(2).

[57] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trade and Markets, pursuant to delegated authority.[58]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–24997 Filed 12–26–07; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

CommunityExpress Pilot Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of Pilot Program extension.

SUMMARY: This notice announces SBA's extension of the CommunityExpress Pilot Program until March 30, 2008. This extension will allow SBA to complete and implement a restructuring of the CommunityExpress program.

DATES: The CommunityExpress Pilot Program is extended under this notice until March 30, 2008.

FOR FURTHER INFORMATION CONTACT: Charles Thomas, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; Telephone (202) 205–6490; *charles.thomas@sba.gov*.

SUPPLEMENTARY INFORMATION: The CommunityExpress Pilot Program was established in 1999 based on the Agency's SBAExpress Program. Lenders approved for participation in CommunityExpress are authorized to use the expedited loan processing procedures in place for the SBAExpress Program, but the loans approved under this Program must be to distressed or underserved markets. To encourage lenders to make these loans, SBA provides its standard 75–85 percent guaranty, which contrasts with the 50 percent guaranty the Agency provides under SBAExpress. However, under CommunityExpress, participating lenders must arrange and, when necessary, pay for appropriate technical assistance for their borrowers under the program. Maximum loan amounts under this Program are limited to $250,000. SBA previously extended CommunityExpress until December 31, 2007 (72 FR 13341), to discuss and develop possible changes and enhancements to the Program.

The further extension of this Program until March 30, 2008, will allow SBA to develop several new concepts designed to improve the potential effectiveness and efficiency of the program and enhance the prospects of success for the small business borrowers under it.

[58] 17 CFR 200.30–3(a)(12).

(Authority: 13 CFR 120.3)

Charles W. Thomas,

Acting Director, Office of Financial Assistance.

[FR Doc. E7–25102 Filed 12–26–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6040]

Culturally Significant Objects Imported for Exhibition Determinations: ''Rhythms of Modern Life: British Prints 1914–1939''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Rhythms of Modern Life: British Prints 1914—1939,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, Boston, Massachusetts, from on or about January 30, 2008, until on or about June 1, 2008, the Metropolitan Museum of Art, New York, New York, from on or about September 23, 2008, until on or about December 7, 2008, The Wolfsonian at Florida International University, Miami Beach, Florida, from on or about January 1, 2009, until on or about April 1, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/453–8052). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 18, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–25070 Filed 12–26–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6041]

Culturally Significant Objects Imported for Exhibition Determinations: ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani''

AGENCY: Department of State.

ACTION: Notice, correction.

SUMMARY: On October 11, 2007, notice was published on page 57987 of the **Federal Register** (volume 72, number 196) of determinations made by the Department of State pertaining to the exhibition ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani.'' The referenced notice is corrected as to two additional objects to be included in the exhibition. Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the additional objects to be included in the exhibition ''Wine, Worship and Sacrifice: The Golden Graves of Ancient Vani'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The additional objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the additional exhibit objects at the Institute for the Study of the Ancient World, New York, New York, from on or about March 10, 2008 until on or about June 1, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The

address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 18, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary, for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–25067 Filed 12–26–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6013]

International Security Advisory Board (ISAB) Meeting Notice

Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on January 28, 2008, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10(d), and to 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 12958.

The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, and international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding international security, nuclear proliferation, and diplomacy.

For more information, contact Brandy Buttrick, Deputy Executive Director of the International Security Advisory Board, Department of State, Washington, DC 20520, telephone: (202) 647–9336.

Dated: December 13, 2007.

George W. Look,

Executive Director, International Security Advisory Board, Department of State.

[FR Doc. E7–25066 Filed 12–26–07; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 6016]

U.S. National Commission for UNESCO Notice of Open Advisory Committee Teleconference Meeting

Summary: The U.S. National Commission for UNESCO will meet via telephone conference on Monday, January 7, 2008, from 11 a.m. until 12 p.m. Eastern Time. The purpose of the teleconference meeting is to consider the recommendations of the Commission's National Committee for the Intergovernmental Oceanographic Commission (IOC). The U.S. National Committee for the IOC was asked to provide recommendations on the UNESCO study related to the Future of the IOC (for more information see IOC Circulars #2247 and #2249 *http://ioc3.unesco.org/cl/letters/CL%202247_e.pdf* and *http://ioc3.unesco.org/cl/letters/CL%202249_e.pdf).* The call will also be an opportunity to provide an update on recent and upcoming Commission and UNESCO activities. The Commission will accept brief oral comments during a portion of this conference call. This public comment period will last 15 minutes, and comments are limited to two minutes per person. Members of the public who wish to present oral comments or to listen to the conference call must make arrangements with the Executive Secretariat of the National Commission by January 4, 2008. For more information or to arrange to participate in the teleconference meeting, contact Alex Zemek, Deputy Executive Director of the U.S. National Commission for UNESCO, Washington, DC 20037. *Telephone:* (202) 663–0026; *Fax:* (202) 663–0035; *e-mail: DCUNESCO@state.gov*.

Dated: December 18, 2007.

Susanna Connaughton,

U.S. National Commission for UNESCO, Department of State.

[FR Doc. E7–25072 Filed 12–26–07; 8:45 am]

BILLING CODE 4710–19–P

DEPARTMENT OF STATE

[Public Notice 6042]

Solicitation of Input and Participation in a Dialogue To Review the Standardized Program Structure for Foreign Assistance; Correction

The Office of the Director of U.S. Foreign Assistance (F) is commencing public consultations on the ''Standardized Program Structure for Foreign Assistance'' (Program Structure). The Program Structure was developed in 2006 through a deliberative interagency process as part of the Secretary's Foreign Assistance Reform. It serves as a lexicon for categorizing and tracking foreign assistance activities from a number of different foreign assistance appropriation accounts, collectively totaling approximately $25 billion in U.S. Foreign Assistance.

F will consider changes to the Program Structure through a three-phase process:

- Phase I will engage public stakeholders (including Non-Governmental Organizations—NGOs) in dialogue;
- Phase II will engage Federal interagency partners; and
- Phase III will occur when all external and internal stakeholder input is collected and analyzed, and then forwarded to the Director of U.S. Foreign Assistance for a decision regarding proposed adjustments to the Program Structure.

This process is expected to take 4–6 months from the start date of the first stage, and will result in a refined Program Structure that will serve as the foundation for future planning and performance products. This notice pertains to Phase I.

The purpose of the consultative process is to fulfill a commitment to engage with external stakeholders to obtain input to improve the Program Structure (for example, to clarify definitions, identify gaps, or remove duplication). Consultation with external stakeholders and analysis of their inputs are expected to last for a period of between 8–12 weeks. F will use the administrative, technical, and logistical services of the National Academy of Public Administration (NAPA) to facilitate consultations.

Effective December 19, 2007, the Department of State will solicit the public for recommended changes at the ''program area'' level (e.g., Transnational Crime; Rule of Law and Human Rights; Health; Macroecomonic Foundation for Growth; Disaster Readiness) of the structure, and below (i.e., program element; program sub-element). The public is strongly encouraged to review the PROGRAM STRUCTURE by going to the following Internet site: *http://www.state.gov/documents/organization/93447.pdf.* Written recommendations for changes will be accepted ONLY between December 27–January 18, 2008, and must be made, by means of e-mail, to the following address: *ForeignAssistanceDefinitions@state.gov.* Recommendations must state clearly the

recommended change, the rationale for the change, and the expected impact on other aspects of the Program Structure.

Following the solicitation period, five (5) focus group meetings (addressing each of the program objectives) will be managed by the Department of State, and hosted and facilitated by NAPA at their location (900 7th Street, NW., Washington, DC 20001). Focus group sessions are tentatively scheduled to take place in January 2008. Participation will be limited to a predetermined number of attendees (due to space limitations), but the Department of State and NAPA will make every effort to ensure representation of a broad cross-section of stakeholders. The focus groups will review written comments, discuss any additional suggestions for changes and make recommendations on which changes should be further considered by the Department of State. Individuals and organizations interested in participating in focus group sessions should contact Lena Trudeau, Program Area Director, Strategic Initiatives, National Academy of Public Administration, (202) 315–5476 (Direct), *ltrudeau@napawash.org.*

Following the focus groups, a plenary session will review recommendations made by each of the groups, before final recommendations are forwarded to the Department of State for consideration by the Federal interagency. The plenary session will occur in the late January timeframe (specific date to be determined) at NAPA offices, and like the focus groups, be limited to a predetermined number of attendees due to space limitations. *Attendance will be determined by the Department of State with the objective of ensuring balanced and broad representation from stakeholders.*

The Department of State is committed to engaging its critical stakeholders in an unprecedented opportunity to review its Program Structure, so as to improve its foreign assistance reform effort currently underway. General information related to U.S. Foreign Assistance may be found at the following Internet site: *http://www.state.gov/f/.*

Dated: December 19, 2007.

Jill Copenhaver,

Management Officer, Office of U.S. Foreign Assistance, Department of State.

[FR Doc. E7–25230 Filed 12–26–07; 8:45 am]

BILLING CODE 4710–02–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at December 5, 2007 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of commission actions.

SUMMARY: At its regular business meeting on December 5, 2007 in Lancaster, Pennsylvania, the Commission: (1) Recognized former Pennsylvania State Senator Noah Wenger and outgoing New York Alternate Member Scott Foti, (2) heard a report on hydrologic conditions in the basin, (3) adopted a final rule making action and a companion resolution regarding agricultural consumptive use, (4) approved a new aquifer testing guidance for project sponsors proposing groundwater withdrawals, (5) accepted the FY 2007 audit report, and (6) approved a grant and three contracts. The Commission also conducted a public hearing to approve certain water resources projects, to accept three settlement agreements, to deny a request for an administrative hearing, to extend two emergency water withdrawal certificates, and to adopt a revised project fee schedule. See the Supplementary Information section below for more details on these actions.

DATES: December 5, 2007.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238–0423; ext. 306; fax: (717) 238–2436; e-mail: *rcairo@srbc.net* or Deborah J. Dickey, Secretary to the Commission, telephone: (717) 238–0422, ext. 301; fax: (717) 238–2436; e-mail: *ddickey@srbc.net*. Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: The final rule making action amends the consumptive use provisions of 18 CFR part 806 relating to agricultural water use and Part 808 relating to an erroneous authority citation, and a companion resolution determines that certain projects supported by the Commission's member states provide sufficient mitigation for agricultural consumptive use. Also, the Commission approved a grant for Chesapeake Bay nutrient monitoring and contracts for the development of a Yield Analysis Tool, the production of New York State inundation maps, and the commencement of a comprehensive water resources study for the Morrison Cove area of the Juniata Subbasin.

The Commission also convened a public hearing and took the following actions:

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Village of Waverly (Well 4), Tioga County, NY. Modification of groundwater approval (Docket No. 20030207).

2. Project Sponsor and Facility: Sno Mountain LLC, Scranton City, Lackawanna County, PA. Application to transfer approvals for surface water withdrawal of 7.300 mgd and consumptive water use of up to 1.600 mgd (Docket No. 20030405).

3. Project Sponsor: Graymont (PA) Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, PA. Modification of consumptive water use approval (Docket No. 20050306).

4. Project Sponsor: Glenn O. Hawbaker, Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, PA. Modification of consumptive water use approval (Docket No. 20050307).

5. Project Sponsor: Parkwood Resources, Inc. Project Facility: Cherry Tree Mine, Burnside Township, Indiana and Clearfield Counties, PA. Application for consumptive water use of up to 0.225 mgd.

6. Project Sponsor and Facility: Mountainview Thoroughbred Racing Association, Inc., East Hanover Township, Dauphin County, PA. Modification of consumptive water use approval (Docket No. 20020819).

7. Project Sponsor and Facility: King Drive Corp., Middle Paxton Township, Dauphin County, PA. Modification of consumptive water use approval (Docket No. 20020615).

8. Project Sponsor and Facility: York Plant Holding LLC, Springettsbury Township, York County, PA. Application for consumptive water use of up to 0.575 mgd.

Public Hearing—Enforcement Actions Approved:

Settlement agreements were accepted for the following projects:

1. Project Sponsor and Facility: Cooperstown Dreams Park, Inc. (Docket No. 20060602), Town of Hartwick, Otsego County, NY.

2. Project Sponsor: Sand Springs Development Corp. (Docket No. 20030406). Project Facility: Sand Springs Golf Community, Butler Township, Luzerne County, PA.

3. Project Sponsor and Facility: BC Natural Chicken, LLC (Docket No. 20040305), Bethel Township, Lebanon County, PA.

Public Hearing—Denial of Request for Administrative Hearing:

Under Section 808.2 of the Commission's Regulation relating to administrative appeals, the Commission denied a request for an administrative hearing concerning the following project: Project Sponsor—PPL Susquehanna, LLC; Project Facility—Susquehanna Steam Electric Station, Salem Township, Luzerne County, PA. (Docket No. 19950301).

Public Hearing—Extension of Emergency Water Withdrawal Certificates:

Emergency water withdrawal certificates were extended for the following projects:

1. Project Sponsor and Facility: City of Lock Haven, Wayne Township, Clinton County, PA.

2. Project Sponsor and Facility: Houtzdale Municipal Authority (Docket No. 19950101), Rush Township, Centre County, PA.

Public Hearing—Fee Schedule Revision

The Commission adopted a revised project fee schedule that includes categorical fee adjustments for inflation and the addition of a fee category for withdrawals of less than 100,000 gpd involving a consumptive use. The revised schedule takes effect on January 1, 2008 and remains in effect until December 31, 2008.

Authority: Public Law 91–575, 84 Stat. 1509 et seq., 18 CFR Parts 806, 807, and 808.

Dated: December 13, 2007.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E7–25112 Filed 12–26–07; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Airport Level Designation for Newark Liberty International Airport for the Summer 2008 Scheduling Season

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

ACTION: Notice of Schedule Coordination.

SUMMARY: Under this notice, the FAA announces that Newark Liberty International Airport (EWR) has been designated a Level 3 Coordinated Airport for the summer 2008 scheduling season under the International Air Transport Association (IATA) Worldwide Scheduling Guidelines. This notice supercedes the September 24, 2007, notice that designated EWR a Level 2 Schedules Facilitated Airport. 72 FR 54317. Based on a recently completed capacity analysis, a review of last summer's demand, the projections for summer 2008, discussions with carriers regarding future schedule plans, and the potential for increased operations at EWR due to operating limits at JFK, the FAA has determined that a Level 3 airport declaration is warranted.

The FAA's primary constraint is runway capacity, but the Port Authority of New York and New Jersey (Port Authority), the airport's operator, also will continue to review proposed schedules for gates, facility, customs, immigration, or similar groundside constraints. The FAA and the Port Authority recognize that separate coordination process for runway slots and gate terminal slots is a burden for carriers and, therefore, the process is under review in order to facilitate communication and reduce the administrative workload. IATA will be consulted regarding ''best practices'' in use at other coordinated airports.

EWR delays over the last several years have been among the highest in the system. Despite a relatively stable number of daily air traffic operations, the airport is experiencing increased congestion and delay partly as a result of certain peak hours when demand approaches or exceeds the airport's average arrival and departure runway throughput. Comparing the period of October 2006 through September 2007 to the same period in the previous year, the average daily operations at EWR decreased by about one-half percent; the average daily arrivals with delays greater than one hour increased 18 percent; and on-time gate arrivals within 15 minutes of scheduled time decreased from 63.52 percent to 61.72 percent. On-time departures within 15 minutes of scheduled time declined from 71.95 percent to 69.33 percent. The average taxi-out delay remained 28.6 minutes.

To determine the airport's throughput, the FAA engaged MITRE's Center for Advanced Aviation System Development (CAASD) to review two years' worth of operational data for weekdays from September 2006 through August 2007. The analysis included hourly arrival and departure counts and the hourly air traffic control (ATC) established rates for those same periods. These rates were combined to develop an ''adjusted'' capacity number to reflect the airport's operational capability. This method compensates for periods when demand during a particular hour was below the ATC acceptance rates and also accounts for actual operations above ATC rates. For the last twelve months of the study period, the average adjusted capacity was 83 operations per hour, down almost five percent from the earlier months analyzed. The FAA is continuing to review ways to improve the airport's capacity and has been engaged in numerous efforts to identify and implement changes that would improve the efficiency of the ATC system. For example, as part of the FAA's New York Aviation Rulemaking Committee (ARC), over 77 initiatives were identified for the New York City area. A number of these initiatives will benefit the EWR operations. A full copy of the ARC's report to the Secretary of Transpiration is available on the FAA's Web site at *http://www.faa.gov*.

The FAA's review of air carriers' schedule submissions for summer 2008 indicated new planned operations in peak hours as well as the retiming of operations from less congested to more congested periods. About 100 new peak-day flights were requested. Proposed schedules in the afternoon and evening period, which were historically high during summer 2007, are of the greatest concern. These proposed schedules, if implemented, would result in a significant increase of operations at EWR and would exceed the airport's optimal rate for multiple, consecutive hours. Delays would increase on an exponential basis and would likely reach levels that are considered unacceptable to passengers, airlines, and other customers.

Under the Level 2 designation, the FAA began discussing carriers' proposed summer 2008 schedules in November at the IATA scheduling Conference in Toronto, Canada. The FAA will grant historic status for foreign flag air carrier and domestic air carrier operations based on their summer 2007 flights if requested for summer 2008. For new requests, the agency identified certain periods that would be beyond the airport's historic throughput and scheduled levels and asked for schedule adjustments from certain carriers to retime operations to other periods of the day where capacity is available. In some cases, carriers responded by withdrawing their new requests for peak hour operations. The FAA is continuing its effort to retime proposed new operation out of peak hours because the agency cannot grant the requests without causing excessive congestion.

The FAA plans to finalize summer 2008 schedules with carriers within the next few weeks. Even if the FAA were to be fully successful in reaching agreement on schedule plans under Level 2 for summer 2008, the FAA now believes that an IATA Level 3

Coordinated Airport designation is warranted to ensure there is no exceedance of the level of operations the FAA will allow for summer 2008. The Level 3 status also will set carrier expectations for future coordination needs and for the need to schedule new operations during periods when the airport has the available capacity.

ADDRESSES: Any change to schedule information for summer 2008 may be submitted by mail to Slot Administration Office, AGC–240, Office of the Chief Counsel, 800 Independence Ave., SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; or by e-mail to: *7-AWA-slotadmin@faa.gov*.

FOR FURTHER INFORMATION CONTACT: James W. Tegtmeier, Associate Chief Counsel for the Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number: 202–267–3073.

Issued in Washington, DC, on December 19, 2007.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 07–6179 Filed 12–19–07; 1:36 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Wednesday, February 6, 2008, starting at 9 am Eastern Standard Time. Arrange for oral presentations by January 23, 2008.

ADDRESSES: Boeing, 1200 Wilson Blvd, Conference Room 234, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Nicanor Davidson, Office of Rulemaking, ARM–207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5174, FAX (202) 267–5075, or e-mail at *nicanor.davidson@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held February 6, 2008.

The agenda for the meeting is as follows:

- Opening Remarks
- FAA Report
- European Aviation Safety Agency Report
- ARAC Executive Committee Report
- Transport Canada Report
- Airplane-level Safety Analysis Working Group Report
  - Closure of Task 2 and Status of Task 3
- Propeller Harmonization Working Group (HWG) Report
- Ice Protection HWG Report
- Airworthiness Assurance HWG Report
- Avionics HWG Report
- Any Other Business
- Action Item Review

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than January 23, 2008. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, the call-in number is (202) 366–3920; the Passcode is ''6039.'' To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent to participate by telephone by January 23, 2008. Anyone calling from outside the Washington, DC metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by January 23, 2008, to present oral statements at the meeting. Written statements may be presented to the ARAC at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on December 19, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E7–25020 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Chautauqua County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed Millennium Parkway project in Chautauqua County, New York, Project Identification Number (PIN) 5757.55.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Kolb, P.E., Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, *Telephone:* (518) 431–4127; or

Alan E. Taylor, P.E., Regional Director, NYSDOT Region 5; 100 Seneca Street, Buffalo NY 14203, *Telephone:* (716) 847–3238; or

George E. Spanos, P.E., Director, CCDPF, 454 North Work Street, Falconer, New York 14733, *Telephone:* (716) 661–8400.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) and the Chautauqua County Department of Public Facilities (CCDPF), will prepare an EIS on a proposal to construct the Millennium Parkway in Chautauqua County, New York.

An industrial corridor, including industrial districts located along Werle Road, Harrington Road, Progress Drive, and County Route (CR) 82 (Middle Road), is being developed to provide further economic opportunities within the surrounding communities. This industrial corridor includes the Chadwick Bay Industrial Park, located to the east of the City of Dunkirk in the Town of Sheridan. Although directly adjacent to air and rail facilities, tractor-trailer truck traffic access to the industrial corridor is currently not adequate.

The purpose of the Millennium Parkway Project is to improve tractor-trailer truck traffic access to the industrial corridor, including the Chadwick Bay Industrial Park, from New York (NY) Route 60 (Bennett Road). Objectives to be met with the construction of the Millennium Parkway are to: Improve tractor-trailer truck-oriented infrastructure to the industrial corridor; improve vehicular and

pedestrian safety along the existing truck route; and reduce travel time from NY Route 60 to the industrial corridor.

The reasonable range of alternatives will include a No-Build Alternative and three Build Alternatives, which are briefly described below. Additional input from Participating and Cooperating Agencies, and from the public, will be necessary before a final decision will be made regarding the full range of alternatives to be studied.

- The *No-Build Alternative* would utilize the existing truck route in its current condition. This alternative would maintain the existing truck route along NY Route 60 to NY Route 5 (Lakeshore Drive) to CR 82 in its present state with only routine maintenance to keep the existing truck route open to traffic.
- The *Build Alternatives* are: Improving the existing truck route; improving other existing routes; or constructing a new urban collector on new alignment by utilizing existing and/or new roads. Incorporated into and studied with the various build alternatives will be design variations of grade and alignment.

The purpose of the Millennium Parkway Project is to improve tractor-trailer truck traffic access to the industrial corridor, including the Chadwick Bay Industrial Park, from NY Route 60. In order to meet this purpose, the project limits have been sufficiently delineated to include the industrial corridor. The western boundary of the Project Limits has been established as the existing truck route along NY Route 60, since the tractor-trailer truck traffic currently passing through the City of Dunkirk utilizes this route. The northern boundary of the project limits has been established as the remaining portion of the existing truck route along NY Route 5 and CR 82 as well as the CSX Transportation (CSXT) Railroad, to avoid any additional railroad crossings. The eastern boundary of the project limits has been established as Harrington Road, CR 82, and Cook Road to avoid conflicts with the Dunkirk Airport. Finally, the southern boundary of the project limits has been established as Interstate 90 (I–90) to avoid conflicts with this route (I–90).

The limits considered to define the bounds of the affected environment for the environmental assessment of the Build Alternatives, which vary slightly from the Project Limits, are generally as follows: northwest along NY Route 60 from the intersection with I–90, Interchange 59; east then north along the City of Dunkirk city limit line; northeast along the CSXT Railroad; south along the existing alignments of Harrington Road, CR 82, and Cook Road; then southwest along the existing alignment of I–90.

The anticipated length of the proposed roadway will be determined based on the preferred alternative. The highway's southern terminus would be located at NY Route 60, north of I–90, Interchange 59, and its northern terminus would be located in the vicinity of the industrial corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. As part of the formal scoping process for this project, a series of public meetings will be held in the towns of Dunkirk and Sheridan this fall. Public notice will be given regarding the time and place of the meetings. The draft EIS will be available for public and agency reviews and comment prior to a public hearing. The draft EIS is expected to be completed in the spring of 2009.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA, NYSDOT, or CCDPF at the addresses provided earlier.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 23 CFR 771.123.

Issued on: December 19, 2007.

Jeffrey W. Kolb,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. E7–25027 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Deschutes County, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice of intent to advise agencies and the public than an Environmental Impact Statement (EIS) will be prepared to assess the impacts of proposed modifications to U.S. 97 in Deschutes County, Oregon.

DATES: A public scoping meeting will be held Thursday, January 24, 2008, at the Sky View Middle School Commons 63555 18th Street, Bend, Oregon 97701. The public scoping meeting will include an informational presentation from 5 p.m. to 6 p.m. The informational presentation will be followed by a question and answer period and a general open house from 6 p.m. until 8:30 p.m. An agency scoping meeting will be held on January 10, 2008, at ODOT Region 4, Construction Office Conference Room, 63030 O.B. Riley Road, Bend, Oregon 97701. The agency scoping meeting will be from 1 p.m. to 3:30 p.m.

FOR FUTHER INFORMATION CONTACT: Ms. Michelle Eraut, Environmental Program Manager, Federal Highway Administration, 530 Center Street, NE., Suite 100, Salem, Oregon 97301; telephone 503–587–4716.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation (ODOT), will prepare an EIS for the proposed modifications to U.S. 97 in Deschutes County, Oregon. The proposed improvements may involve the reconstruction or realignment of the existing U.S. 97 roadway between the Bend Parkway/Empire Avenue and Deschutes Market Road-Tumalo Junction interchanges.

Improvements to the corridor are considered necessary to meet the mobility standards and facility management goals consistent with U.S. 97's designation as a statewide expressway, address current and future transportation demand, and improve safety along the corridor including the intersections of U.S. 97 with Cooley and Robal Roads. Current traffic volumes exceed roadway capacity. Traffic is expected to increase 20 to 40% by 2032. The intersections of U.S. 97 with Cooley and Robal Roads are in the top 5 percent of crash locations on state highways within Oregon.

The northern portion of the project is located in a predominately rural area. Lands on the eastern side of the highway are being considered for inclusion into the City of Bend's Urban Growth Boundary. The middle portion of the project begins the transition from rural to urban uses, with the number of accesses increasing. Access to rural residential uses are located on the west side of the highway and access to two mobile home parks are located on the eastern side of the highway. The

southern portion of the project is within a high-growth urban commercial setting with regional big box retail uses and a large retail mall on the west side of the highway. Smaller regional and local retail and manufacturing businesses are on the east side of the highway.

The EIS will identify transportation needs and deficiencies in the project study area, including safety, mobility, access, safety, system linkages and continuity. The range of alternatives evaluated in the EIS will be developed to meet the identified purpose and need. Potential alternatives and combinations thereof may include, but are not limited to: (1) No action; (2) reroute U.S. 97 on a westerly alignment; and (3) reroute U.S. 973 on an easterly alignment. Design variations of potential alternatives will also be studied, as appropriate. A refinement plan for U.S. 97 & U.S. 20 was completed in May 2007. Information from the refinement plan may be utilized as appropriate in the development of this EIS.

The EIS will be initiated with a scoping process. The scoping process will include a program of public outreach and agency coordination conducted over the next several months to elicit input of project purpose and need, potential alternatives, significant and insignificant issues, and collaborative methods of analyzing transportation alternatives and environmental impacts.

A series of public, agency and tribal meetings will be held in early 2008 and continue throughout the development of the EIS. The public outreach program will include multiple public meetings conducted by ODOT as well as coordination with the Technical Management Team, the Citizens Advisory Committee and the Project Steering Team. The Technical Management Team is comprised of technical representatives from ODOT, the City of Bend, Deschutes County and the Oregon Department of Land Conservation and Development. The Citizens Advisory Committee is comprised of the public representing neighborhood and business interests in the project areas. The Project Steering Team is comprised of policy representatives from ODOT, the City of Bend and Deschutes County.

A public hearing will be held in connection with the release of the draft EIS. Public notice will be given regarding the time and place of the public meetings and hearings. An internet website has been established at: *http://www.US97solutions.org* and will be operational beginning January 10, 2008. This website and other communication media will be utilized throughout the process to provide public information and to receive comments. All comments and input received during the EIS process will be considered and documented.

The FHWA and ODOT will evaluate significant transportation, environmental, social and economic impacts of the project alternatives. Potential areas of impact include: neighborhoods, businesses, natural resources and environmental justice. Measures to avoid, minimize and mitigate any significant adverse impacts will be developed.

Comments and suggestions are invited from all interested parties, to ensure that the full range of issues related to this project are addressed and all significant issues are identified. Comments or questions regarding the proposed action and the EIS should be directed to the FHWA at the address provided above.

Authority: 23 U.S.C. 315.

Issued on: December 18, 2007.

Michelle Eraut,

Environmental Program Manager, Salem, Oregon.

[FR Doc. E7–25023 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss an expanded Marine Transportation System outreach and education program that addresses future workforce needs, environmental issues, and freight mobility; public and private sector data collection efforts; and addressing MTSNAC's ten public/private recommendations. A public comment period is scheduled for 10:30 a.m. to 11 a.m. on Thursday, January 10. 2008. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Richard J. Lolich by January 2, 2008. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by January 18, 2008.

DATES: The meeting will be held on Wednesday, January 9, 2008, from 3 p.m. to 5 p.m. and Thursday, January 10, 2008, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in the Westin Seattle Hotel, 1900 Fifth Ave., Seattle, WA 98101. The hotel's phone number is 206–728–1000.

FOR FURTHER INFORMATION CONTACT: Richard Lolich, (202) 366–0704; Maritime Administration, MAR–540, Room W21–309, 1200 New Jersey Ave., SE., Washington, DC 20590–0001; *richard.lolich@dot.gov*.

Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B.

Dated: December 17, 2007.

By order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E7–25009 Filed 12–26–07; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2008–1)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the rebased first quarter 2008 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. As required by statute, the RCAF is rebased using the fourth quarter 2007 index value as the denominator and first quarter 2008 index value as the numerator (10/1/07 = 1.00). Rebasing is required every five years. The rebased first quarter 2008 RCAF (Unadjusted) is 1.050. The rebased first quarter 2008 RCAF (Adjusted) is 0.486. The rebased first quarter 2008 RCAF–5 is 0.461.

EFFECTIVE DATE: January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov*. To purchase a copy of the full decision, write to, e-mail, or call the Board's contractor, ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*;

phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: December 19, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–24998 Filed 12–26–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 19, 2007.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before January 28, 2008 to be assured of consideration.

Alcohol And Tobacco Tax And Trade Bureau (TTB)

OMB Number: 1513–0044.

Type of Review: Revision.

Title: Notice of Change in Status of Plant.

Forms: TTB 5110.34.

Description: TTB F 5110.34 is necessary to show the use of the distilled spirits plant (DSP) premises for other activities or by alternating proprietors. It describes proprietor's use of plant premises and other information to show that the change in plant status is in conformity with laws and regulations.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 1,000 hours.

OMB Number: 1513–0050.

Type of Review: Revision.

Title: Tax Deferral Bond—Distilled Spirits (Puerto Rico).

Form: 5110.50.

Description: TTB F 5110.50 is the bond to secure payment of excise taxes on distilled spirits shipped from Puerto Rico to the U.S. on deferral of the tax. The form identifies the principal, the surety, purpose of bond, and allocation of the penal sum among the principal's locations.

Respondents: Business and other for profits.

Estimated Total Burden Hours: 10 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–25115 Filed 12–26–07; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 18, 2007.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 28, 2008 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1339.

Type of Review: Extension.

Title: IA–33–92 (Final) Information Reporting for Reimbursements of Interest on Qualified Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of reimbursements of interest overcharged in a prior year. Only businesses that receive mortgage interest in the course of that business are affected by this reporting requirement.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–2078.

Type of Review: Revision.

Title: Disclosure by Tax-Exempt Entity Regarding Prohibited Tax Shelter Transaction.

Form: 8886–T.

Description: Certain tax-exempt entities are required to file Form 8886-T to disclose information for each prohibited tax shelter transaction to which the entity was a party.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 70,395 hours.

OMB Number: 1545–1318.

Type of Review: Extension.

Title: REG–209545–92 (NPRM) Earnings and Profits of Foreign Corporations

Description: Application of the proposed regulations may result in accounting method changes which ordinarily require the filing of Form 3115. However, the proposed regulations waive this filing requirement if certain conditions are met, with the net result that no burdens are imposed.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1464.

Type of Review: Extension.

Title: IA–44–94 (Final) Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

Description: The regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions of $75 or more. These regulations will affect donee organizations and individuals and entities that make payments to donee organizations.

Respondents: Individuals or households.

Estimated Total Burden Hours: 1,975,000 hours.

OMB Number: 1545–1083.

Type of Review: Extension.

Title: INTL–399–88 (Final) Treatment of Dual Consolidated Losses.

Description: Section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. The regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign group, to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1,620 hours.

OMB Number: 1545–1594.

Type of Review: Extension.

Title: REG–251520–96 (Final) Classification of Certain Transactions Involving Computer Programs.

Description: The information requested in regulation Section 1.861–18(k) is necessary for the Commissioner to determine whether a taxpayer properly is requesting to change its method of accounting.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–1119.

Type of Review: Extension.

Title: Form 8804—Annual Return for Partnership Withholding Tax (Section 1446); Form 8805—Foreign Partner's Information Statement of Section 1446 Withholding Tax (Section 1446); Form 8813—Partnership Withholding Tax Payment Voucher (Section 1446).

Forms: 8804, 8805, and 8813.

Description: Code section 1446 requires partnerships to pay a withholding tax if they have effectively connected taxable income allocable to foreign partners. Forms 8804, 8805, and 8813 are used by withholding agents to provide IRS and affected partners with data to assure proper withholding, crediting to partners' accounts and compliance.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 152,005 hours.

OMB Number: 1545–1774.

Type of Review: Extension.

Title: REG–135898–04 (Temporary) Extensions of Time to Elect Method for Determining Allowable Loss; REG–152524–02 (Temporary) Guidance Under Section 1502; REG–102740–02 (Final) Loss Limitation Rules; REG–152.

Description: The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under Sec. 1.337(d)–2T, Sec. 1.1502–20 as currently in effect or under Sec. 1.1502–20 as modified; to allow the taxpayer to waive loss carryovers up to the amount of the Sec. 1.150–20(g) election and to ensure that loss is not disallowed under Sec. 1.337(d)–2T and basis is not reduced under Sec. 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built in gain on the disposition of an asset.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 36,720 hours.

OMB Number: 1545–1378.

Type of Review: Extension.

Title: PS–4–89 (Final) Disposition of an Interest in a Nuclear Power Plant.

Description: The regulations require that certain information be submitted as part of a request for a schedule of ruling amounts. The regulations also require certain taxpayers to file a request for a revised schedule of ruling amounts.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 575 hours.

OMB Number: 1545–1010.

Type of Review: Revision.

Title: U.S. Income Tax Return for Regulated Investment Companies.

Form: 1120–RIC.

Description: Form 1120–RIC is filed by a domestic corporation electing to be taxed as a RIC in order to report its income and deductions and to compute its tax liability. IRC uses Form 1120-RIC to determine whether the RIC has correctly reported its income, deductions, and tax liability.

Respondents: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 369,021 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–25116 Filed 12–26–07; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 72, No. 247

Thursday, December 27, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: New London County, CO

Correction

Notice document 07–4127 appearing on page 47122 in the issue of Wednesday, August 22, 2007 duplicates a document appearing on page 47119 and should not have been published.

[FR Doc. C7–4127 Filed 12–26–07; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 584

[Docket ID OTS–2007–0007]

1550–AC10

Permissible Activities of Savings and Loan Holding Companies

Correction

In rule document E7–24676 beginning on page 72235 in the issue of Thursday, December 20, 2007 make the following correction:

On page 72235, in the second column, under **DATES**, ''April, 2008'' should read ''April 1, 2008''.

[FR Doc. Z7–24676 Filed 12–26–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 27, 2007

Part II

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2007–08 Subsistence Taking of Wildlife Regulations; 2007–08 Subsistence Taking of Fish on the Kenai Peninsula Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU15

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2007–08 Subsistence Taking of Wildlife Regulations; 2007–08 Subsistence Taking of Fish on the Kenai Peninsula Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses in Alaska during the 2007–08 regulatory year. The rulemaking is necessary because the regulations governing the subsistence harvest of wildlife in Alaska are subject to an annual public review cycle. This rulemaking replaces the wildlife regulations that expired on June 30, 2007. This rule also amends the regulations that establish which Alaska residents are eligible to take specific species for subsistence uses. In addition, this rule revises the regulations for fishing seasons, harvest limits, methods and means related to taking of fish on the Kenai Peninsula for subsistence uses during the 2007–08 regulatory year. This rule also amends the customary and traditional use determinations of the Federal Subsistence Board.

DATES: This rule is effective December 27, 2007. Compliance with § ____.24(a)(1) was required as of July 1, 2007; compliance with § ____.24(a)(2) was required as of April 1, 2007; compliance with § ____.25 was required as of July 1, 2007; compliance with § ____.26 is required from July 1, 2007, through June 30, 2008; and compliance with § ____.27(i)(10) is required from June 11, 2007, through March 31, 2008.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK, or on the Office of Subsistence Management Web site *(http://alaska.fws.gov/asm/home.html).*

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

In Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), Congress found that ''the situation in Alaska is unique in that, in most cases, no practical alternative means are available to replace the food supplies and other items gathered from fish and wildlife which supply rural residents dependent on subsistence uses * * *'' and that ''continuation of the opportunity for subsistence uses of resources on public and other lands in Alaska is threatened * * *''. As a result, Title VIII requires, among other things, that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA.

The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from its subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, on July 1, 1990, the Department of the Interior and the Department of Agriculture (Departments) assumed responsibility for implementation of Title VIII of ANILCA on public lands and waters. In anticipation of carrying out this responsibility, the Departments published temporary subsistence management regulations for public lands in Alaska in the **Federal Register** on June 29, 1990 (55 FR 27114). Because the State was unable to create a program in compliance with Title VIII, the Departments published final regulations in the **Federal Register** in 1992 (57 FR 22940, May 29, 1992).

As a result of this joint process between Interior and Agriculture, these regulations can be found in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–242.28 and 50 CFR 100.1–100.28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; subpart B, Program Structure; subpart C, Board Determinations; and subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subparts A, B, and C of these regulations, as revised December 27, 2005 (70 FR 76400), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the program, and the subpart D regulations, which are revised annually.

Federal Subsistence Regional Advisory Councils

The Federal subsistence management regulations divide Alaska into 10 subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council) (36 CFR 242.11 and 50 CFR 100.11). The Regional Councils provide a forum for rural residents, who have personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands and waters. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Because the subpart D regulations, which establish seasons and harvest limits and methods and means, are subject to an annual cycle, they require development of an entire new rule each year. Customary and traditional use determinations (subpart C) are subject to an annual review process providing for modification each year. Section ____.24 (i.e., customary and traditional use

determinations) was originally published in the **Federal Register** on May 29, 1992 (57 FR 22940). The regulations at 36 CFR 242.4 and 50 CFR 100.4 define ''customary and traditional use'' as ''a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation* * *.'' Since that time, the Board has made a number of customary and traditional use determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** as follows:

MODIFICATIONS TO § ____.24.

Federal Register citation	Date of publication:	Rule made changes to the following provisions of ____.24:
59 FR 27462	May 27, 1994	Wildlife and Fish/Shellfish.
59 FR 51855	October 13, 1994	Wildlife and Fish/Shellfish.
60 FR 10317	February 24, 1995	Wildlife and Fish/Shellfish.
61 FR 39698	July 30, 1996	Wildlife and Fish/Shellfish.
62 FR 29016	May 29, 1997	Wildlife and Fish/Shellfish.
63 FR 35332	June 29, 1998	Wildlife and Fish/Shellfish.
63 FR 46148	August 28, 1998	Wildlife and Fish/Shellfish.
64 FR 1276	January 8, 1999	Fish/Shellfish.
64 FR 35776	July 1, 1999	Wildlife.
65 FR 40730	June 30, 2000	Wildlife.
66 FR 10142	February 13, 2001	Fish/Shellfish.
66 FR 33744	June 25, 2001	Wildlife.
67 FR 5890	February 7, 2002	Fish/Shellfish.
67 FR 43710	June 28, 2002	Wildlife.
68 FR 7276	February 12, 2003	Fish/Shellfish.
Note: The Board met May 20–22, 2003, but did not make any additional customary and traditional use determinations.		
69 FR 5018	February 3, 2004	Fish/Shellfish.
69 FR 40174	July 1, 2004	Wildlife.
70 FR 13377	March 21, 2005	Fish/Shellfish.
70 FR 36268	June 22, 2005	Wildlife.
71 FR 15569	March 29, 2006	Fish/Shellfish.
71 FR 37642	June 30, 2006	Wildlife.
72 FR 12676	March 16, 2007	Fish/Shellfish.

Current Rule

The Departments published a proposed rule on August 14, 2006 (71 FR 46423), to amend subparts C and D of 36 CFR part 242 and 50 CFR part 100. The proposed rule opened a comment period, which closed on October 20, 2006. The Departments advertised the proposed rule by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 64 proposals for changes to subparts C and D. After the proposal period closed, the Board prepared two booklets describing the proposals and distributed them to the public. One booklet was for wildlife proposals Statewide, and the other was for fish proposals for the Kenai Peninsula; both were also available online. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations.

The 10 Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, a Council Chair, or a designated representative, presented each Council's recommendations at the Board meetings of April 30–May 2, 2007 and May 8–10, 2007. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. The public has had extensive opportunity to review and comment on all changes.

Of the 64 proposals, the Board adopted 18 and rejected 14. The Board adopted 20 proposals with modifications and took no action on 8 proposals due to action that they had taken on other similar proposals. The Board deferred two proposals to allow collection of additional information. One proposal had been withdrawn by the proponent prior to the meeting, and one proposal was withdrawn during the meeting at the request of the proponent and with the concurrence of the Chair of the Regional Council and Board members.

Summary of Proposals Rejected by the Board

The Board rejected or took no action on 23 proposals.

All of the rejected proposals were recommended for rejection by at least one of the Regional Councils. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/home.html*).

Summary of Proposals Adopted by the Board

The Board adopted 38 proposals. Some of these proposals were adopted as submitted. Others were adopted with modifications suggested by the respective Regional Council, modifications developed during the analysis process, or modifications developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils, although further modifications may have been

made during Board deliberations, and were based on customary and traditional uses or harvest practices, or on protecting fish or wildlife populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/home.html*). Additional minor modifications have been made by changing titles of officials delegated to open or close seasons or set harvest restrictions. This was necessary because of office reorganizations and internal agency changes in official geographic responsibilities.

One wildlife proposal was adopted by the Board contrary to the recommendations of the Eastern Interior and North Slope Regional Advisory Councils. The Board's decision was made in consideration of Section 815(3) of ANILCA, which allows restricting nonsubsistence uses only if needed to conserve healthy populations of fish and wildlife, to continue subsistence uses, for public safety, or for administration. The Board concluded that maintaining the closure to nonsubsistence hunting of sheep in the Red Sheep Creek and Cane Creek drainages within the management area was no longer necessary for conservation of a healthy sheep population, to provide for continued subsistence use of sheep, for public safety, or for administration.

These final regulations reflect Board review and consideration of Regional Council recommendations and public comments. All Board members have reviewed this rule and agree with its substance. Because this rule concerns public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text will be incorporated into 36 CFR part 242 and 50 CFR part 100.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Board has provided extensive opportunity for public input and involvement in excess of standard Administrative Procedure Act requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change.

In the more than 15 years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the subsistence regulations. A further lapse in regulatory control could affect the continued viability of wildlife populations and future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(d) to make this rule effective upon publication in the **Federal Register**. We further believe that sufficient public notice has been given to affected persons about the Board decisions, and we have established the compliance dates set forth in **DATES** to ensure continued operation of the subsistence program.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analyses and examined the environmental consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final Rule	''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the **Federal Register**.
64 FR 1276	January 8, 1999	Final Rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE—Continued

Federal Register citation	Date of publication	Category	Details
66 FR 31533	June 12, 2001	Interim Rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.
67 FR 30559	May 7, 2002	Final Rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct Final Rule ...	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of Direct Final Rule.	Because we received no adverse comments on the direct final rule (67 FR 30559), we adopted the direct final rule.
69 FR 60957	October 14, 2004 ..	Final Rule	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of ''regulatory year'' from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005.	Final Rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final Rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final Rule	Revised nonrural determinations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

This rule does not contain any new information collection requirements that need Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule applies to the use of public lands in Alaska. The information collection requirements described in this rule are already approved by OMB and have been assigned control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor and you are not required to respond to a collection of information request unless it displays a currently valid OMB control number.

Other Requirements

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport, commercial fishery, hunting and trapping on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The number of businesses and the amount of trade that will result from this Federal land-related activity is unknown but expected to be insignificant.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of regulatory flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as sporting goods, ammunition, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that the effects will not be significant.

This rule benefits those participants who engage in the subsistence harvest of fish and wildlife in Alaska in two identifiable ways: first, participants get the consumptive value of the food harvested, and second, participants get the cultural benefit associated with the maintenance of a subsistence lifestyle. We can estimate the consumptive value for fish and wildlife harvested under this rule but can place no dollar value on the maintenance of a subsistence lifestyle. However, we estimate that 8.7 million pounds of wildlife are harvested by the local subsistence users annually and, if based on a replacement value of $5.00 per pound, would equate to $43.5 million in food value Statewide. A small additional number of pounds of fish are harvested by local subsistence users in the Kenai Peninsula area. The cultural benefits of maintaining a subsistence lifestyle can also be of considerable value to the participants.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of

this program is limited by definition to certain public lands. Likewise, these regulations have no potential implications for takings of private property as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless the State's program is compliant with the requirements of that Title.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no significant direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, no Statement of Energy Effects is required.

Drafting Information—Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Charles Ardizzone, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service; Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Jerry Berg, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, Alaska Regional Office, U.S. Forest Service, provided additional assistance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

Regulation Promulgation

■ For the reasons set out in the preamble, the Federal Subsistence Board amends title 36, part 242, and title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

■ 2. In subpart C of 36 CFR part 242 and 50 CFR part 100, § ____.24(a)(1) and (2) are revised to read as follows:

§ ____.24 Customary and traditional use determinations.

(a) * * *

(1) *Wildlife determinations.* The rural Alaska residents of the listed communities and areas have a customary and traditional use of the specified species on Federal public lands within the listed areas:

Area	Species	Determination
Unit 1C	Black Bear	Residents of Unit 1C, 1D, 3, Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
Unit 1A	Brown Bear	Residents of Unit 1A, except no subsistence for residents of Hyder.
Unit 1B	Brown Bear	Residents of Unit 1A, Petersburg, and Wrangell, except no subsistence for residents of Hyder.
Unit 1C	Brown Bear	Residents of Unit 1C, Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
Unit 1D	Brown Bear	Residents of 1D.
Unit 1A	Deer	Residents of Units 1A and 2.
Unit 1B	Deer	Residents of Units 1A, 1B, 2, and 3.
Unit 1C	Deer	Residents of 1C, 1D, Hoonah, Kake, and Petersburg.
Unit 1D	Deer	No Federal subsistence priority.
Unit 1B	Goat	Residents of Units 1B and 3.
Unit 1C	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
Unit 1B	Moose	Residents of Units 1, 2, 3, and 4.
Unit 1C Berners Bay	Moose	No Federal subsistence priority.
Unit 1D	Moose	Residents of Unit 1D.
Unit 2	Deer	Residents of Unit 1A, 2, and 3.
Unit 3	Deer	Residents of Unit 1B, 3, Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
Unit 3, Wrangell and Mitkof Islands	Moose	Residents of Units 1B, 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
Unit 4	Deer	Residents of Unit 4, Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.

Area	Species	Determination
Unit 4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5A.
Unit 5	Brown Bear	Residents of Yakutat.
Unit 5	Deer	Residents of Yakutat.
Unit 5	Goat	Residents of Unit 5A
Unit 5	Moose	Residents of Unit 5A.
Unit 5	Wolf	Residents of Unit 5A.
Unit 6A	Black Bear	Residents of Yakutat and Unit 6C and 6D, except no subsistence for Whittier.
Unit 6, remainder	Black Bear	Residents of Unit 6C and 6D, except no subsistence for Whittier.
Unit 6	Brown Bear	No Federal subsistence priority.
Unit 6A	Goat	Residents of Unit 5A, 6C, Chenega Bay, and TaTitlek.
Unit 6C and Unit 6D	Goat	Residents of Unit 6C and D.
Unit 6A	Moose	Residents of Units 5A, 6A, 6B and 6C.
Unit 6B and Unit 6C	Moose	Residents of Units 6A, 6B and 6C.
Unit 6D	Moose	No Federal subsistence priority.
Unit 6A	Wolf	Residents of Units 5A, 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
Unit 7	Caribou	No Federal subsistence priority.
Unit 7, Brown Mountain hunt area	Goat	Residents of Port Graham and Nanwalek.
Unit 7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and TaTitlek.
Unit 7, remainder	Moose	No Federal subsistence priority.
Unit 7	Sheep	No Federal subsistence priority.
Unit 7	Ruffed Grouse	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
Unit 8	Deer	Residents of Unit 8.
Unit 8	Elk	Residents of Unit 8.
Unit 8	Goat	No Federal subsistence priority.
Unit 9D	Bison	No Federal subsistence priority.
Unit 9A and Unit 9B	Black Bear	Residents of Units 9A, 9B, 17A, 17B, and 17C.
Unit 9A	Brown Bear	Residents of Pedro Bay.
Unit 9B	Brown Bear	Residents of Unit 9B.
Unit 9C	Brown Bear	Residents of Unit 9C.
Unit 9D	Brown Bear	Residents of Units 9D and 10 (Unimak Island).
Unit 9E	Brown Bear	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
Unit 9A and Unit 9B	Caribou	Residents of Units 9B, 9C, and 17.
Unit 9C	Caribou	Residents of Unit 9B, 9C, 17, and Egegik.
Unit 9D	Caribou	Residents of Unit 9D, Akutan, and False Pass.
Unit 9E	Caribou	Residents of Units 9B, 9C, 9E, 17, Nelson Lagoon and Sand Point.
Unit 9A, Unit 9B, Unit 9C and Unit 9E	Moose	Residents of Unit 9A, 9B, 9C, and 9E.
Unit 9D	Moose	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
Unit 9B	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, Port Alsworth, and residents of Lake Clark National Park and Preserve within Unit 9B.
Unit 9, remainder	Sheep	No determination.
Unit 9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 9A, Unit B, Unit C, & Unit E	Beaver	Residents of Units 9A, 9B, 9C, 9E, and 17.
Unit 10 Unimak Island	Brown Bear	Residents of Units 9D and 10 (Unimak Island).
Unit 10 Unimak Island	Caribou	Residents of Akutan, False Pass, King Cove, and Sand Point.
Unit 10, remainder	Caribou	No determination.
Unit 10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 11	Bison	No Federal subsistence priority.
Unit 11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.
Unit 11, remainder	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.
Unit 11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Units 11 and 12.

Area	Species	Determination
Unit 11, remainder	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, Tazlina, Tonsina, and Unit 11.
Unit 11, north of the Sanford River	Caribou	Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake.
Unit 11, remainder	Caribou	Residents of Units 11, 13A–D, and Chickaloon.
Unit 11	Goat	Residents of Unit 11, Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Slana, Tazlina, Tonsina, and Dot Lake.
Unit 11, north of the Sanford River	Moose	Residents of Units 11, 12, 13A–D, Chickaloon, Healy Lake, and Dot Lake.
Unit 11, remainder	Moose	Residents of Units 11, 13A–D, and Chickaloon.
Unit 11, north of the Sanford River	Sheep	Residents of Unit 12, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina, Tonsina, residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
Unit 11, remainder	Sheep	Residents of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina, Tonsina, residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
Unit 11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12, Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
Unit 12	Caribou	Residents of Unit 12, Dot Lake, Healy Lake, and Mentasta Lake.
Unit 12, that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to Pickerel Lake.	Moose	Residents of Unit 12, 13C, Dot Lake, and Healy Lake.
Unit 12, that portion east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border.	Moose	Residents of Unit 12, 13C, and Healy Lake.
Unit 12, remainder	Moose	Residents of Unit 11 north of 62nd parallel, Unit 12, 13A–D and the residents of Chickaloon, Dot Lake, and Healy Lake.
Unit 12	Sheep	Residents of Unit 12, Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
Unit 12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 13	Brown Bear	Residents of Unit 13 and Slana.
Unit 13B	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20D except Fort Greely, and the residents of Chickaloon.
Unit 13C	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, Chickaloon, Dot Lake and Healy Lake.
Unit 13A and Unit 13D	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
Unit 13E	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, Chickaloon, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
Unit 13D	Goat	No Federal subsistence priority.
Unit 13A and Unit 13D	Moose	Residents of Unit 13, Chickaloon, and Slana.
Unit 13B	Moose	Residents of Units 13, 20D except Fort Greely, and the residents of Chickaloon and Slana.
Unit 13C	Moose	Residents of Units 12, 13, and the residents of Chickaloon, Healy Lake, Dot Lake and Slana.

Area	Species	Determination
Unit 13E	Moose	Residents of Unit 13, Chickaloon, McKinley Village, Slana, and the area along the Parks Highway between mileposts 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
Unit 13D	Sheep	No Federal subsistence priority.
Unit 13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 & 23.
Unit 13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 & 23.
Unit 14C	Brown Bear	No Federal subsistence priority.
Unit 14	Goat	No Federal subsistence priority.
Unit 14	Moose	No Federal subsistence priority.
Unit 14A and Unit 14C	Sheep	No Federal subsistence priority.
Unit 15A and Unit 15B	Black Bear	Residents of Ninilchik.
Unit 15C	Black Bear	Residents of Ninilchik, Port Graham, and Nanwalek.
Unit 15C	Brown Bear	Residents of Ninilchik.
Unit 15, remainder	Brown Bear	No Federal subsistence priority.
Unit 15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
Unit 15	Sheep	No Federal subsistence priority.
Unit 15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
Unit 15	Grouse (Spruce)	Residents of Unit 15.
Unit 15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16B	Black Bear	Residents of Unit 16B.
Unit 16	Brown Bear	No Federal subsistence priority.
Unit 16A	Moose	No Federal subsistence priority.
Unit 16B	Moose	Residents of Unit 16B.
Unit 16	Sheep	No Federal subsistence priority.
Unit 16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 16	Grouse (Spruce and Ruffed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22 and 23.
Unit 17A and that portion of 17B draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9A and B, 17, Akiak, and Akiachak.
Unit 17, remainder	Black Bear	Residents of Units 9A and B, and 17.
Unit 17A and Unit 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
Unit 17A, remainder	Brown Bear	Residents of Unit 17, Akiak, Akiachak, Goodnews Bay, and Platinum.
Unit 17B, that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akiak and Akiachak.
Unit 17B and Unit 17C	Brown Bear	Residents of Unit 17.
Unit 17A, that portion west of the Izavieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
Unit 17A, that portion north of Togiak Lake that includes Izavieknik River drainages.	Caribou	Residents of Akiak, Akiachak, and Tuluksak.
Unit 17A and 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
Unit 17B, that portion of Togiak National Wildlife Refuge within Unit 17B.	Caribou	Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Akiak, Akiachak, Tuluksak, Tuntutuliak, and Napakiak.
Unit 17, remainder	Caribou	Residents of Units 9B, 17, Lime Village, and Stony River.
17A and 17B, those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.

Area	Species	Determination
Unit 17A, that portion north of Togiak Lake that includes Izavieknik River drainages.	Moose	Residents of Akiak, Akiachak.
Unit 17A, remainder	Moose	Residents of Unit 17, Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
Unit 17B, that portion within the Togiak National Wildlife Refuge.	Moose	Residents of Akiak, Akiachak.
Unit 17B, remainder and Unit 17C	Moose	Residents of Unit 17, Nondalton, Levelock, Goodnews Bay, and Platinum.
Unit 17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 17	Beaver	Residents of Units 9A, 9B, 9C, 9E, and 17.
Unit 18	Black Bear	Residents of Unit 18, Unit 19A living downstream of the Holokuk River, Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
Unit 18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Marys, and Tuluksak.
Unit 18	Caribou	Residents of Unit 18, Manokotak, Stebbins, St. Michael, Togiak, Twin Hills, and Upper Kalskag.
Unit 18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including, the Tuluksak River drainage.	Moose	Residents of Unit 18, Upper Kalskag, Aniak, and Chuathbaluk.
Unit 18, that portion north of a line from Cape Romanzof to Kusilvak Mountain to Mountain Village, and all drainages north of the Yukon River downstream from Marshall.	Moose	Residents of Unit 18, St. Michael, Stebbins, and Upper Kalskag.
Unit 18, remainder	Moose	Residents of Unit 18 and Upper Kalskag.
Unit 18	Musk ox	No Federal subsistence priority.
Unit 18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 19C and Unit 19D	Bison	No Federal subsistence priority.
Unit 19A and Unit 19B	Brown Bear	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
Unit 19C	Brown Bear	No Federal subsistence priority.
Unit 19D	Brown Bear	Residents of Units 19A and D, Tuluksak and Lower Kalskag.
Unit 19A and Unit 19B	Caribou	Residents of Units 19A and 19B, Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
Unit 19C	Caribou	Residents of Unit 19C, Lime Village, McGrath, Nikolai, and Telida.
Unit 19D	Caribou	Residents of Unit 19D, Lime Village, Sleetmute, and Stony River.
Unit 19A and Unit 9B	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and residents of Unit 19.
Unit 19B, west of the Kogrukluk River	Moose	Residents of Eek and Quinhagak.
Unit 19C	Moose	Residents of Unit 19.
Unit 19D	Moose	Residents of Unit 19 and Lake Minchumina.
Unit 19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 20D	Bison	No Federal subsistence priority.
Unit 20F	Black Bear	Residents of Unit 20F, Stevens Village, and Manley.
Unit 20E	Brown Bear	Residents of Unit 12 and Dot Lake.
Unit 20F	Brown Bear	Residents of Unit 20F, Stevens Village, and Manley.
Unit 20A	Caribou	Residents of Cantwell, Nenana, and those domiciled between mileposts 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
Unit 20B	Caribou	Residents of Unit 20B, Nenana, and Tanana.
Unit 20C	Caribou	Residents of Unit 20C living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenana, Nikolai, Tanana, Talida, and those domiciled between mileposts 216 and 239 of the Parks Highway and between mileposts 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
Unit 20D and Unit 20E	Caribou	Residents of 20D, 20E, and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.

Area	Species	Determination
Unit 20F	Caribou	Residents of 20F, 25D, and Manley.
Unit 20A	Moose	Residents of Cantwell, Minto, Nenana, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
Unit 20B, Minto Flats Management Area	Moose	Residents of Minto and Nenana.
Unit 20B, remainder	Moose	Residents of Unit 20B, Nenana, and Tanana.
Unit 20C	Moose	Residents of Unit 20C (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), Cantwell, ''Manley'', Minto, Nenana, those domiciled between mileposts 300 and 309 of the Parks Highway, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
Unit 20D	Moose	Residents of Unit 20D and residents of Tanacross.
Unit 20E	Moose	Residents of Unit 20E, Unit 12 north of the Wrangell-St. Elias National Preserve, Circle, Central, Dot Lake, Healy Lake, and Mentasta Lake.
Unit 20F	Moose	Residents of Unit 20F, ''Manley'', Minto, and Stevens Village.
Unit 20F	Wolf	Residents of Unit 20F, Stevens Village, and ''Manley''.
Unit 20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 20D	Grouse, (Spruce, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 20D	Ptarmigan (Rock and Willow).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 21	Brown Bear	Residents of Units 21 and 23.
Unit 21A	Caribou	Residents of Units 21A, 21D, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
Unit 21B and Unit 21C	Caribou	Residents of Units 21B, 21C, 21D, and Tanana.
Unit 21D	Caribou	Residents of Units 21B, 21C, 21D, and Huslia.
Unit 21E	Caribou	Residents of Units 21A, 21E, Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
Unit 21A	Moose	Residents of Units 21A, 21E, Takotna, McGrath, Aniak, and Crooked Creek.
Unit 21B and Unit 21C	Moose	Residents of Units 21B, 21C, Tanana, Ruby, and Galena.
Unit 21D	Moose	Residents of Units 21D, Huslia, and Ruby.
Unit 21E	Moose	Residents of Unit 21E and Russian Mission.
Unit 21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22A	Black Bear	Residents of Unit 22A and Koyuk.
Unit 22B	Black Bear	Residents of Unit 22B.
Unit 22C, Unit 22D, and Unit 22E	Black Bear	No Federal subsistence priority.
Unit 22	Brown Bear	Residents of Unit 22
Unit 22A	Caribou	Residents of Unit 21D west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, 24, Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Nunam Iqua, and Alakanuk.
Unit 22, remainder	Caribou	Residents of Unit 21D west of the Koyukuk and Yukon Rivers, 22 (except residents of St. Lawrence Island), 23, and 24.
Unit 22	Moose	Residents of Unit 22.
Unit 22B, west of the Darby Mountains	Musk ox	Residents of Unit 22B and 22C.
Unit 22B, remainder	Musk ox	Residents of Unit 22B.
Unit 22C	Musk ox	Residents of Unit 22C.
Unit 22D, that portion within the Kougarok, Kuzitrin, and Pilgrim River drainages.	Musk ox	Residents of Unit 22C, White Mountain, and Unit 22D excluding St. Lawrence Island.
Unit 22D, remainder	Musk ox	Residents of Unit 22D excluding St. Lawrence Island.
Unit 22E	Musk ox	Residents of Unit 22E excluding Little Diomede Island.
Unit 22	Wolf	Residents of Units 23, 22, 21D north and west of the Yukon River, and Kotlik.
Unit 22	Grouse (Spruce)	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 22	Ptarmigan (Rock and Willow).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.

Area	Species	Determination
Unit 23	Brown Bear	Residents of Units 21 and 23.
Unit 23	Caribou	Residents of Unit 21D west of the Koyukuk and Yukon Rivers, Galena, 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26A.
Unit 23	Moose	Residents of Unit 23.
Unit 23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Musk ox	Residents of Unit 23 south of Kotzebue Sound and west of and including the Buckland River drainage.
Unit 23, remainder	Musk ox	Residents of Unit 23 east and north of the Buckland River drainage.
Unit 23	Sheep	Residents of Point Lay and Unit 23 north of the Arctic Circle.
Unit 23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 23	Grouse (Spruce and Ruffed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20D, 22, and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village, Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
Unit 24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24.
Unit 24, remainder	Brown Bear	Residents of Unit 24.
Unit 24	Caribou	Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
Unit 24	Moose	Residents of Unit 24, Koyukuk, and Galena.
Unit 24	Sheep	Residents of Unit 24 residing north of the Arctic Circle, Allakaket, Alatna, Hughes, and Huslia.
Unit 24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25D	Black Bear	Residents of Unit 25D.
Unit 25D	Brown Bear	Residents of Unit 25D.
Unit 25, remainder	Brown Bear	Residents of Unit 25 and Eagle.
Unit 25D	Caribou	Residents of 20F, 25D, and Manley
Unit 25A	Moose	Residents of Units 25A and 25D.
Unit 25D, west	Moose	Residents of Unit 25D West.
Unit 25D, remainder	Moose	Residents of remainder of Unit 25.
Unit 25A	Sheep	Residents of Arctic Village, Chalkyitsik, Fort Yukon, Kaktovik, and Venetie.
Unit 25B and Unit 25C	Sheep	No Federal subsistence priority.
Unit 25D	Wolf	Residents of Unit 25D.
Unit 25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex), Anaktuvuk Pass, and Point Hope.
Unit 26A and C	Caribou	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
Unit 26B	Caribou	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and residents of Unit 24 within the Dalton Highway Corridor Management Area.
Unit 26	Moose	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass.
Unit 26A	Musk ox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
Unit 26B	Musk ox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
Unit 26C	Musk ox	Residents of Kaktovik.
Unit 26A	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
Unit 26B	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
Unit 26C	Sheep	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkyitsik, Fort Yukon, Point Hope, and Venetie.
Unit 26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.

(2) *Fish determinations.* The following communities and areas have been found to have a positive customary and traditional use determination in the listed area for the indicated species:

Area	Species	Determination
KOTZEBUE AREA	All fish	Residents of the Kotzebue Area.
NORTON SOUND—PORT CLARENCE AREA:		
Norton Sound-Port Clarence Area, waters draining into Norton Sound between Point Romanof and Canal Point.	All fish	Residents of Stebbins, St. Michael, and Kotlik.
Norton Sound-Port Clarence Area, remainder	All fish	Residents of the Norton Sound-Port Clarence Area.
YUKON-NORTHERN AREA:		
Yukon River drainage	Salmon, other than fall chum salmon.	Residents of the Yukon River drainage and the community of Stebbins.
Yukon River drainage	Fall chum salmon	Residents of the Yukon River drainage and the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish (other than salmon).	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area	All fish	Residents of the Yukon-Northern Area, excluding the residents of the Yukon River drainage and excluding those domiciled in Unit 26B.
Tanana River drainage contained within the Tetlin NWR and the Wrangell-St. Elias NPP.	Freshwater fish (other than salmon).	Residents of the Yukon-Northern Area and residents of Mentasta Lake, Chistochina, Slana, and all residents living between Mentasta Lake and Chistochina.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installations located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Akiachak, Akiak, Aniak, Atmautluak, Bethel, Chuathbaluk, Crooked Creek, Eek, Goodnews Bay, Kasigluk, Kwethluk, Lower Kalskag, Napakiak, Napaskiak, Nunapitchuk, Oscarville, Platinum, Quinhagak, Tuluksak, Tuntutuliak, and Upper Kalskag.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring.	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparrevohn USAFB, and Tatalina USAFB.
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonat Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—		
Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage	Salmon and freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Kvichak/Iliamna-Lake Clark drainage.	Salmon and freshwater fish	Residents of the Kvichak/Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
Egegik District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of South Naknek, the Egegik District and freshwater drainages flowing into the district.
Ugashik District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Ugashik District and freshwater drainages flowing into the district.
Togiak District	Herring spawn on kelp	Residents of the Togiak District and freshwater drainages flowing into the district.
Remainder of the Bristol Bay Area	All fish	Residents of the Bristol Bay Area.
ALEUTIAN ISLANDS AREA	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
ALASKA PENINSULA AREA	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
CHIGNIK AREA	Halibut, salmon and fish other than rainbow/steelhead trout.	Residents of the Chignik Area.

Area	Species	Determination
KODIAK AREA—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°51.10' North latitude) mid-stream Shelikof Strait, north and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°10.34' North latitude, 156°20.22' West longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than rainbow/steelhead trout and salmon.	Residents of the Kodiak Area.
COOK INLET AREA.		
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	All fish	Residents of the communities of Hope and Cooper Landing.
Kenai Peninsula District—Waters north of and including the Kenai River drainage within the Kenai National Wildlife Refuge and the Chugach National Forest.	Salmon	Residents of the community of Ninilchik.
Waters within the Kasilof River drainage within the Kenai NWR.	All fish	Residents of the community of Ninilchik.
Waters within Lake Clark National Park draining into and including that portion of Tuxedni Bay within the park.	Salmon	Residents of the Tuxedni Bay area.
Cook Inlet Area	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
PRINCE WILLIAM SOUND AREA:		
Southwestern District and Green Island	Salmon	Residents of the Southwestern District, which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Copper River drainage upstream from Haley Creek	Freshwater fish	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Gulkana National Wild and Scenic River	Freshwater fish	Residents of Cantwell, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Prince William Sound Area, except for the Copper River drainage upstream of Haley Creek.	Freshwater fish (trout, char, whitefish, suckers, grayling, and burbot).	Residents of the Prince William Sound Area, except those living in the Copper River drainage upstream of Haley Creek.
Chitina Subdistrict of the Upper Copper River District	Salmon	Residents of Cantwell, Chickaloon, Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Gakona Junction, Glennallen, Gulkana, Healy Lake, Kenny Lake, Lower Tonsina, McCarthy, Mentasta Lake, Nabesna, Northway, Paxson-Sourdough, Slana, Tanacross, Tazlina, Tetlin, Tok, Tonsina, and those individuals that live along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Glennallen Subdistrict of the Upper Copper River District	Salmon	Residents of the Prince William Sound Area and residents of Cantwell, Chickaloon, Chisana, Dot Lake, Healy Lake, Northway, Tanacross, Tetlin, Tok, and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.

Area	Species	Determination
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon	Residents of Mentasta Lake and Dot Lake.
Remainder of the Prince William Sound Area	Salmon	Residents of the Prince William Sound Area.
Waters of the Bering River area from Point Martin to Cape Suckling.	Eulachon	Residents of Cordova.
Waters of the Copper River Delta from the Eyak River to Point Martin.	Eulachon	Residents of Cordova, Chenega Bay, and Tatitlek.
YAKUTAT AREA:		
Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Fresh water upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area	Dolly Varden, trout, smelt, and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.
SOUTHEASTERN ALASKA AREA:		
District 1—Section 1E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Saxman.
District 1—Section 1F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Saxman.
Districts 2, 3, and 5 and waters draining into those Districts.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 6 and waters draining into that District	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the living south of Sumner Strait and west of Clarence Strait and Kashevaroff Passage; residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.
District 7 and waters draining into that District	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island); residents of drainages flowing into Districts 7 & 8, including the communities of Petersburg & Wrangell; and residents of the communities of Meyers Chuck and Kake.
District 8 and waters draining into that District	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of drainages flowing into Districts 7 & 8, residents of drainages flowing into District 6 north of the latitude of Point Alexander (Mitkof Island), and residents of Meyers Chuck.
District 9—Section 9A	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' West longitude, including Killisnoo Island.
District 13—Section 13A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.

Area	Species	Determination
District 13—Section 13C	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City and Borough of Sitka in drainages that empty into Section 13B north of the latitude of Dorothy Narrows.
District 13—Section 13C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30' West longitude, including Killisnoo Island.
District 14—Section 14B and 14C	Salmon, Dolly Varden, trout, smelt, and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Remainder of the Southeastern Alaska Area	Dolly Varden, trout, smelt, and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.

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Subpart D—Subsistence Taking of Fish and Wildlife

■ 3. In subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.25 is revised to read as follows:

§ ____.25 Subsistence taking of fish, wildlife, and shellfish: general regulations.

(a) *Definitions.* The following definitions apply to all regulations contained in this part:

Abalone iron means a flat device which is used for taking abalone and which is more than 1 inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Airborne means transported by aircraft.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration's Alaska Airman's Guide and chart supplement.

Anchor means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

Antlered means any caribou, deer, elk, or moose having at least one visible antler.

Antlerless means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

Bait means any material excluding a scent lure that is placed to attract an animal by its sense of smell or taste; however, those parts of legally taken animals that are not required to be salvaged and which are left at the kill site are not considered bait.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Bear means black bear, or brown or grizzly bear.

Big game means black bear, brown bear, bison, caribou, Sitka black-tailed deer, elk, mountain goat, moose, musk ox, Dall sheep, wolf, and wolverine.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths of an inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, elk, or musk oxen.

Calf means a moose, caribou, elk, musk ox, or bison less than 12 months old.

Cast net means a circular net with a mesh size of no more than 1½ inches and weights attached to the perimeter, which, when thrown, surrounds the fish and closes at the bottom when retrieved.

Char means the following species: Arctic char (*Salvelinus alpinis*), lake trout (*Salvelinus namaycush*), brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Closed season means the time when fish, wildlife, or shellfish may not be taken.

Crab means the following species: red king crab (*Paralithodes camshatica*), blue king crab (*Paralithodes platypus*), brown king crab (*Lithodes aequispina*), scarlet king crab (*Lithodes couesi*), all species of tanner or snow crab (*Chionoecetes spp.*), and Dungeness crab (*Cancer magister*).

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Depth of net means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

Designated hunter or fisherman means a Federally qualified hunter or fisherman who may take all or a portion of another Federally qualified hunter's or fisherman's harvest limit(s) only under situations approved by the Board.

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed 5 feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving gear means any type of hard hat or skin diving equipment, including SCUBA equipment; a tethered, umbilical, surface-supplied unit; or snorkel.

Drainage means all of the lands and waters comprising a watershed, including tributary rivers, streams, sloughs, ponds, and lakes, which contribute to the water supply of the watershed.

Drift gillnet means a drifting gillnet that has not been intentionally staked, anchored, or otherwise fixed in one place.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: the meat of the ribs, neck, brisket, front quarters as far as the distal (bottom) joint of the radius-

ulna (knee), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed in this definition does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera. For black bear, brown and grizzly bear, ''edible meat'' means the meat of the front quarter and hindquarters and meat along the backbone (backstrap).

Federally qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Field means an area outside of established year-round dwellings, businesses, or other developments usually associated with a city, town, or village; *field* does not include permanent hotels or roadhouses on the State road system or at State or Federally maintained airports.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Fish wheel means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish, which is driven by river current or other means.

Fresh water of streams and rivers means the line at which fresh water is separated from salt water at the mouth of streams and rivers by a line drawn headland to headland across the mouth as the waters flow into the sea.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gillnet means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish or bottomfish means any marine fish except halibut, osmerids, herring and salmonids.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse, and sharp-tailed grouse.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Handicraft means a finished product made by a rural Alaskan resident from the nonedible byproducts of fish or wildlife and is composed wholly or in some significant respect of natural materials. The shape and appearance of the natural material must be substantially changed by the skillful use of hands, such as sewing, weaving, drilling, lacing, beading, carving, etching, scrimshawing, painting, or other means, and incorporated into a work of art, regalia, clothing, or other creative expression, and can be either traditional or contemporary in design. The handicraft must have substantially greater monetary and aesthetic value than the unaltered natural material alone.

Handline means a hand-held and operated line, with one or more hooks attached.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person or designated group, per specified time period, in a Unit or portion of a Unit in which the taking occurs even if part or all of the harvest is preserved. A fish, when landed and killed by means of rod and reel, becomes part of the harvest limit of the person originally hooking it.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Highway means the drivable surface of any constructed road.

Household means that group of people residing in the same residence.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Hydraulic clam digger means a device using water or a combination of air and water used to harvest clams.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

Lead means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fish wheel, fyke net, or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district, or section.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Marmot collectively refers to all species of marmot that occur in Alaska, including the hoary marmot, Alaska marmot, and the woodchuck.

Mechanical clam digger means a mechanical device used or capable of being used for the taking of clams.

Mechanical jigging machine means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Motorized vehicle means a motor-driven land, air, or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance that is toxic or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Possession limit means the maximum number of fish, grouse, or ptarmigan a person or designated group may have in possession if the they have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for

human consumption after a 15-day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ram means a male Dall sheep.

Registration permit means a permit that authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Regulatory year means July 1—June 30, except for fish and shellfish, for which it means April 1—March 31.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes*.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole. In either case, bait or an artificial fly or lure is used as terminal tackle. This definition does not include the use of rod and reel gear for snagging.

Salmon means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); Chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning, rearing, or for traveling to a spawning or rearing area.

Salvage means to transport the edible meat, skull, or hide, as required by regulation, of a regulated fish, wildlife, or shellfish to the location where the edible meat will be consumed by humans or processed for human consumption in a manner which saves or prevents the edible meat from waste, and preserves the skull or hide for human use.

Scallop dredge means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Sea urchin rake means a hand-held implement, no longer than 4 feet, equipped with projecting prongs used to gather sea urchins.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Set gillnet means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Shovel means a hand-operated implement for digging clams.

Skin, hide, pelt, or fur means any tanned or untanned external covering of an animal's body. However, for bear, the skin, hide, pelt, or fur means the external covering with claws attached.

Snagging means hooking or attempting to hook a fish elsewhere than in the mouth.

Spear means a shaft with a sharp point or fork-like implement attached to one end, which is used to thrust through the water to impale or retrieve fish, and which is operated by hand.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, must be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements will be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under 5-pound weight.

Subsistence fishing permit means a subsistence harvest permit issued by the Alaska Department of Fish and Game or the Federal Subsistence Board.

Take or *Taking* means to fish, pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Transportation means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

Troll gear means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing, or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical, or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

Trophy means a mount of a big game animal, including the skin of the head (cape) or the entire skin, in a lifelike representation of the animal, including a lifelike representation made from any part of a big game animal; ''trophy'' also includes a ''European mount'' in which the horns or antlers and the skull or a portion of the skull are mounted for display.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow/steelhead trout (Oncorhynchus mykiss).

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions

in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

Unit and *Subunit* means one of the geographical areas in the State of Alaska known as Game Management Units, or GMUs, as defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code and collectively listed in this part as Units or Subunits.

Wildlife means any hare, ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Taking fish, wildlife, or shellfish for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting, trapping, or fishing during a closed season or in an area closed by this part is prohibited. You may not take for subsistence fish, wildlife, or shellfish outside established Unit or Area seasons, or in excess of the established Unit or Area harvest limits, unless otherwise provided for by the Board. You may take fish, wildlife, or shellfish under State regulations on public lands, except as otherwise restricted at §§ __.26 through __.28. Unit/Area-specific restrictions or allowances for subsistence taking of fish, wildlife, or shellfish are identified at §§ __.26 through __.28.

(c) *Harvest limits.* (1) Harvest limits authorized by this section and harvest limits established in State regulations may not be accumulated.

(2) Fish, wildlife, or shellfish taken by a designated individual for another person pursuant to § __.10(d)(5)(ii) counts toward the individual harvest limit of the person for whom the fish, wildlife, or shellfish is taken.

(3) A harvest limit applies to the number of fish, wildlife, or shellfish that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(4) Unless otherwise provided, any person who gives or receives fish, wildlife, or shellfish must furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received fish, wildlife, or shellfish; the time and place that the fish, wildlife, or shellfish was taken; and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take fish, wildlife, or shellfish on his or her behalf in accordance with § __.10(d)(5)(ii), the permit must be furnished in place of a signed statement.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally qualified subsistence user, you (beneficiary) may designate another Federally qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Hunting by designated harvest permit.* In Units 1–8, 9D, 10–16, and 18–26, if you are a Federally qualified subsistence user (recipient), you may designate another Federally qualified subsistence user to take deer, moose and caribou on your behalf unless you are a member of a community operating under a community harvest system or unless unit-specific regulations in § __.26 preclude or modify the use of the designated hunter system or allow the harvest of additional species by a designated hunter. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time, unless otherwise specified in unit-specific regulations in § __.26.

(f) A rural Alaska resident who has been designated to take fish, wildlife, or shellfish on behalf of another rural Alaska resident in accordance with § __.10(d)(5)(ii) must promptly deliver the fish, wildlife, or shellfish to that rural Alaska resident and may not charge the recipient for his/her services in taking the fish, wildlife, or shellfish or claim for themselves the meat or any part of the harvested fish, wildlife, or shellfish.

(g) [Reserved].

(h) *Permits.* If a subsistence fishing or hunting permit is required by this part, the following permit conditions apply unless otherwise specified in this section:

(1) You may not take more fish, wildlife, or shellfish for subsistence use than the limits set out in the permit;

(2) You must obtain the permit prior to fishing or hunting;

(3) You must have the permit in your possession and readily available for inspection while fishing, hunting, or transporting subsistence-taken fish, wildlife, or shellfish;

(4) If specified on the permit, you must keep accurate daily records of the harvest, showing the number of fish, wildlife, or shellfish taken, by species, location and date of harvest, and other such information as may be required for management or conservation purposes; and

(5) If the return of harvest information necessary for management and conservation purposes is required by a permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following regulatory year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(i) You may not possess, transport, give, receive, or barter fish, wildlife, or shellfish that was taken in violation of Federal or State statutes or a regulation promulgated hereunder.

(j) *Utilization of fish, wildlife, or shellfish.* (1) You may not use wildlife as food for a dog or furbearer, or as bait, except as allowed for in § __.26, § __.27, or § __.28, or except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, or ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in Units 5, 9B, 17, 18, portions of 19A and 19B, 21D, 22, 23, 24, and 26A need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares, marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse, and ptarmigan.

(4) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally taken subsistence fish.

(5) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested fish, wildlife, or shellfish, unanticipated weather conditions, or unavoidable loss to another animal.

(6) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the skin, hide, pelt, or fur, including claws, of a black bear.

(i) In Units 1, 2, 3, 4, and 5, you may sell handicraft articles made from the skin, hide, pelt, fur, claws, bones, teeth, sinew, or skulls of a black bear taken from Units 1, 2, 3, or 5.

(ii) [Reserved].

(7) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the skin, hide, pelt, or fur, including claws, of a brown bear taken from Units 1–5, 9A–C, 9E, 12, 17, 20, or 25.

(i) In Units 1, 2, 3, 4, and 5, you may sell handicraft articles made from the skin, hide, pelt, fur, claws, bones, teeth, sinew, or skulls of a brown bear taken from Units 1, 4, or 5.

(ii) [Reserved].

(8) If you are a Federally qualified subsistence user, you may sell the raw fur or tanned pelt with or without claws attached from legally harvested furbearers.

(9) If you are a Federally qualified subsistence user, you may sell handicraft articles made from the nonedible byproducts (including, but not limited to, skin, shell, fins, and bones) of subsistence-harvested fish or shellfish.

(10) If you are a Federally qualified subsistence user, you may sell handicraft articles made from nonedible byproducts of wildlife harvested for subsistence uses (excluding bear), to include; skin, hide, pelt, fur, claws, bones (except skulls of moose, caribou, elk, deer, sheep, goat and musk ox), teeth, sinew, antlers and/or horns (if not attached to any part of the skull or made to represent a big game trophy) and hooves.

(11) The sale of handicrafts made from the nonedible byproducts of wildlife, when authorized in this part, may not constitute a significant commercial enterprise.

(12) You may sell the horns and antlers not attached to any part of the skull from legally harvested caribou (except caribou harvested in Unit 23), deer, elk, goat, moose, musk ox, and sheep.

(13) You may sell the raw/untanned and tanned hide or cape from a legally harvested caribou, deer, elk, goat, moose, musk ox, and sheep.

(k) The regulations found in this part do not apply to the subsistence taking and use of fish, wildlife, or shellfish regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187); the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543); the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407); and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or to any amendments to these Acts. The taking and use of fish, wildlife, or shellfish, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(l) Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from fishing, hunting, or trapping on public lands in an area may fish, hunt, or trap on public lands in accordance with the appropriate State regulations.

4. In subpart D of 36 CFR part 242 and 50 CFR part 100, §____.26 is added to read as follows:

§____.26 Subsistence taking of wildlife.

(a) You may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(b) Except for special provisions found at paragraphs (n)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(1) Shooting from, on, or across a highway;

(2) Using any poison;

(3) Using a helicopter in any manner, including transportation of individuals, equipment, or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(4) Taking wildlife from a motorized land or air vehicle when that vehicle is in motion, or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(5) Using a motorized vehicle to drive, herd, or molest wildlife;

(6) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(7) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle, or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves, or wolverine, except that—

(i) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(ii) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk ox, and mountain goat;

(8) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over 9 inches, or conibear style trap with a jaw spread over 11 inches;

(9) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(10) Using a trap to take ungulates or bear;

(11) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(12) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(13) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting an inch-wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least 1 ounce (437.5 grains);

(14) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (n)(1) through (26) of this section.

Baiting of black bears is subject to the following restrictions:

(i) Before establishing a black bear bait station, you must register the site with ADF&G;

(ii) When using bait, you must clearly mark the site with a sign reading ''black bear bait station'' that also displays your hunting license number and ADF&G-assigned number;

(iii) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(iv) You may not use bait within ¼ mile of a publicly maintained road or trail;

(v) You may not use bait within 1 mile of a house or other permanent dwelling, or within 1 mile of a developed campground or developed recreational facility;

(vi) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(vii) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(viii) You may not have more than two bait stations with bait present at any one time;

(15) Taking swimming ungulates, bears, wolves, or wolverine;

(16) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer, the setting of snares or traps, or the removal of furbearers from traps or snares;

(17) Taking a bear cub or a sow accompanied by cub(s).

(c) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(d) The following methods and means of trapping furbearers for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b) of this section:

(1) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(2) Disturbing or destroying any beaver house;

(3) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(4) Taking otter with a steel trap having a jaw spread of less than 5⅞ inches during any closed mink and marten season in the same Unit;

(5) Using a net or fish trap (except a blackfish or fyke trap);

(6) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(e) *Possession and transportation of wildlife.* (1) Except as specified in paragraphs (e)(2) or (f)(1) of this section, or as otherwise provided, you may not take a species of wildlife in any unit, or portion of a unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to §____.10(d)(5)(iii) or as otherwise provided for by this part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(f) *Harvest limits.* (1) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(2) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of ''one brown/grizzly bear per year'' counts against a ''one brown/grizzly bear every four regulatory years'' harvest limit in other Units. You may not take more than one brown/grizzly bear in a regulatory year.

(3) The Assistant Regional Director for Subsistence Management, FWS, is authorized to open, close, or adjust Federal subsistence lynx seasons and to set harvest and possession limits for lynx in Units 6, 7, 11, 12, 13, 14, 15, 16, 20A, 20B, 20C east of the Teklanika River, 20D, and 20E, with a maximum season of November 1–February 28. This delegation may be exercised only when it is necessary to conserve lynx populations or to continue subsistence uses, only within guidelines listed within the ADF&G Lynx Harvest Management Strategy, and only after staff analysis of the potential action, consultation with the appropriate Regional Council Chairs, and Interagency Staff Committee concurrence.

(g) *Evidence of sex and identity.* (1) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(2) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except that in Units 1–5 antlers are also considered proof of sex for deer if the antlers are naturally attached to an entire carcass, with or without the viscera; and except in Units 11, 13, 19, 21, and 24, where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached) to indicate the sex of the harvested moose; however, this paragraph (g)(2) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose harvest limit requires an antlered bull, an antler size, or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (g)(3) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(h) *Removing harvest from the field.* You must leave all edible meat on the bones of the front quarters and hind quarters of caribou and moose harvested in Units 9B, 17, 18, and 19B prior to October 1 until you remove the meat from the field or process it for human consumption. You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of moose harvested in Unit 21 prior to October 1 until you remove the meat from the field or process it for human consumption. You must leave all edible meat on the bones of the front quarters, hind quarters, and ribs of caribou and moose harvested in Unit 24 prior to October 1 until you remove the meat from the field

or process it for human consumption. Meat of the front quarters, hind quarters, or ribs from a harvested moose or caribou may be processed for human consumption and consumed in the field; however, meat may not be removed from the bones for purposes of transport out of the field.

(i) *Returning of tags, marks, or collars.* If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(j) *Sealing of bear skins and skulls.* (1) Sealing requirements for bear apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in Units 5, 9B, 9E, 17, 18, 19A and 19B downstream of and including the Aniak River drainage, 21D, 22, 23, 24, and 26A need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision does not apply to brown bears taken within Units 5, 9B, 9E, 17, 18, 19A and 19B downstream of and including the Aniak River drainage, 21D, 22, 23, 24, and 26A and which are not removed from the Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear that does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in Units 9B, 17, 18, and 19A and 19B downstream of and including the Aniak River drainage is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative must remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in Units 21D, 22, 23, 24, and 26A from the area or present it for commercial tanning within the area, you must first have it sealed by an ADF&G representative in Barrow, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative must remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat.

(v) If you remove the skin or skull of a bear taken in Unit 9E from Unit 9, you must first have it sealed by an authorized sealing representative. At the time of sealing, the representative must remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(k) *Sealing of beaver, lynx, marten, otter, wolf, and wolverine.* You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13E, or 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative in accordance with State or Federal regulations.

(1) In Unit 18, you must obtain an ADF&G seal for beaver skins only if they are to be sold or commercially tanned.

(2) In Unit 2, you must seal any wolf taken on or before the 30th day after the date of taking.

(l) If you take a species listed in paragraph (k) of this section but are unable to present the skin in person, you must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (k) of this section.

(m) You may take wildlife, outside of established season or harvest limits, for food in traditional religious ceremonies, that are part of a funerary or mortuary cycle, including memorial potlatches, under the following provisions:

(1) The harvest does not violate recognized principles of wildlife conservation and uses the methods and means allowable for the particular species published in the applicable Federal regulations. The appropriate Federal land manager will establish the number, species, sex, or location of harvest, if necessary, for conservation purposes. Other regulations relating to ceremonial harvest may be found in the unit-specific regulations in § ____.26(n).

(2) No permit or harvest ticket is required for harvesting under this section; however, the harvester must be a Federally qualified subsistence user with customary and traditional use in the area where the harvesting will occur.

(3) In Units 1–26 (except for Koyukon/Gwich'in potlatch ceremonies in Units 20F, 21, 24, or 25):

(i) A tribal chief, village or tribal council president, or the chief's or president's designee for the village in which the religious/cultural ceremony will be held, or a Federally qualified subsistence user outside of a village or tribal-organized ceremony, must notify the nearest Federal land manager that a wildlife harvest will take place. The notification must include the species, harvest location, and number of animals expected to be taken.

(ii) Immediately after the wildlife is taken, the tribal chief, village or tribal council president or designee, or other Federally qualified subsistence user must create a list of the successful hunters and maintain these records, including the name of the decedent for whom the ceremony will be held. If requested, this information must be available to an authorized representative of the Federal land manager.

(iii) The tribal chief, village or tribal council president or designee, or other Federally qualified subsistence user outside of the village in which the religious/cultural ceremony will be held must report to the Federal land manager the harvest location, species, sex, and number of animals taken as soon as practicable, but not more than 15 days after the wildlife is taken.

(4) In Units 20F, 21, 24, and 25 (for Koyukon/Gwich'in potlatch ceremonies only):

(i) Taking wildlife outside of established season and harvest limits is authorized if it is for food for the traditional Koyukon/Gwich'in Potlatch Funerary or Mortuary ceremony and if it is consistent with conservation of healthy populations.

(ii) Immediately after the wildlife is taken, the tribal chief, village or tribal council president, or the chief's or president's designee for the village in which the religious ceremony will be held must create a list of the successful hunters and maintain these records. The list must be made available, after the harvest is completed, to a Federal land manager upon request.

(iii) As soon as practical, but not more than 15 days after the harvest, the tribal chief, village council president, or designee must notify the Federal land

manager about the harvest location, species, sex, and number of animals taken.

(n) *Unit regulations.* You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1–June 30. Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (n)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1A consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1B consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1C consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1D consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1A—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1B—the Anan Creek drainage within 1 mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a 1-mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of bear;

(D) Unit 1C:

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1C, Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1A, 1B, and 1D between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1A—4 antlered deer	Aug. 1–Dec. 31.
Unit 1B—2 antlered deer	Aug. 1–Dec. 31.
Unit 1C—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1A—Revillagigedo Island only	No open season.
Unit 1B—that portion north of LeConte Bay—1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1A and Unit 1B—that portion on the Cleveland Peninsula south of the divide between Yes Bay and Santa Anna Inlet.	No open season.
Unit 1A and Unit 1B—remainder—2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat. The taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1C—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1C—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Unit 1C—remainder—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1D—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1D—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Unit 1D—remainder—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 1A–1 antlered bull by Federal registration permit	Sept. 5–Oct. 15.

Harvest limits	Open season
Unit 1B–1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only. The Petersburg District Ranger is authorized to close the season based on conservation concerns, in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council.	Sept. 15–Oct. 15.
Unit 1C—that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1C—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1D	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: Unit 1—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the westernmost point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
5 deer; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15—Federal/State harvest report. The Tongass National Forest Supervisor is authorized to reduce the harvest to 4 deer based on conservation concerns, in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council.	July 24–Dec. 31.
The Federal public lands on Prince of Wales Island, excluding the southeast portion (lands south of the West Arm of Cholmondeley Sound draining into Cholmondeley Sound or draining eastward into Clarence Strait), are closed to hunting of deer from Aug. 1 to Aug. 15, except by Federally qualified subsistence users hunting under these regulations.	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves. The Tongass National Forest Supervisor (or designee) may close the Federal hunting and trapping season in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council, when the combined Federal-State harvest quota is reached.	Sept. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Wolf: No limit. The Tongass National Forest Supervisor (or designee) may close the Federal hunting and trapping season in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council, when the combined Federal-State harvest quota is reached. Any wolf taken in Unit 2 must be sealed within 30 days of harvest.	Nov. 15–Mar. 31.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.*

(i) Unit 3 consists of all islands west of Unit 1B, north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevaroff, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:.	
Unit 3—Mitkof, Woewodski, and Butterworth Islands—1 antlered deer	Oct. 15–Oct. 31.
Unit 3—remainder—2 antlered deer	Aug. 1–Nov. 30.
Moose: 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only. The Petersburg District Ranger is authorized to close the season based on conservation concerns, in consultation with ADF&G and the Chair of the Southeast Alaska Subsistence Regional Advisory Council.	Sept. 15–Oct. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island–No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island–No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1C and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take brown bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take brown bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay.

(iii) Unit-specific regulations:

(A) You may shoot ungulates from a boat. You may not shoot bear, wolves, or wolverine from a boat, unless you are certified as disabled;

(B) Five Federal registration permits will be issued by the Sitka or Hoonah District Ranger for the taking of brown bear for educational purposes associated with teaching customary and traditional subsistence harvest and use practices. Any bear taken under an educational permit does not count in an individual's one bear every four regulatory years limit.

Harvest limits	Open season
Hunting	
Brown Bear:.	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21° W. long.) to Rodgers Point (57° 35° N. lat., 135° 33° W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34° N. lat., 135° 25° W. long.) to the entrance of Gut Bay (56° 44° N. lat. 134° 38° W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—remainder—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: Unit 4—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5A consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5B consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not shoot ungulates, bear, wolves, or wolverine from a boat, unless you are certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag if you have obtained a Federal registration permit prior to hunting.

Harvest limits	Open season
Hunting	
Black Bear:	
2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear:	
1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5A—1 buck	Nov. 1–Nov. 30.
Unit 5B	No open season.
Goat:	
Unit 5A—that area between the Hubbard Glacier and the West Nunatak Glacier on the north and east sides of Nunatak Fjord—1 goat by Federal registration permit. The U.S. Forest Service Yakutat District Ranger and ADF&G will jointly announce the harvest quota prior to the season. A minimum of two goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement from the U.S. Forest Service Yakutat District Ranger when the quota has been taken. The harvest quota and season announcements will be made in consultation with The National Park Service and local residents.	Aug. 1–Jan. 31.

Harvest limits	Open season
Unit 5A—remainder—1 goat by Federal registration permit. The U.S. Forest Service Yakutat District Ranger and ADF&G will jointly announce the harvest quota prior to the season. A minimum of four goats in the harvest quota will be reserved for Federally qualified subsistence users. The season will be closed by local announcement when the quota has been taken. The harvest quota and season announcements will be made in consultation with The National Park Service and local residents.	Aug. 1–Jan. 31.
Unit 5B—1 goat by Federal registration permit only.	
Moose:	
Unit 5A, Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5A, except Nunatak Bench—1 bull by joint State/Federal registration permit only. The season will be closed when 60 bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 bulls have been taken in that area. From Oct. 8–21, public lands will be closed to taking of moose, except by residents of Unit 5A hunting under these regulations.	Oct. 8–Nov. 15.
Unit 5B—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5B.	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce and Ruffed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Nov. 10–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov 10–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6A consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6B consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6C consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6D consists of the remainder of Unit 6.

(ii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6B and 6C with the aid of artificial lights;

(C) One permit will be issued by the Cordova District Ranger to the Native Village of Eyak to take one bull moose from Federal lands in Units 6B or C for their annual Memorial/Sobriety Day potlatch;

(D) A Federally qualified subsistence user (recipient) who is either blind, 65 years of age or older, at least 70 percent disabled, or temporarily disabled may designate another Federally qualified subsistence user to take any moose, deer, black bear and beaver on his or her behalf in Unit 6, unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients, but may have no more than one harvest limit in his or her possession at any one time;

(E) A hunter younger than 10 years old at the start of the hunt may not be issued a Federal subsistence permit to harvest black bear, deer, goat, moose, wolf, and wolverine;

(F) A hunter younger than 10 years old may harvest black bear, deer, goat, moose, wolf, and wolverine under the direct, immediate supervision of a licensed adult, at least 18 years old. The animal taken is counted against the adult's harvest limit. The adult is responsible for ensuring that all legal requirements are met.

Harvest limits	Open season
Hunting	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.

Harvest limits	Open season
Goats:	
Unit 6A and B—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6C	No open season.
Unit 6D (subareas RG242, RG243, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only. In each of the Unit 6D subareas, goat seasons will be closed by the Cordova District Ranger when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—4 goats, RG244—2 goats, RG249—4 goats, RG266—4 goats, RG252—1 goat.	Aug. 20–Jan. 31.
Moose:	
Unit 6C—1 antlerless moose by Federal registration permit only	Sept. 1–Oct. 31.
Unit 6C—1 bull by Federal registration permit only	Sept. 1–Dec. 31.
(In Unit 6C, only one moose permit may be issued per household. A household receiving a State permit for Unit 6C moose may not receive a Federal permit. The annual harvest quota will be announced by the U.S. Forest Service, Cordova Office, in consultation with ADF&G. The Federal harvest allocation will be 100% of the antlerless moose permits and 75% of the bull permits.).	
Unit 6—remainder	No open season.
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 31.
Coyote:	
Unit 6A and D—2 coyotes	Sept. 1–Apr. 30.
Unit 6B and 6C—No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	No open season.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Dec. 1–Apr. 30.
Coyote:	
Unit 6C—south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Unit 6A, B, C remainder, and D—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7—that portion draining into Kings Bay—Public lands are closed to the taking of moose by all users	No open season.
Unit 7—remainder	No open season.
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 10.
Coyote: No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Jan. 31.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.

Harvest limits	Open season
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 10 per day, 20 in possession	Aug. 10–Mar. 31.
Grouse (Ruffled)	No open season.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 20 beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akhiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions. Permits will be issued by the Kodiak Refuge Manager.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer: Unit 8—all lands within the Kodiak Archipelago within the Kodiak National Wildlife Refuge, including lands on Kodiak, Ban, Uganik, and Afognak Islands—3 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31.	Aug. 1–Jan. 31.
Elk: Kodiak, Ban, Uganik, and Afognak Islands—1 elk per household by Federal registration permit only. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd.	Sept. 15–Nov. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands, including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9A consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9B consists of the Kvichak River drainage except those lands drained by the Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage;

(C) Unit 9C consists of the Alagnak (Branch) River drainage, the Naknek River drainage, lands drained by the Kvichak River/Bay between the Alagnak River drainage and the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9D consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay, including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9E consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1-Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9C within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp

roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9B from April 1-May 31 and in the remainder of Unit 9 from April 1–30;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in Unit 9B, except that portion within the Lake Clark National Park and Preserve, if you have obtained a State registration permit prior to hunting.

(C) In Unit 9B, Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community; however, no more than five permits will be issued in a single community. The season will be closed when four females or ten bears have been taken, whichever occurs first. The permits will be issued and closure announcements made by the Superintendent, Lake Clark National Park and Preserve;

(D) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9B for ceremonial purposes, under the terms of a Federal registration permit from July 1-June 30. Permits will be issued to individuals only at the request of a local organization. This 10-moose limit is not cumulative with that permitted for potlatches by the State;

(E) For Units 9C and 9E only, a Federally qualified subsistence user (recipient) of Units 9C and 9E may designate another Federally qualified subsistence user of Units 9C and 9E to take bull caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time;

(F) For Unit 9D, a Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time;

(G) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1–December 31 or May 10–25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9D or Unit 10 (Unimak Island) only;

(H) You may hunt brown bear in Unit 9E with a Federal registration permit in lieu of a State locking tag if you have obtained a Federal registration permit prior to hunting.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9B—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only —1 bear by Federal registration permit only.	July 1–June 30.
Unit 9B, remainder—1 bear by State registration permit only	Sept. 1–May 31.
Unit 9E—1 bear by Federal registration permit	Sept. 25–Dec. 31. Apr. 15–May 25.
Caribou:	
Unit 9A—4 caribou; however, no more than 2 caribou may be taken Aug. 10—Sept. 30 and no more than 1 caribou may be taken Oct. 1—Nov. 30.	Aug. 10–Mar. 31.
Unit 9B—3 caribou; however, no more than 1 caribou may be taken from July 1—Nov. 30	July 1–Apr. 15.
Unit 9C, that portion within the Alagnak River drainage—1 caribou	Aug. 1–Mar. 31.
Unit 9C—remainder—Federal public lands are closed to the taking of caribou	
Unit 9D—2 bulls by Federal registration permit	Aug. 1–Sept. 30.
Unit 9E—Federal public lands are closed to the taking of caribou	Nov. 15–Mar. 31.
Sheep:	
Unit 9B, that portion within Lake Clark National Park and Preserve—1 ram with 3/4 curl or larger horn by Federal registration permit only. By announcement of the Lake Clark National Park and Preserve Superintendent, the summer/fall season will be closed when up to 5 sheep are taken and the winter season will be closed when up to 2 sheep are taken.	July 15–Oct. 15. Jan. 1–Apr. 1.
Unit 9B—remainder—1 ram with 7/8 curl or larger horn by Federal registration permit only	Aug. 10–Oct. 10.
Unit 9—remainder—1 ram with 7/8 curl or larger horn	Aug. 10–Sept. 20.
Moose:	
Unit 9A—1 bull	Sept. 1–15.
Unit 9B—1 bull	Aug. 20–Sept. 15. Dec. 1–Jan. 15.
Unit 9C—that portion draining into the Naknek River from the north—1 bull	Sept. 1–15. Dec. 1–31.
Unit 9C—that portion draining into the Naknek River from the south—1 bull by Federal registration permit only. Public lands are closed during December for the hunting of moose, except by Federally qualified subsistence users hunting under these regulations.	Aug. 20–Sept. 15. Dec. 1–31.
Unit 9C—remainder—1 bull	Sept. 1–15. Dec. 15–Jan. 15.
Unit 9D—1 bull by Federal registration permit. Federal public lands will be closed by announcement of the Izembek Refuge Manager to the harvest of moose when a total of 10 bulls have been harvested between State and Federal hunts.	Dec. 15–Jan. 20.
Unit 9E—1 bull, however only antlered bulls may be taken Dec. 1–Jan. 31	Aug. 20–Sept. 20. Dec. 1–Jan. 31.

Harvest limits	Open season
Beaver: Unit 9B and 9E—2 beaver per day	Apr. 15–May 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
No limit	Oct. 10–Mar. 31.
2 beaver per day; only firearms may be used	Apr. 15–May 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.

(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

(iii) In Unit 10—Unimak Island only, a Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

(iv) The communities of False Pass, King Cove, Cold Bay, Sand Point, and Nelson Lagoon annually may each take, from October 1–December 31 or May 10–25, one brown bear for ceremonial purposes, under the terms of a Federal registration permit. A permit will be issued to an individual only at the request of a local organization. The brown bear may be taken from either Unit 9D or Unit 10 (Unimak Island) only.

Harvest limits	Open season
Hunting	
Caribou:	
Unit 10—Unimak Island only—4 caribou by Federal registration permit only	Aug. 1–Sept. 30. Nov. 15–Mar. 31.
Unit 10—remainder—No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River

between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) One moose without calf may be taken from June 20–July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt. Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(ii) A joint permit may be issued to a pair of a minor and an elder to hunt sheep during the Sept. 21–Oct. 20 hunt. The following conditions apply:

(A) The permittees must be a minor aged 8 to 15 years old and an accompanying adult 60 years of age or older;

(B) Both the elder and the minor must be Federally qualified subsistence users with a positive customary and traditional use determination for the area they want to hunt;

(C) The minor must hunt under the direct immediate supervision of the accompanying adult, who is responsible for ensuring that all legal requirements are met;

(D) Only one animal may be harvested with this permit. The sheep harvested will count against the harvest limits of both the minor and accompanying adult.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 15.
Caribou	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older	Sept. 21–Oct. 20.
Goat: Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed by announcement of the Superintendent, Wrangell-St. Elias National Park and Preserve to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts.	Aug. 25–Dec. 31.
Moose: 1 antlered bull by Federal registration permit only	Aug 20–Sept. 20.
Beaver: 1 beaver per day, 1 in possession	June 1–Oct. 10.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; you may use bait to hunt wolves on FWS and BLM lands;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap coyotes or wolves in Unit 12 during April and October;

(C) One moose without calf may be taken from June 20-July 31 in the Wrangell-St. Elias National Park and Preserve in Unit 11 or 12 for the Batzulnetas Culture Camp. Two hunters from either Chistochina or Mentasta Village may be designated by the Mt. Sanford Tribal Consortium to receive the Federal subsistence harvest permit. The permit may be obtained from a Wrangell-St. Elias National Park and Preserve office.

(ii) A joint permit may be issued to a pair of a minor and an elder to hunt sheep during the Sept. 21–Oct. 20 hunt. The following conditions apply:

(A) The permittees must be a minor aged 8 to 15 years old and an accompanying adult 60 years of age or older;

(B) Both the elder and the minor must be Federally qualified subsistence users with a positive customary and traditional use determination for the area they want to hunt;

(C) The minor must hunt under the direct immediate supervision of the accompanying adult, who is responsible for ensuring that all legal requirements are met;

(D) Only one animal may be harvested with this permit. The sheep harvested will count against the harvest limits of both the minor and accompanying adult.

Harvest limits	Open season
Hunting	
Black Bear:.	
3 bears	July 1–June 30.
Brown Bear:.	
1 bear.	Aug. 10–June 30.
Caribou:.	
Unit 12—that portion of the Nabesna River drainage within the Wrangell–St. Elias National Park and Preserve and all Federal lands south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—All hunting of caribou is prohibited on Federal public lands.	No open season.
Unit 12—remainder—1 bull	Sept. 1–20.
Unit 12—remainder—1 caribou may be taken by a Federal registration permit during a winter season to be announced. Dates for a winter season to occur between Oct. 1 and Apr. 30 and sex of animal to be taken will be announced by Tetlin National Wildlife Refuge Manager in consultation with Wrangell–St. Elias National Park and Preserve Superintendent, Alaska Department of Fish and Game area biologists, and Chairs of the Eastern Interior Regional Advisory Council and Upper Tanana/Fortymile Fish and Game Advisory Committee.	Winter season to be announced.
Sheep:	
Unit 12—1 ram with full curl or larger horn	Aug. 10–Sept. 20.
Unit 12—that portion within Wrangell–St. Elias National Park and Preserve—1 ram with full curl horn or larger by Federal registration permit only by persons 60 years of age or older.	Sept. 21–Oct. 20.
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell–St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to Pickerel Lake—1 antlered bull. The Nov.–Dec. season is open by Federal registration permit only.	Aug. 24–28. Sept. 8–17. Nov. 20–Dec 10.
Unit 12—that portion east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull.	Aug. 24-Sept. 30.
Unit 12—remainder—1 antlered bull with spike/fork antlers	Aug. 15–23.
Unit 12—remainder—1 antlered bull	Aug. 24–28. Sept. 1–17.
Beaver:	
Unit 12—Wrangell–Saint Elias National Park and Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption.	Sept. 20–May 15.
Coyote:	
10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 1–Mar. 15.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
15 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used Nov. 1–Apr. 15. The total annual harvest limit for beaver is 15, of which no more than 6 may be taken by firearm under trapping or hunting regulations. Meat from beaver harvested by firearm must be salvaged for human consumption.	Sept. 20–May 15.
Coyote:	
No limit	Oct. 15–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30	Nov. 1–Dec. 31.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Sept. 20–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Oct. 1–Apr. 30.
Wolverine:	

Harvest limits	Open season
No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north and east bank of the Talkeetna River including the Talkeetna River to its confluence with Clear Creek, the eastside drainages of a line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeast shore of lake 4408, then southeast in a straight line to the northern most fork of the Chickaloon River; the drainages into the east bank of the Chickaloon River below the line from lake 4408; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13A consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13B consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13C consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13D consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13E consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–25 in the Delta Controlled Use Area, the boundary of which is defined as: A line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle benchmark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Cantwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Middle Fork trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13B bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Middle Fork Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning;

(D) You may not use any motorized vehicle or pack animal for hunting, including the transportation of hunters, their hunting gear, and/or parts of game from July 26-September 30 in the Tonsina Controlled Use Area. The Tonsina Controlled Use Area consists of that portion of Unit 13D bounded on the west by the Richardson Highway from the Tiekel River to the Tonsina River at Tonsina, on the north along the south bank of the Tonsina River to where the Edgerton Highway crosses the Tonsina River, then along the Edgerton Highway to Chitina, on the east by the Copper River from Chitina to the Tiekel River, and on the south by the north bank of the Tiekel River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) Upon written request by the Camp Director to the Glennallen Field Office, 2 caribou, sex to be determined by the Glennallen Field Office Manager of the BLM, may be taken from Aug. 10-Sept. 30 or Oct. 21-Mar. 31 by Federal registration permit for the Hudson Lake Residential Treatment Camp. Additionally, 1 bull moose may be taken Aug. 1-Sept. 20. The animals may be taken by any Federally qualified hunter designated by the Camp Director. The hunter must have in his/her possession the permit and a designated hunter

permit during all periods that are being hunted;

(C) Upon written request from the Ahtna Heritage Foundation to the Glennallen Field Office, either 1 bull moose or 2 caribou, sex to be determined by the Glennallen Field Office Manager of the Bureau of Land Management, may be taken from Aug 1-Sept. 20 for 1 moose or Aug. 10-Sept. 20 for 2 caribou by Federal registration permit for the Ahtna Heritage Foundation's culture camp. The permit will expire on September 20 or when the camp closes, whichever comes first. No combination of caribou and moose is allowed. The animals may be taken by any Federally qualified hunter designated by the Camp Director. The hunter must have in his/her possession the permit and a designated hunter permit during all periods that are being hunted.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested.	Aug. 10–May 31.
Caribou:	
Unit 13A and 13B—2 caribou by Federal registration permit only. The sex of animals that may be taken will be announced by the Glennallen Field Office Manager of the Bureau of Land Management in consultation with the Alaska Department of Fish and Game area biologist and Chairs of the Eastern Interior Regional Advisory Council and the Southcentral Regional Advisory Council.	Aug. 10–Sept. 30. Oct. 21–Mar. 31.
Unit 13—remainder—2 bulls by Federal registration permit only.	Aug. 10–Sept. 30. Oct. 21–Mar. 31.
You may not hunt within the Trans-Alaska Oil Pipeline right-of-way. The right-of-way is the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	
Sheep:	
Unit 13, excluding Unit 13D and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl or larger horn.	Aug. 10–Sept. 20.
Moose:	
Unit 13E—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1–Sept. 20.
Unit 13—remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20.
Beaver:	
1 beaver per day, 1 in possession	June 15–Sept. 10.
Coyote:	
10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe):	
No limit	July 1–June 30.
Lynx:	
2 lynx	Nov. 10–Feb. 28.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Ruffled, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession	Aug. 10-Mar. 31.
Trapping	
Beaver:	
No limit	Sept. 25–May 31.
Coyote:	
No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 10–Feb. 28.
Lynx:	
No limit	Nov. 10–Feb. 28.
Marten:	
Unit 13—No limit	Nov. 10–Feb. 28.
Mink and Weasel:	
No limit	Nov. 10–Feb. 28.
Muskrat:	
No limit	Sept. 25–June 10.
Otter:	
No limit	Nov. 10–Mar. 31.
Wolf:	
No limit	Oct. 15–Apr. 30.
Wolverine:	
No limit	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south and west bank of the Talkeetna River to its confluence with Clear Creek, the west side drainages of a line going up the south bank of Clear Creek to the first unnamed creek on the south, then up that creek to lake 4408, along the northeast shore of lake 4408, then southeast in a straight line to the northernmost fork of the Chickaloon River:

(A) Unit 14A consists of drainages in Unit 14 bounded on the west by the east bank of the Susitna River, on the north by the north bank of Willow Creek and Peters Creek to its headwaters, then east along the hydrologic divide separating the Susitna River and Knik Arm drainages to the outlet creek at lake 4408, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14B consists of that portion of Unit 14 north of Unit 14A;

(C) Unit 14C consists of that portion of Unit 14 south of Unit 14A.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation;

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 14C—1 bear	July 1–June 30.
Beaver:	
Unit 14C—1 beaver per day, 1 in possession	May 15–Oct. 31.
Coyote:	
Unit 14C—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14C—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe):	
Unit 14C—5 hares per day	Sept. 8–Apr. 30.
Lynx:	
Unit 14C—2 lynx	Dec. 1–Jan. 31.
Wolf:	
Unit 14C—5 wolves	Aug. 10–Apr. 30.
Wolverine:	
Unit 14C—1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed):	
Unit 14C—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 14C—10 per day, 20 in possession	Sept. 8–Mar. 31.
Trapping	
Beaver:	
Unit 14C—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote:	
Unit 14C—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 14C—1 fox	Nov. 10–Feb. 28.
Lynx:	
Unit 14C—No limit	Dec. 15–Jan. 31.
Marten:	
Unit 14C—No limit	Nov. 10–Jan. 31.
Mink and Weasel:	
Unit 14C—No limit	Nov. 10–Jan. 31.
Muskrat:	
Unit 14C—No limit	Nov. 10–May 15.
Otter:	
Unit 14C—No limit	Nov. 10–Feb. 28.
Wolf:	
Unit 14C—No limit	Nov. 10–Feb. 28.
Wolverine:	
Unit 14C—No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15A consists of that portion of Unit 15 north of the north bank of the Kenai River and the north shore of Skilak Lake;

(B) Unit 15B consists of that portion of Unit 15 south of the north bank of the Kenai River and the north shore of Skilak Lake, and north of the north bank of the Kasilof River, the north shore of Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15C consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1—March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15A bounded by a line beginning at the easternmost junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its westernmost junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15B east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare.

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 15A and 15B—2 bears by Federal registration permit	July 1–June 30.
Unit 15C—3 bears.	July 1–June 30.
Brown Bear:	
Unit 15C—1 bear every four regulatory years by Federal registration permit. The season may be opened or closed by announcement from the Kenai National Wildlife Refuge Manager after consultation with ADF&G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council.	Oct. 1–Nov. 30 To be announced. -and- Apr. 1–June 15 To be announced.
Moose:	
Unit 15A—Skilak Loop Wildlife Management Area	No open season.
Unit 15A—remainder, 15B, and 15C—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Units 15B and 15C—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only. The Kenai NWR Refuge Manager is authorized to close the October/November season based on conservation concerns, in consultation with ADF&G and the Chair of the Southcentral Alaska Subsistence Regional Advisory Council.	Oct. 20–Nov. 10.
Coyote: No limit	Sept. 1–Apr. 30.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Jan. 31.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 15—remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce):.	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed)	No open season.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15A and 15B—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 15C—20 per day, 40 in possession	Aug. 10–Dec. 31.
Unit 15C—5 per day, 10 in possession	Jan. 1–Mar. 31.
Trapping	
Beaver: 20 Beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10–Feb. 28.
Marten:	
Unit 15B—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: Unit 15—No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: Unit 15B and C—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16A consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16B consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Caribou: 1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16B—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 bull	Sept. 1–15.
Unit 16B—remainder 1 bull	Sept. 1–30.
	Dec. 1–Feb. 28.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 1–Jan. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: No limit	Oct. 10–May 15.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 15–Jan. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17A consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17B consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17C consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17B, from Aug. 1–Nov. 1.

(B) [Reserved]

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting;

(C) For Federal registration permit caribou hunts for Unit 17A and 17C, that portion consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay, a Federally qualified subsistence user may designate another Federally qualified subsistence user to harvest caribou on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) If you have a trapping license, you may use a firearm to take beaver in Unit 17 from April 15–May 31. You may not take beaver with a firearm under a trapping license on National Park Service lands.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 17A—all drainages west of Right Hand Point—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30. The season may be closed and harvest limit reduced for the drainages between the Togiak River and Right Hand Point by announcement of the Togiak National Wildlife Refuge Manager.	Aug. 1–Mar. 31.
Unit 17A and 17C—that portion of 17A and 17C consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—up to 2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk hunting under these regulations. The harvest objective, harvest limit, and the number of permits available will be announced by the Togiak National Wildlife Refuge Manager after consultation with the Alaska Department of Fish and Game and the Nushagak Peninsula Caribou Planning Committee. Successful hunters must report their harvest to the Togiak National Wildlife Refuge within 24 hours after returning from the field. The season may be closed by announcement of the Togiak National Wildlife Refuge Manager.	Aug. 1–Sept. 30. Dec. 1–Mar. 31.
Unit 17A—remainder and 17C—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season to occur sometime within Aug. 1–Mar. 31 timeframe; season, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager.
Unit 17B and 17C—that portion of 17C east of the Wood River and Wood River Lakes—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30.	Aug. 1–Apr. 15.
Sheep: 1 ram with full curl or larger horn	Aug. 10–Sept. 20.
Moose:	
Unit 17A—1 bull by State registration permit	Aug. 25–Sept. 20.
Unit 17A—that portion that includes the area east of the west shore of Nenevok Lake, east of the west bank of the Kemuk River, and east of the west bank of the Togiak River south from the confluence Togiak and Kemuk Rivers—1 antlered bull by State registration permit. Up to a 14-day season during the period Dec. 1–Jan. 31 may be opened or closed by the Togiak National Wildlife Refuge Manager after consultation with ADF&G and local users.	Winter season to be announced.
Unit 17B—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit. During the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17C—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit. During the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17B—remainder and 17C—remainder—1 bull by State registration permit. During the period Sept. 1–15, a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 17—No limit	Oct. 10–Mar. 31.
Unit 17—2 beaver per day. Only firearms may be used	Apr. 15–May 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the Kalskag Controlled Use Area, which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you are not allowed to use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from Apr. 1–Jun. 10;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting;

(C) You may take caribou from a boat moving under power in Unit 18.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear by State registration permit only	Sept. 1–May 31.
Caribou: 3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov. 30	Aug. 1–Mar. 15.
Moose:	
Unit 18—that portion east of a line running from the mouth of the Ishkowik River to the closest point of Dall Lake, then to the easternmost point of Takslesluk Lake, then along the Kuskokwim River drainage boundary to the Unit 18 border, and then north of and including the Eek River drainage. Federal public lands are closed to the taking of moose by all users.	No open season.
Unit 18—south of and including the Kanektok River drainages. Federal public lands are closed to the taking of moose by all users.	No open season.
Unit 18—That portion north and west of a line from Cape Romanzof to Kusilvak Mountain to Mountain Village and excluding all Yukon River drainages upriver from Mountain Village—1 antlered bull.	Aug 10–Sept. 30.
Unit 18—That portion north and west of a line from Cape Romanzof to Kusilvak Mountain to Mountain Village and excluding all Yukon River drainages upriver from Mountain Village—1 moose. The Yukon Delta NWR Manager may restrict the harvest to only antlered bulls after consultation with the ADF&G and the Yukon–Kuskokwim Delta Subsistence Regional Advisory Council chair.	Dec. 20–Jan. 20.
Unit 18—remainder—1 antlered bull	Aug. 10–Sept. 30. Dec. 20–Jan. 10.
Beaver: No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–May 30.
Trapping	
Beaver: No limit	July 1–June 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19A consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19B;

(B) Unit 19B consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19C consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19D consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (m)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19D upstream from the mouth of the Selatna River, but excluding the Selatna and Black River drainages, to a line extending from Dyckman Mountain on the northern Unit 19D boundary southeast to the 1,610 foot crest of Munsatli Ridge, then south along Munsatli Ridge to the 2,981 foot peak of Telida Mountain, then northeast to the intersection of the western boundary of Denali National Preserve with the Minchumina-Telida winter trail, then south along the western boundary of Denali National Preserve to the southern boundary of Unit 19D, you may not use aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in those portions of 19A and 19B downstream of and including the Aniak River drainage if you have obtained a State registration permit prior to hunting.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 19A and 19B—those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit.	Aug. 10–June 30.
Unit 19A—remainder, 19B—remainder, and Unit 19D—1 bear	Aug. 10–June 30.
Caribou:	
Unit 19A—north of Kuskokwim River—1 caribou.	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19A—south of the Kuskokwim River and Unit 19B (excluding rural Alaska residents of Lime Village)—3 caribou; however, no more than 1 caribou may be taken from Aug. 1–Nov 30.	Aug. 1–Apr. 15.
Unit 19C–1 caribou	Aug. 10–Oct. 10.
Unit 19D—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Unit 19D—remainder—1 caribou	Aug. 10–Sept. 30.
Unit 19—Residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep:	
1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 19—Residents of Lime Village only—no individual harvest limit, but a village harvest quota of 28 bulls (including those taken under the State Tier II system). Reporting will be by a community reporting system.	July 1–June 30.
Unit 19A—North of the Kuskokwim River, upstream from but excluding the George River drainage, and south of the Kuskokwim River upstream from and including the Downey Creek drainage, not including the Lime Village Management Area; Federal public lands are closed to the taking of moose.	No open season.
Unit 19A remainder—1 antlered bull by Federal drawing permit or a State Tier II permit. Federal public lands are closed to the taking of moose except by residents of Tuluksak, Lower Kalskag, Upper Kalskag, Aniak, Chuathbaluk, and Crooked Creek hunting under these regulations. The Refuge Manager of the Yukon Delta NWR, in cooperation with the BLM Field Office Manager, will annually establish the harvest quota and number of permits to be issued in coordination with the State Tier II hunt. If the allowable harvest level is reached before the regular season closing date, the Refuge Manager, in consultation with the BLM Field Office Manager, will announce an early closure of Federal public lands to all moose hunting.	Sept. 1–20.
Unit 19B–1 bull with spike-fork or 50-inch antlers or antlers with 4 or more brow tines on one side	Sept. 1–20.
Unit 19C–1 antlered bull	Sept. 1–20.
Uit 19C–1 bull by State registration permit	Jan. 15–Feb. 15.
Unit 19D—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–30.
Unit 19D—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–30. Dec. 1–Feb. 28.
Unit 19D—remainder—1 antlered bull	Sept. 1–30. Dec. 1–15.
Coyote:	
10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe):	
No limit.	July 1–June 30.

Harvest limits	Open season
Lynx:	
2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 19D—10 wolves per day	Aug. 10–Apr. 30.
Unit 19—remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed):	
15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
20 per day, 40 in possession.	Aug. 10–Apr. 30.
Trapping	
Beaver:	
No limit	Nov. 1–Jun. 10.
Coyote:	
No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Mar. 31.
Lynx:	
No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1–Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:	
No limit	Nov. 1–Apr. 30.
Wolverine:	
No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20A consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20B consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20C consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20D consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding, the Banner Creek drainage;

(E) Unit 20E consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20F consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (n)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle benchmark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 of the Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence

taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(D) You may not use any motorized vehicle for hunting from August 5-September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20E bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River 3 miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may only hunt moose by bow and arrow in the Fairbanks Management Area. The Area consists of that portion of Unit 20B bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to Isberg Road, then northeasterly on Isberg Road to Cripple Creek Road, then northeasterly on Cripple Creek Road to the Parks Highway, then north on the Parks Highway to Alder Creek, then westerly to the middle fork of Rosie Creek through section 26 to the Parks Highway, then east along the Parks Highway to Alder Creek, then upstream along Alder Creek to its confluence with Emma Creek, then upstream along Emma Creek to its headwaters, then northerly along the hydrographic divide between Goldstream Creek drainages and Cripple Creek drainages to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to Sheep Creek Road, then north on Sheep Creek Road to Murphy Dome Road, then west on Murphy Dome Road to Old Murphy Dome Road, then east on Old Murphy Dome Road to the Elliot Highway, then south on the Elliot Highway to Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, Davidson Ditch, then southeasterly along the Davidson Ditch to its confluence with the tributary to Goldstream Creek in Section 29, then downstream along the tributary to its confluence with Goldstream Creek, then in a straight line to First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its confluence with Ruby Creek, then upstream along Ruby Creek to Esro Road, then south on Esro Road to Chena Hot Springs Road, then east on Chena Hot Springs Road to Nordale Road, then south on Nordale Road to the Chena River, to its intersection with the Trans-Alaska Pipeline right of way, then southeasterly along the easterly edge of the Trans-Alaska Pipeline right of way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along the Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear from April 15–June 30; you may use bait to hunt wolves on FWS and BLM lands;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap coyotes or wolves in Unit 20E during April and October;

(C) Residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals at the request of the Native Village of Tanana only. This three-moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
Brown Bear:	
Unit 20A—1 bear	Sept. 1–May 31.
Unit 20E—1 bear	Aug. 10–June 30.
Unit 20—remainder—1 bear	Sept. 1–May 31.
Caribou:	
Unit 20E—1 caribou by joint State/Federal registration permit only. Up to 900 caribou may be taken under a State/Federal harvest quota. During the winter season, area closures or hunt restrictions may be announced when Nelchina caribou are present in a mix of more than 1 Nelchina caribou to 15 Fortymile caribou, except when the number of caribou present is low enough that less than 50 Nelchina caribou will be harvested regardless of the mixing ratio for the two herds. The season closures will be announced by the Eastern Interior Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 20F—north of the Yukon River—1 caribou	Aug. 10–Mar. 31.
Unit 20F—east of the Dalton Highway and south of the Yukon River—1 caribou; however, cow caribou may be taken only from Nov. 1–March 31. During the November 1–March 31 season, a State registration permit is required.	Aug. 10–Sept. 20 Nov. 1–Mar. 31.
Moose:	

Harvest limits	Open season
Unit 20A—1 antlered bull	Sept. 1–20.
Unit 20B—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–20. Jan. 10–Feb. 28.
Unit 20B—remainder—1 antlered bull	Sept. 1–20.
Unit 20C—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–30 Nov. 15–Dec. 15.
Unit 20C—remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–30.
Unit 20E—that portion within Yukon-Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 20E—that portion drained by the Forty-mile River (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 bull.	Aug. 24–28 Sept. 1–15.
Unit 20F—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–25.
Unit 20F—remainder—1 antlered bull	Sept. 1–25 Dec. 1–10.
Beaver:	
Unit 20E—Yukon-Charley Rivers National Preserve—6 beaver per season. Meat from harvested beaver must be salvaged for human consumption.	Sept. 20–May 15.
Coyote:	
10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe):	
No limit	July 1–June 30.
Lynx:	
Unit 20A, 20B, and that portion of 20C east of the Teklanika River—2 lynx	Dec. 1–Jan. 31.
Unit 20E—2 lynx	Nov. 1–Jan. 31.
Unit 20—remainder—2 lynx	Dec. 1–Jan. 31.
Muskrat:	
Unit 20E, that portion within Yukon-Charley Rivers National Preserve—No limit	Sept. 20–June 10.
Unit 20—remainder	No open season.
Wolf:	
10 wolves	Aug. 10–Apr. 30.
Wolverine:	
1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed):	
Units 20A, 20B, 20C, 20E, and 20F–15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock and Willow):.	
Unit 20—those portions within 5 miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Units 20A, 20B, 20C, and 20F—No limit	Nov. 1–Apr. 15.
Unit 20E–25 beaver per season. Only firearms may be used during Sept. 20–Oct. 31 and Apr. 16–May 15, to take up to 6 beaver. Only traps or snares may be used Nov. 1–Apr. 15. The total annual harvest limit for beaver is 25, of which no more than 6 may be taken by firearm under trapping or hunting regulations. Meat from beaver harvested by firearm must be salvaged for human consumption.	Sept. 20–May 15.
Coyote:	
Unit 20E—No limit	Oct. 15–Apr. 30.
Unit 20—remainder—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases):	
No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20A, 20B, and 20C east of the Teklanika River—No limit	Dec. 15–Feb. 15.
Unit 20E—No limit; however, no more than 5 lynx may be taken between Nov. 1 and Nov. 30	Nov. 1–Dec. 31.
Unit 20F and 20C—remainder—No limit	Nov. 1–Feb. 28.
Marten:	
No limit	Nov. 1—Feb. 28.
Mink and Weasel:	
No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20E—No limit	Sept. 20–June 10.
Unit 20—remainder—No limit	Nov. 1–June 10.
Otter:	
No limit	Nov. 1–Apr. 15.
Wolf:.	
Unit 20A, 20B, 20C, & 20F—No limit	Nov. 1–Apr. 30.
Unit 20E—No limit	Oct. 1–Apr. 30.
Wolverine:	

Harvest limits	Open season
No limit	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including, the Tozitna River drainage on the north bank, and to, but not including, the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21A consists of the Innoko River drainage upstream from and including the Iditarod River drainage;

(B) Unit 21B consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21C consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21D consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21E consists of the Yukon River drainage from Paimiut upstream to, but not including, the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Unit 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk at 64°52.58′ N. lat., 157°43.10′ W. long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65°28.42′ N. lat., 157°44.89′ W. long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57 N. lat., 156°41 W. long.) at 65°56.66′ N. lat., 156°40.81′ W. long., then easterly to the confluence of the forks of the Dakli River at 66°02.56′ N. lat., 156°12.71′ W. long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66°00.31′ N. lat., 155°18.57′W. long., then southwesterly to the crest of Hochandochtla Mountain at 65°31.87′ N. lat., 154°52.18′ W. long., then southwest to the mouth of Cottonwood Creek at 65°13.00′ N. lat., 156°06.43′ W. long., then southwest to Bishop Rock (Yistletaw) at 64°49.35′ N. lat., 157°21.73′ W. long., then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G-operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) In Unit 21D, you may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear between September 1 and September 25;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Nov. 1–June 10;

(C) The residents of Units 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 21D—1 bear by State registration permit only	Aug. 10–June 30.
Unit 21—remainder—1 bear	Aug. 10–June 30.

Harvest limits	Open season
Caribou:	
Unit 21A—1 caribou	Aug. 10–Sept. 30. Dec. 10–Dec. 20.
Unit 21B—that portion north of the Yukon River and downstream from Ukawutni Creek	No open season.
Unit 21C—the Dulbi and Melozitna River drainages downstream from Big Creek	No open season.
Unit 21B remainder, 21C remainder, and 21E—1 caribou	Aug. 10–Sept. 30.
Unit 21D—north of the Yukon River and east of the Koyukuk River—caribou may be taken during a winter season to be announced by the Refuge Manager of the Koyukuk/Nowitna National Wildlife Refuge Manager and the BLM Central Yukon Field Office Manager, in consultation with ADF&G and the Chairs of the Western Interior Subsistence Regional Advisory Council, and the Middle Yukon and Ruby Fish and Game Advisory Committees.	Winter season to be announced.
Unit 21D—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30
Moose:	
Unit 21B—that part of the Nowitna River drainage downstream from and including the Little Mud River drainage—1 bull. A State registration permit is required from Sept. 5–25. A Federal registration permit is required from Sept. 26–Oct. 1.	Sept. 5–Oct. 1.
Unit 21B—that part of the Nowitna River drainage downstream from and including the Little Mud River drainage—1 antlered bull. A Federal registration permit is required during the 5-day season and will be limited to one per household. The 5-day season may be announced by the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G and the Chairs of the Western Interior Regional Advisory Council and the Ruby Fish and Game Advisory Committee.	Five-day season to be announced between Dec. 1 and March 31.
Unit 21A and 21B—remainder—1 bull	Aug. 20–Sept. 25. Nov. 1–30.
Unit 21C—1 antlered bull	Sept. 5–25.
Unit 21D—Koyukuk Controlled Use Area—1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the Mar. 1–5 season if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 27–Sept. 20 season a State registration permit is required. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Aug. 27–Sept. 20. Mar. 1–5 season to be announced.
Unit 21D—remainder—1 moose; however, antlerless moose may be taken only during Sept. 21–25 and the Mar. 1–5 season if authorized jointly by the Koyukuk/Nowitna National Wildlife Refuge Manager and the Central Yukon Field Office Manager, Bureau of Land Management. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 22–31 and Sept. 5–25 seasons, a State registration permit is required. During the Mar. 1–5 season a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and the Middle Yukon Fish and Game Advisory Committee.	Aug. 22–31. Sept. 5–25. Mar. 1–5 season to be announced.
Unit 21E–1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–10.
Beaver:	
Unit 21E—No Limit	Nov. 1–June 10.
Unit 21—remainder	No open season.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No Limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22A consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and

including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22B consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22C consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22D consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York and St. Lawrence Island;

(E) Unit 22E consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes;

(C) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine;

(D) The taking of one bull moose and one musk ox by the community of Wales is allowed for the celebration of the Kingikmiut Dance Festival under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Wales. The harvest may only occur between January 1 and March 15 in Unit 22E for a bull moose and in Unit 22E for a musk ox. The harvest will count against any established quota for the area;

(E) A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take musk oxen on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must get a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients in the course of a season, but have no more than two harvest limits in his/her possession at any one time, except in Unit 22E where a resident of Wales or Shishmaref acting as a designated hunter may hunt for any number of recipients, but have no more than four harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 22A and 22B—3 bears	July 1–June 30.
Unit 22—remainder	No open season.
Brown Bear:	
Unit 22A, 22B, 22D, and 22E—1 bear by State registration permit only	Aug. 1–May 31.
Unit 22C–1 bear by State registration permit only	Aug. 1–Oct. 31. May 10–25.
Caribou:	
Unit 22B west of Golovin Bay and west of a line along the west bank of the Fish and Niukluk Rivers and excluding the Libby River drainage—5 caribou per day.	Oct. 1–Apr. 30. May 1–Sept. 30, a season may be opened by announcement by the Anchorage Field Office Manager of the BLM, in consultation with ADF&G.
Units 22A, 22B remainder, that portion of Unit 22D in the Kougaruk, Kuzitrin (excluding the Pilgrim River drainage), American, and Agiapuk River Drainages, and Unit 22E, that portion east of and including the Sanaguich River drainage—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 22A—that portion north of and including the Tagoomenik and Shaktoolik River drainages—1 bull. Federal public lands are closed to hunting except by residents of Unit 22A hunting under these regulations.	Aug. 1–Sept. 30.
Unit 22A—that portion in the Unalakleet drainage and all drainages flowing into Norton Sound north of the Golsovia River drainage and south of the Tagoomenik and Shaktoolik River drainages—Federal public lands are closed to the taking of moose.	No open season.
Unit 22A—remainder—1 bull. However, during the period Jan. 1–31, only an antlered bull may be taken. Federal public lands are closed to the taking of moose except by residents of Unit 22A hunting under these regulations.	Aug. 1–Sept. 30. Jan. 1–31.
Unit 22B—west of the Darby Mountains—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by Federally qualified subsistence users hunting under these regulations.	Sept. 1–14.
Unit 22B—west of the Darby Mountains—1 bull by either Federal or State registration permit. Quotas and any needed season closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS, and ADF&G. Federal public lands are closed to the taking of moose except by residents of White Mountain and Golovin hunting under these regulations.	Jan. 1–31.
Unit 22B—remainder—1 bull	Aug. 1–Jan. 31.

Harvest limits	Open season
Unit 22C—1 antlered bull	Sept. 1–14.
Unit 22D—that portion within the Kougarok, Kuzitrin, and Pilgrim River drainages—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations.	Sept. 1–14.
Unit 22D—that portion west of the Tisuk River drainage and Canyon Creek—1 bull by State registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G.	Sept. 1–14.
Unit 22D—that portion west of the Tisuk River drainage and Canyon Creek—1 bull by Federal registration permit. Quotas and any needed closures will be announced by the Anchorage Field Office Manager of the BLM, in consultation with NPS and ADF&G. Federal public lands are closed to the taking of moose except by residents of Units 22D and 22C hunting under these regulations.	Dec. 1–31.
Unit 22D—remainder—1 bull	Aug. 10–Sept. 14. Oct. 1–Nov. 30.
Unit 22D—remainder—1 moose; however, no person may take a calf or a cow accompanied by a calf	Dec. 1–31.
Unit 22D—remainder—1 antlered bull.	Jan. 1–31.
Unit 22E—1 bull. Federal public lands are closed to the taking of moose except by Federally qualified subsistence users hunting under these regulations.	Aug. 1–Dec. 31.
Musk ox:	
Unit 22B—1 bull by Federal permit or State Tier II permit. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and the BLM Field Office Manager.	Aug. 1–Mar. 15.
Unit 22D—that portion west of the Tisuk River drainage and Canyon Creek—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Sept. 1–Mar. 15.
Unit 22D—remainder—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 22E—1 musk ox by Federal permit or State permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 22—remainder	No open season.
Beaver:	
Unit 22A, 22B, 22D, and 22E—50 beaver	Nov. 1–June 10.
Unit 22—remainder	No open season.
Coyote: Federal public lands are closed to all taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22A and 22B—No limit	Nov. 1–Apr. 15.
Unit 22—remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 3 wolverines	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow):	
Unit 22A and 22B east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22E—20 per day, 40 in possession	July 15–May 15.
Unit 22—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.

Trapping

Beaver:	
Unit 22A, 22B, 22D, and 22E—50 beaver	Nov. 1–June 10.
Unit 22C	No open season.
Coyote: Federal public lands are closed to all taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.

Harvest limits	Open season
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area for the period August 25–September 15. The Area consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek. This closure does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service.

(B) [Reserved]

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. Aircraft may not be used in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 23;

(B) In addition to other restrictions on method of take found in this § __.26, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1–Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipients' harvest limits in his/her possession at the same time;

(E) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine;

(F) A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take musk oxen on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must get a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients, but have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 23—1 bear by State registration permit	Aug. 1–May 31.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—south of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep is 21, of which 15 may be rams and 6 may be ewes. Federal public lands are closed to the taking of sheep except by Federally qualified subsistence users hunting under these regulations.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 23—north of Rabbit Creek, Kyak Creek, and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl or larger horn	Aug. 10–Sept. 20.
Unit 23, remainder (Schwatka Mountains)—1 sheep	Oct. 1–Apr. 30.

Harvest limits	Open season
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a calf or a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a calf or a cow accompanied by a calf.	Aug. 1–Mar. 31.
Unit 23—remainder—1 moose; no person may take a calf or a cow accompanied by a calf	Aug. 1–Mar. 31.
Musk ox:	
Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 musk ox by Federal permit or State Tier II permit; however, cows may only be taken during the period Jan. 1–Mar. 15. Federal public lands are closed to the taking of musk ox except by Federally qualified subsistence users hunting under these regulations. Annual harvest quotas and any needed closures will be announced by the Superintendent of the Western Arctic National Parklands, in consultation with ADF&G and BLM.	Aug. 1–Mar. 15.
Unit 23—Cape Krusenstern National Monument—1 bull by Federal permit. Annual harvest quotas and any needed closures will be announced by the Superintendent of Western Arctic National Parklands. Cape Krusenstern National Monument is closed to the taking of musk oxen except by resident zone community members with permanent residence within the Monument or the immediately adjacent Napaktuktuk Mountain area, south of latitude 67°05′N and west of longitude 162°30′W hunting under these regulations.	Aug. 1–Mar. 15.
Unit 23—remainder	No open season.
Beaver: No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra) No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Oct. 1–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Muskrat: No limit	July 1–June 30
Grouse (Spruce and Ruffed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	July 1–June 30.
Unit 23—remainder—30 beaver	July 1–June 30.
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage:

(A) Unit 24A consists of the Middle Fork of the Koyukuk River drainage upstream from but not including the Harriet Creek and North Fork Koyukuk River drainages, to the South Fork of the Koyukuk River drainage upstream from Squaw Creek, the Jim River Drainage, the Fish Creek drainage upstream from and including the Bonanza Creek drainage, to the 1,410′ ft. peak of the hydrologic divide with the northern fork of the Kanuti Chalatna River at N. Lat. 66°33.303′ W. Long. 151°03.637′ and following the unnamed northern fork of the Kanuti Chalatna Creek to the confluence of the southern fork of the Kanuti Chalatna River at N. Lat. 66°27.090′ W. Long. 151°23.841′, 4.2 miles SSW (194 degrees true) of Clawanmenka Lake and following the unnamed southern fork of the Kanuti Chalatna Creek to the hydrologic divide with the Kanuti River drainage at N. Lat. 66°19.789′ W. Long. 151°10.102′, 3.0 miles ENE (79 degrees true) from the 2,055 ft. peak on that divide, and the Kanuti River drainage upstream from the confluence of an unnamed creek at N. Lat. 66°13.050′ W. Long. 151°05.864′, 0.9 miles SSE (155 degrees true) of a 1,980 ft. peak on that divide, and following that unnamed creek to the Unit 24 boundary on the hydrologic divide to the Ray River drainage at N. Lat. 66°03.827′ W. Long. 150°49.988′ at the 2,920 ft. peak of that divide;

(B) Unit 24B consists of the Koyukuk River Drainage upstream from Dog Island to the Subunit 24A boundary;

(C) Unit 24C consists of the Hogatza River Drainage, the Koyukuk River Drainage upstream from Batza River on the north side of the Koyukuk River and upstream from and including the Indian River Drainage on the south side of the Koyukuk River to the Subunit 24B boundary;

(D) Unit 24D consists of the remainder of Unit 24.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles, or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use

snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, and Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Unit 21s and 24 bounded by a line from the north bank of the Yukon River at Koyukuk at 64°52.58′ N. lat., 157°43.10′ W. long., then northerly to the confluences of the Honhosa and Kateel Rivers at 65°28.42′ N. lat., 157°44.89′ W. long., then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.) at 65°56.66′ N. lat., 156°40.81′ W. long., then easterly to the confluence of the forks of the Dakli River at 66°02.56′ N. lat., 156°12.71′ W. long., then easterly to the confluence of McLanes Creek and the Hogatza River at 66°00.31′ N. lat., 155°18.57′ W. long., then southwesterly to the crest of Hochandochtla Mountain at 65°31.87′ N. lat., 154°52.18′ W. long., then southwest to the mouth of Cottonwood Creek at 65°13.00′ N. lat., 156°06.43′ W. long., then southwest to Bishop Rock (Yistletaw) at 64°49.35′ N. lat., 157°21.73′ W. long., then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. You may not use aircraft in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears. However, this prohibition does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30; and in the Koyukuk Controlled Use Area, you may also use bait to hunt black bear between September 1 and September 25;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 24—1 bear by State registration permit	Aug. 10–June 30.
Caribou:	
Unit 24—that portion south of the south bank of the Kanuti River, upstream from and including that portion of the Kanuti-Kilolitna River drainage, bounded by the southeast bank of the Kodosin-Nolitna Creek, then downstream along the east bank of the Kanuti-Kilolitna River to its confluence with the Kanuti River—1 caribou.	Aug. 10–Mar. 31.
Unit 24—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24A and 24B—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24A and 24B—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 24A—except that portion within the Gates of the Arctic National Park—1 ram with 7/8 curl or larger horn by Federal registration permit only.	Aug. 20–Sept. 30.
Unit 24—remainder—1 ram with 7/8 curl or larger horn	Aug. 10–Sept. 20.
Moose:	
Unit 24A–1 antlered bull by Federal registration permit	Aug. 25–Oct. 1.
Unit 24B—that portion within the John River Drainage—1 moose	Aug. 1–Dec. 31.
Unit 24B—all drainages to the north of the Koyukuk River, except the John River drainage—1 moose; however, antlerless moose may be taken only during the periods Sept. 27–Oct. 1 and Mar. 1–5, if authorized jointly by the Kanuti National Wildlife Refuge Manager, the BLM Field Office Manager, and Gates of the Arctic National Park Superintendent. A Federal registration permit is required for the Sept. 26–Oct. 1 and Mar. 1–5 seasons. Harvest of cows accompanied by calves is prohibited. The announcement will be made after consultation with the ADF&G Area Biologist and Chairs of the Western Interior Alaska Subsistence Regional Advisory Council, the Gates of the Arctic Subsistence Resource Commission, and the Koyukuk River Fish and Game Advisory Committee. Federal public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by Federally qualified subsistence users of Unit 24, Koyukuk, and Galena hunting under these regulations.	Aug. 25–Oct. 1. Mar. 1–5 season to be announced.
Unit 24B—remainder 1 antlered bull. A Federal registration permit is required for the Sept. 26–Oct. 1 season. Federal public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by Federally qualified subsistence users of Unit 24, Koyukuk, and Galena hunting under these regulations.	Aug. 25–Oct. 1.

Harvest limits	Open season
Unit 24C and 24D—that portion within the Koyukuk Controlled Use Area and Koyukuk National Wildlife Refuge—1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the Mar. 1–5 season, if authorized by announcement by the Koyukuk/Nowitna National Wildlife Refuge Manager and BLM Field Office Manager Central Yukon Field Office Manager. Harvest of cow moose accompanied by calves is prohibited. During the Aug. 27–Sept. 20 season, a State registration permit is required. During the Mar. 1–5 season, a Federal registration permit is required. Announcement for the antlerless moose seasons and cow quotas will be made after consultation with the ADF&G Area Biologist and the Chairs of the Western Interior Alaska Subsistence Regional Advisory Council, and the Middle Yukon and Koyukuk River Fish and Game Advisory Committees.	Aug. 27–Sept. 20. Mar. 1–5 to be announced.
Unit 24C—remainder and Unit 24D—remainder—1 antlered bull. During the Sept. 5—Sept. 25 season, a State registration permit is required.	Aug. 25–Oct. 1.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 15 wolves; however, no more than 5 wolves may be taken prior to Nov. 1	Aug. 10–Apr. 30.
Wolverine: 5 wolverine; however, no more than 1 wolverine may be taken prior to Nov. 1	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25A consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25B consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25C consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20E boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25D consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25A north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30 and between August 1 and September 25; you may use bait to hunt wolves on FWS and BLM lands;

(B) You may take caribou and moose from a boat moving under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25D west provided that:

(*1*) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s);

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25D west;

(*4*) Any moose taken under this provision counts against the annual quota of 60 bulls.

Harvest limits	Open season
Hunting	
Black Bear:	
3 bears	July 1–June 30.
or 3 bears by State community harvest permit	July 1–June 30.
Brown Bear:	
Unit 25A and 25B—1 bear	Aug. 10–June 30.
Unit 25C—1 bear	Sept. 1–May 31.
Unit 25D—1 bear	July 1–June 30.
Caribou:	
Unit 25C—that portion west of the east bank of the mainstem of Preacher Creek to its confluence with American Creek, then west of the east bank of American Creek—1 caribou; however, cow caribou may be taken only from Nov. 1–Mar. 31. However, during the November 1–March 31 season, a State registration permit is required.	Aug. 10–Sept. 20. Nov. 1–Mar. 31.
Unit 25C—remainder—1 caribou by joint State/Federal registration permit only. Up to 600 caribou may be taken under a State/Federal harvest quota. The season closures will be announced by the Eastern Interior Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 25D—that portion of Unit 25D drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30. Dec. 1–31.
Unit 25A, 25B, and Unit 25D—remainder—10 caribou	July 1–Apr. 30.
Sheep:	
Unit 25A—that portion within the Dalton Highway Corridor Management Area	No open season
Units 25A—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Federal public lands, except the drainages of Red Sheep Creek and Cane Creek during the period of Aug. 10–Sept. 20, are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkyitsik hunting under these regulations.	Aug. 10–Apr. 30.
Unit 25A—remainder—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25A—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–10.
Unit 25B—that portion within Yukon-Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 25B—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–10.
Unit 25B—that portion, other than Yukon-Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–30. Dec. 1–15.
Unit 25B—remainder—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–15.
Unit 25C—1 antlered bull	Sept. 1–15.
Unit 25D (west)—that portion lying west of a line extending from the Unit 25D boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth of Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzic River, then upstream along the west bank of the Hadweenzic River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25D boundary—1 bull by a Federal registration permit. Permits will be available in the following villages: Beaver (25 permits), Birch Creek (10 permits), and Stevens Village (25 permits). Permits for residents of 25D (west) who do not live in one of the three villages will be available by contacting the Yukon Flats National Wildlife Refuge Office in Fairbanks or a local Refuge Information Technician. Moose hunting on public land in Unit 25D (west) is closed at all times except for residents of Unit 25D (west) hunting under these regulations. The moose season will be closed by announcement of the Refuge Manager Yukon Flats NWR when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25D (west).	Aug. 25–Feb. 28.
Unit 25D—remainder—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–20.
Beaver:	
Unit 25A, 25B, and 25D—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25C	No open season.
Coyote: 10 coyotes	Aug. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe): No limit	July 1–June 30.

Harvest limits	Open season
Lynx:	
Unit 25C—2 lynx	Dec. 1–Jan. 31.
Unit 25—remainder—2 lynx	Nov. 1–Feb. 28.
Muskrat:	
Unit 25B and 25C, that portion within Yukon-Charley Rivers National Preserve—No limit	Nov. 1–June 10.
Unit 25—remainder	No open season.
Wolf:	
Unit 25A—No limit	Aug. 10–Apr. 30.
Unit 25—remainder—10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Ruffed, and Sharp-tailed):	
Unit 25C—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock and Willow):	
Unit 25C—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 25C—No limit	Nov. 1–Apr. 15.
Unit 25—remainder—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine:	
Unit 25C—No limit	Nov. 1–Feb. 28.
Unit 25—remainder—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border, including the Firth River drainage within Alaska:

(A) Unit 26A consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26B consists of that portion of Unit 26 east of Unit 26A, west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26C consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose during the periods July 1–Sept. 14 and Jan. 1–Mar. 31 in Unit 26A; however, this does not apply to transportation of moose hunters, their gear, or moose parts by aircraft between publicly owned airports;

(B) You may not use firearms, snowmobiles, licensed highway vehicles or motorized vehicles, except aircraft and boats, in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending 5 miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor only for subsistence taking of wildlife.

(iii) You may hunt brown bear in Unit 26A by State registration permit in lieu of a resident tag if you have obtained a State registration permit prior to hunting. You may not use aircraft in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 26;

(B) In addition to other restrictions on method of take found in this § ____.26, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take sheep or musk ox on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally qualified subsistence user (recipient) may designate another Federally qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for only one recipient in the course of a season and may have both his and the recipient's harvest limits in his/her possession at the same time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26A—1 bear by State registration permit	July 1–May 31.
Unit 26B—1 bear	Sept. 1–May 31.
Unit 26 C—1 bear	Aug. 10–June 30.
Caribou:	
Unit 26A—10 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Unit 26B—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26C—10 caribou per day	July 1–Apr. 30.
(You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.).	
Sheep:	
Unit 26A and 26B—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person, no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26A—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26A—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 sheep by Federal registration permit. The total allowable harvest of sheep for the DeLong Mountains is 8, of which 5 may be rams and 3 may be ewes.	Aug. 10–April 30. If the allowable harvest levels are reached before the regular season closing date, the Superintendent of the Western Arctic National Parklands will announce an early closure.
Unit 26B—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl or larger horn by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 26A—remainder and 26B—remainder—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl or larger horn.	Aug. 10–Sept. 20.
Unit 26C—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl or larger horn. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26A—that portion of the Colville River drainage upstream from and including the Anaktuvuk River drainage—1 bull.	Aug. 1–Sept. 14.
Unit 26A—that portion of the Colville River drainage upstream from and including the Anaktuvuk River drainage—1 moose; however, you may not take a calf or a cow accompanied by a calf.	Feb. 15–Apr. 15.
Unit 26A—that portion west of 156° 00′W. longitude excluding the Colville River drainage—1 moose, however, you may not take a calf or a cow accompanied by a calf.	July 1–Sept. 14.
Unit 26A—remainder—1 bull	Aug. 1–Sept. 14.
Unit 26B, excluding the Canning River drainage—1 bull	Sept. 1–14.
Units 26B remainder and 26C—1 moose by Federal registration permit by residents of Kaktovik only. The harvest quota is 3 moose (2 bulls and 1 of either sex), provided that no more than 2 bulls may be harvested from Unit 26C and cows may not be harvested from Unit 26C. You may not take a cow accompanied by a calf. Only 3 Federal registration permits will be issued. Federal public lands are closed to the taking of moose except by a Kaktovik resident holding a Federal registration permit and hunting under these regulations.	July 1–Mar. 31.
Musk ox: Unit 26C—1 bull by Federal registration permit only. The number of permits that may be issued only to the residents of the village of Kaktovik will not exceed three percent (3%) of the number of musk oxen counted in Unit 26C during a pre-calving census. Public lands are closed to the taking of musk ox, except by rural Alaska residents of the village of Kaktovik hunting under these regulations	July 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):.	
Unit 26A and 26B—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26C—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Aug. 10–Apr. 30.
Wolverine: 5 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock and Willow): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.

Harvest limits	Open season
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

■ 5. In subpart D of 36 CFR part 242 and 50 CFR part 100, §§ ____.27(i)(10) is revised to read as follows:

§ ____.27 Subsistence taking of fish.

* * * * *

(i) * * *

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51.10′ N. Lat.) and a line extending south from Cape Fairfield (148°50.25′ W. Long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Cook Inlet Area. If you take rainbow/steelhead trout incidentally in subsistence net fisheries, you may retain them for subsistence purposes, unless otherwise prohibited or provided for in this section. With jigging gear through the ice or rod and reel gear in open waters there is an annual limit of 2 rainbow/steelhead trout 20 inches or longer, taken from Kenai Peninsula freshwaters.

(ii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iii) You may not take grayling or burbot for subsistence purposes.

(iv) You may only take salmon, trout, Dolly Varden, and other char under authority of a Federal subsistence fishing permit. Seasons, harvest and possession limits, and methods and means for take are the same as for the taking of those species under Alaska sport fishing regulations (5 AAC 56) unless modified herein. Additionally for Federally managed waters of the Kasilof and Kenai River drainages:

(A) Residents of Ninilchik may take sockeye, Chinook, coho, and pink salmon through a dip net and a rod and reel fishery on the upper mainstem of the Kasilof River from Federal regulatory markers on both sides of the river below the outlet of Tustumena Lake downstream to markers on both sides of the river at Silver Salmon Rapids. Residents using rod and reel gear may fish with up to 2 baited single or treble hooks. Other species incidentally caught during the dip net and rod and reel fishery may be retained for subsistence uses, including up to 200 rainbow/steelhead trout taken through August 15. After 200 rainbow/steelhead trout have been taken in this fishery or after August 15, all rainbow/steelhead trout must be released unless otherwise provided for in this section. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location.

(*1*) Fishing for sockeye and Chinook salmon will be allowed from June 16–August 15.

(*2*) Fishing for coho and pink salmon will be allowed from June 16–October 31.

(*3*) Fishing for sockeye, Chinook, coho, or pink salmon will end prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(*4*) Each household may harvest their annual sockeye, Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or a rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery will be included as part of each household's annual limit for the Kasilof River.

(*i*) For sockeye salmon—annual total harvest limit of 4,000; annual household limits of 25 for each permit holder and 5 additional for each household member;

(*ii*) For Chinook salmon—annual harvest limit of 500; annual household limit of 10 for each permit holder and 2 additional for each household member;

(*iii*) For coho salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member; and

(*iv*) For pink salmon—annual total harvest limit of 500; annual household limits of 10 for each permit holder and 2 additional for each household member.

(B) In addition to the dip net and rod and reel fishery on the upper mainstem of the Kasilof River described under paragraph (i)(10)(iv)(A) of this section, residents of Ninilchik may also take coho and pink salmon through a rod and reel fishery in Tustumena Lake. Before leaving the fishing site, all retained salmon must be recorded on the permit and marked by removing the dorsal fin. Seasons, areas, harvest and possession limits, and methods and means for take are the same as for the taking of these species under Alaska sport fishing regulations (5 AAC 56), except for the following methods and means, and bag and possession limits:

(*1*) Fishing will be allowed with up to 2 baited single or treble hooks.

(*2*) For coho salmon 16 inches and longer, the daily bag and possession limits are 4 per day and 4 in possession.

(*3*) For pink salmon 16 inches and longer, daily bag and possession limits are 6 per day and 6 in possession.

(C) Resident fish species including lake trout, rainbow/steelhead trout, and Dolly Varden/Arctic char may be harvested in Federally managed waters of the Kasilof River drainage. Resident fish species harvested in the Kasilof River drainage under the conditions of a Federal subsistence permit must be marked by removing the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site.

(*1*) Lake trout may be harvested with rod and reel gear the entire year. For fish 20 inches or longer, daily bag and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily bag and possession limits are 15 per day and 15 in possession.

(*2*) Dolly Varden/Arctic char may be harvested with rod and reel gear the entire year. In flowing waters, daily bag and possession limits are 4 per day and 4 in possession. In lakes and ponds, daily bag and possession limits are 10 fish per day and 10 in possession.

(*3*) Rainbow trout may be harvested with rod and reel gear the entire year for fish less than 20 inches in length. In flowing waters, daily bag and possession limits are 2 per day and 2 in possession. In lakes and ponds, daily bag and possession limits are 5 per day and 5 in possession.

(*4*) You may fish in Tustumena Lake with a gillnet, no longer than 10 fathoms, fished under the ice or jigging gear used through the ice under authority of a Federal subsistence fishing permit. The total annual harvest quota for this fishery is 200 lake trout, 200 rainbow trout, and 500 Dolly Varden/Arctic char. The use of a gillnet will be prohibited by special action after the harvest quota of any species has been met. For the jig fishery, annual household limits are 30 fish in any

combination of lake trout, rainbow trout or Dolly Varden/Arctic char.

(*i*) You may harvest fish under the ice only in Tustumena Lake. Gillnets are not allowed within a ¼ mile radius of the mouth of any tributary to Tustumena Lake, or the outlet of Tustumena Lake.

(*ii*) Permits will be issued by the Federal fisheries manager or designated representative, and will be valid for the winter season, unless the season is closed by special action.

(*iii*) All harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing location. Reported information must include number of each species caught; number of each species retained; length, depth (number of meshes deep) and mesh size of gillnet fished; location fished; and total hours fished. Harvest data on the permit must be filled out before transporting fish from the fishing area.

(*iv*) The gillnet must be checked at least once in every 48-hour period.

(*v*) For unattended gear, the permittee's name and address must be plainly and legibly inscribed on a stake at one end of the gillnet.

(*vi*) Incidentally caught fish may be retained and must be recorded on the permit.

(*vii*) Failure to return the completed harvest permit by May 31 may result in issuance of a violation notice and/or denial of a future subsistence permit.

(D) Residents of Hope, Cooper Landing, and Ninilchik may take sockeye salmon through a dip net and a rod and reel fishery at one specified site on the Russian River, and sockeye, late-run Chinook, coho, and pink salmon through a dip net/rod and reel fishery at two specified sites on the Kenai River below Skilak Lake and as provided in this section. For Ninilchik residents, salmon taken in the Kasilof River Federal subsistence dip net and a rod and reel fishery will be included as part of each household's annual limit for the Kenai and Russian Rivers' dip net and rod and reel fishery. For both Kenai River fishing sites below Skilak Lake, incidentally caught fish may be retained for subsistence uses, except for early-run Chinook salmon (unless otherwise provided for), rainbow trout 18 inches or longer, and Dolly Varden 18 inches or longer, which must be released. For the Russian River fishing site, incidentally caught fish may be retained for subsistence uses, except for early- and late-run Chinook salmon, coho salmon, rainbow trout, and Dolly Varden, which must be released. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Harvests must be reported within 72 hours to the Federal fisheries manager upon leaving the fishing site, and permits must be returned to the manager at the end of the season. Chum salmon that are retained are to be included within the annual limit for sockeye salmon. Only residents of Hope and Cooper Landing may retain incidentally caught resident species.

(*1*) The household dip net and rod and reel gear fishery is limited to three sites:

(*i*) At the Kenai River Moose Meadows site, dip netting and rod and reel gear are allowed only from a boat from Federal regulatory markers on both banks of the Kenai River at about river mile 29 downstream approximately 2.5 miles to markers on both banks of the Kenai River at about river mile 26.5. Residents using rod and reel gear at this fishery site may fish with up to 2 baited single or treble hooks from June 16–August 31.

(*ii*) At the Kenai River Mile 48 site, dip netting is allowed while either standing in the river or from a boat, from Federal regulatory markers on both banks of the Kenai River at about river mile 48 (approximately 2 miles below the outlet of Skilak Lake) downstream approximately 2.5 miles to markers on both banks of the Kenai River at about river mile 45.5. Residents using rod and reel gear at this fishery site may fish with up to 2 baited single or treble hooks from June 16–August 31.

(*iii*) At the Russian River Falls site, dip netting is allowed from a Federal regulatory marker near the upstream end of the fish ladder at Russian River Falls downstream to a Federal regulatory marker approximately 600 yards below Russian River Falls. Residents using rod and reel gear at this fishery site may not fish with bait at any time.

(*2*) Fishing seasons are as follows:

(*i*) For sockeye salmon at all fishery sites: June 15–August 15;

(*ii*) For late-run Chinook, pink, and coho salmon at both Kenai River fishery sites only: July 16–September 30; and

(*iii*) Fishing for sockeye, late-run Chinook, coho, or pink salmon will close by special action prior to regulatory end dates if the annual total harvest limit for that species is reached or superseded by Federal special action.

(*3*) Each household may harvest their annual sockeye, late-run Chinook, coho, or pink salmon limits in one or more days, and each household member may fish with a dip net or rod and reel during this time. Salmon taken in the Kenai River system dip net and rod and reel fishery by Ninilchik households will be included as part of those households' annual limits for the Kasilof River.

(*i*) For sockeye salmon—annual total harvest limit of 4,000 (including any retained chum salmon); annual household limits of 25 for each permit holder and 5 additional for each household member;

(*ii*) For late-run Chinook salmon—annual total harvest limit of 1,000; annual household limits of 10 for each permit holder and 2 additional for each household member;

(*iii*) For coho salmon—annual total harvest limit of 3,000; annual household limits of 20 for each permit holder and 5 additional for each household member; and

(*iv*) For pink salmon—annual total harvest limit of 2,000; annual household limits of 15 for each permit holder and 5 additional for each household member.

(E) For Federally managed waters of the Kenai River and its tributaries, in addition to the dip net and rod and reel fisheries on the Kenai and Russian rivers described under paragraph (i)(10)(iv)(D) of this section, residents of Hope, Cooper Landing, and Ninilchik may take sockeye, Chinook, coho, pink, and chum salmon through a separate rod and reel fishery in the Kenai River drainage. Before leaving the fishing site, all retained fish must be recorded on the permit and marked by removing the dorsal fin. Permits must be returned to the Federal fisheries manager at the end of the fishing season. Incidentally caught fish, other than salmon, are subject to regulations found in paragraphs (i)(10)(iv)(F) and (G) of this section. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means for take are the same as for the taking of these salmon species under State of Alaska fishing regulations (5 AAC 56), except for the following bag and possession limits:

(*1*) In the Kenai River below Skilak Lake, fishing is allowed with up to 2 baited single or treble hooks from June 16–August 31.

(*2*) For early-run Chinook salmon less than 44 inches or 55 inches or longer, daily bag and possession limits are 2 per day and 2 in possession.

(*3*) For late-run Chinook salmon 20 inches and longer, daily bag and possession limits are 2 per day and 2 in possession.

(*4*) Annual harvest limits for any combination of early- and late-run Chinook salmon are 4 for each permit holder.

(*5*) For other salmon 16 inches and longer, the combined daily bag and

possession limits are 6 per day and 6 in possession, of which no more than 4 per day and 4 in possession may be coho salmon, except for the Sanctuary Area and Russian River, for which no more than 2 per day and 2 in possession may be coho salmon.

(F) For Federally managed waters of the Kenai River and its tributaries below Skilak Lake outlet at river mile 50, residents of Hope and Cooper Landing may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means for take are the same as for the taking of these resident species under State of Alaska fishing regulations (5 AAC 56), except for the following bag and possession limits:

(*1*) For lake trout 20 inches or longer, daily bag and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily bag and possession limits are 15 per day and 15 in possession.

(*2*) In flowing waters, daily bag and possession limits for Dolly Varden/Arctic char less than 18 inches in length are 1 per day and 1 in possession. In lakes and ponds, daily bag and possession limits are 2 per day and 2 in possession. Only 1 of these fish can be 20 inches or longer.

(*3*) In flowing waters, daily bag and possession limits for rainbow/steelhead trout are 1 per day and 1 in possession and must be less than 18 inches in length. In lakes and ponds, daily bag and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(G) For Federally managed waters of the upper Kenai River and its tributaries above Skilak Lake outlet at river mile 50, residents of Hope and Cooper Landing may take resident fish species including lake trout, rainbow trout, and Dolly Varden/Arctic char with jigging gear through the ice or rod and reel gear in open waters. Resident fish species harvested in the Kenai River drainage under the conditions of a Federal subsistence permit must be marked by removal of the dorsal fin immediately after harvest and recorded on the permit prior to leaving the fishing site. Seasons, areas (including seasonal riverbank closures), harvest and possession limits, and methods and means for take are the same as for the taking of these resident species under Alaska fishing regulations (5 AAC 56), except for the following bag and possession limits:

(*1*) For lake trout 20 inches or longer, daily bag and possession limits are 4 per day and 4 in possession. For fish less than 20 inches, daily bag and possession limits are 15 fish per day and 15 in possession. For Hidden Lake, daily limits are 4 per day and 4 in possession regardless of size.

(*2*) In flowing waters, daily bag and possession limits for Dolly Varden/Arctic char less than 16 inches are 1 per day and 1 in possession. In lakes and ponds, daily bag and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(*3*) In flowing waters, daily bag and possession limits for rainbow/steelhead trout are 1 per day and 1 in possession and it must be less than 16 inches in length. In lakes and ponds, daily bag and possession limits are 2 per day and 2 in possession of which only 1 fish 20 inches or longer may be harvested daily.

(*v*) You may only take smelt with dip nets in fresh water from April 1–June 15. There are no harvest or possession limits for smelt.

(*vi*) Gillnets may not be used in fresh water, except for the taking of whitefish in the Tyone River drainage and as otherwise provided for in this Cook Inlet section.

* * * * *

Dated: November 20, 2007.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. E7–24571 Filed 12–26–07; 8:45 am]

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Federal Register

Thursday,

December 27, 2007

Part III

Department of Housing and Urban Development

2 CFR Part 2424

24 CFR Parts 5, 6, et al.

Implementation of OMB Guidance on Nonprocurement Debarment and Suspension; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2 CFR Part 2424

24 CFR Parts 5, 6, 8, 15, 21, 24, 25, 26, 84, 85, 91, 92, 103, 107, 135, 200, 202, 203, 206, 245, 291, 401, 402, 570, 572, 585, 941, 954, 982, 983, 1000, 1003, 1005, 1006, 3282, and 3500

[Docket No. FR–5071–F–02]

RIN 2501–AD29

Implementation of OMB Guidance on Nonprocurement Debarment and Suspension

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: Following publication of a March 23, 2007, proposed rule, this final rule relocates HUD's regulations governing nonprocurement debarment and suspension to a new part in title 2 of the Code of Federal Regulations (CFR). The relocation is part of a governmentwide initiative to create one location where the public can access both the Office of Management and Budget (OMB) guidance for grants and agreements and the associated Federal agency implementing regulations. The new part adopts the OMB guidance on nonprocurement debarment and suspension and supplements it with HUD-specific clarifications and additions. The rule also makes conforming changes to HUD regulations referencing the nonprocurement debarment and suspension regulations. This regulatory action is an administrative simplification that would make no substantive change in HUD policy or procedures for nonprocurement debarment and suspension. This final rule takes into consideration the one public comment received on the March 23, 2007, proposed rule. To conform the rule to reflect the establishment of HUD's Office of Hearings and Appeals and more closely track the language of the OMB guidelines, this final rule adopts the proposed rule with minor changes.

DATES: *Effective Date:* January 28, 2008.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Acting Associate General Counsel, Office of Program Enforcement, Administrative Proceedings Division, Department of Housing and Urban Development, 1250 Maryland Avenue, SW., Suite 200, Washington DC 20024–0500; telephone number (202) 708–2350 (this is not a toll-free number); e-mail address *DaneM.Narode@hud.gov.* Hearing- or speech-impaired individuals may access the telephone number listed above by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

OMB is undertaking to restructure the framework of Federal government policies for grants, other financial assistance, and nonprocurement agreements in an effort to make it easier for applicants and recipients to locate and comply with such policies. On May 11, 2004 (69 FR 26276), OMB established a new title 2 of the CFR, which is comprised of two subtitles. Subtitle A, entitled ''Government-wide Grants and Agreements,'' contains OMB policy guidance to Federal agencies on grants and agreements. Subtitle B, entitled ''Federal Agency Regulations for Grants and Agreements,'' will contain the regulations of Federal agencies implementing the OMB guidance, as it applies to grants and other financial assistance agreements and nonprocurement transactions.

On August 31, 2005, at 70 FR 51862, OMB continued its initiative to create a single location where OMB guidance and Federal agency implementing regulations could be found by incorporating guidance documents into 2 CFR, subtitle A, and making conforming changes. OMB is engaging in a process by which it will relocate and revise guidance documents including, but not limited to, OMB circulars and OMB guidance for Federal agencies on governmentwide debarment and suspension.

On March 23, 2007, at 72 FR 14015, HUD published a proposed rule to adopt the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by HUD's policies and procedures for nonprocurement debarment and suspension. HUD's rule proposed to create a new part at 2 CFR part 2424 that adopts, by reference, the baseline provisions of 2 CFR part 180 and includes HUD-specific supplements, clarifications, and modifications to 2 CFR part 180. Accordingly, HUD's regulations at 24 CFR part 24, entitled ''Government-wide Debarment and Suspension (Nonprocurement),'' are being supplanted by 2 CFR part 2424. It is important to note that the OMB rule promulgating 2 CFR 180 (70 FR 51863, August 31, 2005) re-codified the existing common rule on nonprocurement debarment and suspension issued by 33 Federal agencies, including HUD, on November 26, 2003 (68 FR 66534). As a result, this rule does not change existing HUD policy or procedures.

To reflect the new location of HUD's suspension and debarment regulations at 2 CFR part 2424, the March 23, 2007, rule proposed numerous conforming regulatory changes throughout HUD's regulation in title 24 of the CFR. Various parts of title 24 have cross-references to the nonprocurement suspension and debarment provisions contained at 24 CFR part 24; therefore, the rule proposed to replace them with references to 2 CFR part 2424. HUD also proposed to revise references to the Drug Free Workplace Act, which were originally included within 24 CFR part 24. Neither the conforming regulatory changes nor the revision of references to the Drug Free Workplace Act have substantive effect on the Department's regulations.

HUD's March 23, 2007, rule also proposed revisions to its Limited Denial of Participation (LDP) regulations currently codified at 24 CFR part 24. These revisions included changes to account for the relocation of the nonprocurement debarment and suspension rules, as well as to clarify that included within the causes for imposing an LDP under new 2 CFR 2424.1110(a)(8) are any acts or omissions that would be cause for debarment under 2 CFR 180.800. HUD also proposed amending 2 CFR 2424.1130 by adding paragraph (c) to specify that the applicable factors found in 2 CFR 180.860 may be considered by the Departmental official or designee in deciding whether to terminate, modify, or affirm an LDP. Finally, HUD proposed clarifying changes to 24 CFR 5.105, to add the term ''participant,'' to 24 CFR 21.605(a)(2); to refer to OMB Circular A–102, as implemented at 24 CFR part 85; and to amend 24 CFR 84.13 by removing HUD as a regulated entity under part 84.[1] This final rule adopts these changes without further modification.

In this final rule, HUD has also removed the delegation of authority to the Director of the Departmental Enforcement Center from proposed 24 CFR 2424.137. The section now found in the final rule mirrors HUD's previous promulgation of the nonprocurement suspension and debarment rule. HUD has made slight modifications to 24 CFR 2424.747 and 2424.842 in order to more closely track the language of the OMB guidelines. HUD has also modified 24 CFR 2424.952 to reflect the establishment of HUD's Office of Hearings and Appeals and the dissolution of HUD's Board of Contract

[1] For a more detailed description of the proposed regulatory changes, please see the preamble to the March 23, 2007, proposed rule.

Appeals. None of the above changes make substantial modifications to the rule as proposed, or to HUD debarment and suspension practice.

II. Summary of the Public Comment Received on the March 23, 2007, Proposed Rule

This final rule follows publication of the March 23, 2007, proposed rule and takes into consideration the one public comment received on the proposed rule. After careful consideration of the issue raised by the commenter, HUD has decided to adopt the proposed rule with minor changes, as discussed above.

The public comment period on the March 23, 2007, proposed rule closed on May 22, 2007. HUD received one comment. The comment, from a national nonprofit organization that represents housing and redevelopment officials, expressed concern about the LDP sanction as a HUD-specific procedure and requested that HUD examine and reconsider its use of the LDP sanction. The commenter wrote that because the LDP sanction takes effect immediately for a limited duration, the sanction may run its course prior to the completion of the administrative review process. The commenter also questioned whether the existence of the LDP sanction creates an ''undesirable imbalance'' in the relationship between the local HUD officials authorized to impose the LDP and local officials who may be subject to the sanction. The commenter did not comment directly on the proposed regulatory change regarding LDPs, and wrote that it was not ''suggesting at this time that the LDP regulations should be removed.'' Rather, the commenter asked HUD to explain the continued use of LDPs.

As noted above, HUD has not revised the proposed rule in response to this comment. In response to the questions raised by the commenter, HUD notes first that the proposed change to the LDP provision was limited to a clarification, and was not a substantive change. Further, the LDP sanction is not new, but has been relied upon by HUD for more than two decades in order to protect the public and HUD from future harm. Rather than creating any undue imbalance in the relationship between the Federal government and program participants, the LDP has been an effective tool in immediately curtailing program abuse. Absent the availability of the LDP sanction, the misuse of scarce Federal resources would continue pending the completion of a potentially lengthy administrative process. Accordingly, HUD continues to believe that the LDP sanction provides a valuable safeguard to the public and the Federal government.

III. Findings and Certifications

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulatory amendments that would be made by this rule are procedural. This rule relocates HUD's regulations governing nonprocurement debarment and suspension to a new part in title 2 of the CFR. The relocation is part of a governmentwide initiative to create one location where the public can find both the OMB requirements for grants and agreements and the associated Federal agency implementing regulations. The rule also makes conforming changes to HUD regulations referencing the nonprocurement debarment and suspension regulations. This regulatory action is an administrative simplification that makes no substantive change in HUD policy or procedures for nonprocurement debarment and suspension. The rule does not have any impact on the substantive rights or duties of small entities, because the policies and procedures are being relocated, while remaining substantively the same. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of UMRA.

List of Subjects

2 CFR Part 2424

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 6

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 8

Administrative practice and procedure, Civil rights, Equal employment opportunity, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Reporting and recordkeeping requirements.

24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

24 CFR Part 21

Administrative practice and procedure, Drug abuse, Grant programs, Loan programs, Reporting and recordkeeping requirements.

24 CFR Part 24

Administrative practice and procedure, Government contracts, Grant programs, Loan programs, Technical assistance, Reporting and recordkeeping requirements.

24 CFR Part 25

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 26

Administrative practice and procedure.

24 CFR Part 84

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 85

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

24 CFR Part 107

Administrative practice and procedure, Fair housing, Grant programs—housing and community development, Loan programs—housing and community development, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 291

Community facilities, Homeless, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

24 CFR Part 401

Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 402

Low and moderate income housing, Rent subsidies.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 572

Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 585

Community facilities, Grant programs—housing and community development, Homeless, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 954

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Grant programs—Indians, Indians, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent

subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Loan programs—Indians, Reporting and recordkeeping requirements.

24 CFR Part 1006

Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Hawaiian Natives, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Housing, Mortgages, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons discussed in the preamble, HUD amends 2 CFR part 2424 and 24 CFR parts 5, 6, 8, 15, 21, 24, 25, 26, 84, 85, 91, 92, 103, 107, 135, 200, 202, 203, 206, 245, 291, 401, 402, 570, 572, 585, 941, 954, 982, 983, 1000, 1003, 1005, 1006, 3282, and 3500 to read as follows:

TITLE 2—GRANTS AND AGREEMENTS

SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS

PART 2424—NONPROCUREMENT DEBARMENT AND SUSPENSION; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■ 1. Under the authority of 42 U.S.C. 3535(d), add Chapter XXIV consisting of part 2424 to Subtitle B to read as follows:

CHAPTER XXIV—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 2424—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.

2424.10 What does this part do?
2424.20 Does this part apply to me?
2424.30 What policies and procedures must I follow?

Subpart A—General

2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?

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2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?
2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Suspension

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2424.952 Hearing officer.
2424.970 Nonprocurement transaction (HUD supplement to governmentwide definition at 2 CFR 180.970).
2424.995 Principal (HUD supplement to governmentwide definition at 2 CFR 180.995).
2424.1017 Ultimate beneficiary.

Subpart J—Limited Denial of Participation

2424.1100 What is a limited denial of participation?
2424.1105 Who may issue a limited denial of participation?
2424.1110 When may a HUD official issue a limited denial of participation?
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2424.1140 What is the scope of a limited denial of participation?
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2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?
2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?
2424.1165 How is a limited denial of participation reported?

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 2424.10 What does this part do?

In this part, HUD adopts, as HUD policies, procedures, and requirements for nonprocurement debarment and suspension, the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by this part. This adoption thereby gives regulatory effect for HUD to the OMB guidance, as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Pub. L. 103–355, 108 Stat. 3327).

§ 2424.20 Does this part apply to me?

This part and, through this part, pertinent portions of subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)), apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by § 2424.970 of this part);

(b) Respondent in a HUD suspension or debarment action;

(c) HUD debarment or suspension official; or

(d) HUD grants officer, agreements officer, or other official authorized to enter into any type of nonprocurement transaction that is a covered transaction.

§ 2424.30 What policies and procedures must I follow?

The HUD policies and procedures that you must follow are the policies and procedures specified in each applicable section of the OMB guidance in subparts

A through I of 2 CFR part 180, as that section is supplemented by the section in this part with the same section number. The contracts that are covered transactions, for example, are specified by section 220 of the OMB guidance (i.e., 2 CFR 180.220), as supplemented by section 220 in this part (i.e., § 2424.220). For any section of OMB guidance in subparts A through I of 2 CFR 180 that has no corresponding section in this part, HUD policies and procedures are those in the OMB guidance.

Subpart A—General

§ 2424.137 Who in HUD may grant an exception to let an excluded person participate in a covered transaction?

The Secretary or designee may grant an exception permitting an excluded person to participate in a particular covered transaction. If the Secretary or a designee grants an exception, the exception must be in writing and state the reason(s) for deviating from the governmentwide policy in Executive Order 12549.

Subpart B—Covered Transactions

§ 2424.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by HUD under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the HUD nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the Appendix to 2 CFR part 180).

Subpart C—Responsibilities of Participants Regarding Transactions

§ 2424.300 What must I do before I enter into a covered transaction with another person at the next lower tier (HUD supplement to governmentwide definition at 2 CFR 180.300)?

(a) You, as a participant, are responsible for determining whether you are entering into a covered transaction with an excluded or disqualified person. You may decide the method by which you do so.

(i) You may, but are not required to, check the Excluded Parties List System (EPLS).

(ii) You may, but are not required to, collect a certification from that person.

(b) In the case of an employment contract, HUD does not require employers to check the EPLS prior to making salary payments pursuant to that contract.

§ 2424.332 What methods must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

To communicate the requirements to lower-tier participants, you must include a term or condition in the transaction requiring compliance with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by this subpart.

Subpart D—Responsibilities of Federal Agency Officials Regarding Transactions

§ 2424.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

To communicate to a participant the requirements described in 2 CFR 180.435 of the OMB guidance, you must include a term or condition in the transaction that requires the participant to: comply with subpart C of 2 CFR part 180, as supplemented by subpart C of this part, and include a similar term or condition in lower-tier covered transactions.

Subpart E—[Reserved]

Subpart F—[Reserved]

Subpart G—Suspension

§ 2424.747 Who conducts fact finding for HUD suspensions?

In all HUD suspensions, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

Subpart H—Debarment

§ 2424.842 Who conducts fact finding for HUD debarments?

In all HUD debarments, the official who shall conduct additional proceedings where disputed material facts are challenged shall be a hearing officer.

Subpart I—Definitions

§ 2424.952 Hearing officer.

Hearing Officer means an Administrative Law Judge or Office of Appeals Judge authorized by HUD's Secretary or by the Secretary's designee to conduct proceedings under this part.

§ 2424.970 Nonprocurement transaction (HUD supplement to governmentwide definition at 2 CFR 180.970).

In the case of employment contracts that are covered transactions, each salary payment under the contract is a separate covered transaction.

§ 2424.995 Principal (HUD supplement to governmentwide definition at 2 CFR 180.995).

A person who has a critical influence on, or substantive control over, a covered transaction, whether or not employed by the participant. Persons who have a critical influence on, or substantive control over, a covered transaction may include, but are not limited to:

(a) Loan officers;

(b) Staff appraisers and inspectors;

(c) Underwriters;

(d) Bonding companies;

(e) Borrowers under programs financed by HUD or with loans guaranteed, insured, or subsidized through HUD programs;

(f) Purchasers of properties with HUD-insured or Secretary-held mortgages;

(g) Recipients under HUD assistance agreements;

(h) Ultimate beneficiaries of HUD programs;

(i) Fee appraisers and inspectors;

(j) Real estate agents and brokers;

(k) Management and marketing agents;

(l) Accountants, consultants, investment bankers, architects, engineers, and attorneys who are in a business relationship with participants in connection with a covered transaction under a HUD program;

(m) Contractors involved in the construction or rehabilitation of properties financed by HUD, with HUD-insured loans or acquired properties, including properties held by HUD as mortgagee-in-possession;

(n) Closing agents;

(o) Turnkey developers of projects financed by or with financing insured by HUD;

(p) Title companies;

(q) Escrow agents;

(r) Project owners;

(s) Administrators of hospitals, nursing homes, and projects for the elderly financed or insured by HUD; and

(t) Developers, sellers, or owners of property financed with loans insured under Title I or Title II of the National Housing Act.

§ 2424.1017 Ultimate beneficiary.

Ultimate beneficiaries of HUD programs include, but are not limited to, subsidized tenants and subsidized mortgagors, such as those assisted under Section 8 Housing Assistance Payment contracts, by Section 236 Rental Assistance, or by Rent Supplement payments.

Subpart J—Limited Denial of Participation

§ 2424.1100 What is a limited denial of participation?

A limited denial of participation excludes a specific person from participating in a specific program, or programs, within a HUD field office's geographic jurisdiction, for a specific period of time. A limited denial of participation is normally issued by a HUD field office, but may be issued by a Headquarters office. The decision to impose a limited denial of participation is discretionary and based on the best interests of the federal government.

§ 2424.1105 Who may issue a limited denial of participation?

The Secretary designates HUD officials who are authorized to impose a limited denial of participation, affecting any participant and/or their affiliates, except mortgagees approved by the Federal Housing Administration (FHA).

§ 2424.1110 When may a HUD official issue a limited denial of participation?

(a) An authorized HUD official may issue a limited denial of participation against a person, based upon adequate evidence of any of the following causes:

(1) Approval of an applicant for insurance would constitute an unsatisfactory risk;

(2) There are irregularities in a person's past performance in a HUD program;

(3) The person has failed to maintain the prerequisites of eligibility to participate in a HUD program;

(4) The person has failed to honor contractual obligations or to proceed in accordance with contract specifications or HUD regulations;

(5) The person has failed to satisfy, upon completion, the requirements of an assistance agreement or contract;

(6) The person has deficiencies in ongoing construction projects;

(7) The person has falsely certified in connection with any HUD program, whether or not the certification was made directly to HUD;

(8) The person has committed any act or omission that would be cause for debarment under 2 CFR 180.800;

(9) The person has violated any law, regulation, or procedure relating to the application for financial assistance, insurance, or guarantee, or to the performance of obligations incurred pursuant to a grant of financial assistance or pursuant to a conditional or final commitment to insure or guarantee;

(10) The person has made or procured to be made any false statement for the purpose of influencing in any way an action of the Department; or

(11) Imposition of a limited denial of participation by any other HUD office.

(b) Filing of a criminal Indictment or Information shall constitute adequate evidence for the purpose of limited denial of participation actions. The Indictment or Information need not be based on offenses against HUD.

(c) Imposition of a limited denial of participation by any other HUD office shall constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

(d) An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is currently responsible and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 2424.1115 When does a limited denial of participation take effect?

A limited denial of participation is effective immediately upon issuance of the notice.

§ 2424.1120 How long may a limited denial of participation last?

A limited denial of participation may remain in effect up to 12 months.

§ 2424.1125 How does a limited denial of participation start?

A limited denial of participation is made effective by providing the person, and any specifically named affiliate, with notice:

(a) That the limited denial of participation is being imposed;

(b) Of the cause(s) under § 2424.1110 for the sanction;

(c) Of the potential effect of the sanction, including the length of the sanction and the HUD program(s) and geographic area affected by the sanction;

(d) Of the right to request, in writing, within 30 days of receipt of the notice, a conference under § 2424.1130; and

(e) Of the right to contest the limited denial of participation under § 2424.1130.

§ 2424.1130 How may I contest my limited denial of participation?

(a) Within 30 days after receiving a notice of limited denial of participation, you may request a conference with the official who issued such notice. The conference shall be held within 15 days after the Department's receipt of the request for a conference, unless you waive this time limit. The official or designee who imposed the sanction shall preside. At the conference, you may appear with a representative and may present all relevant information and materials to the official or designee. Within 20 days after the conference, or within 20 days after any agreed-upon extension of time for submission of additional materials, the official or designee shall, in writing, advise you of the decision to terminate, modify, or affirm the limited denial of participation. If all or a portion of the remaining period of exclusion is affirmed, the notice of affirmation shall advise you of the opportunity to contest the notice and to request a hearing before a Departmental Hearing Officer. You have 30 days after receipt of the notice of affirmation to request this hearing. If the official or designee does not issue a decision within the 20-day period, you may contest the sanction before a Departmental Hearing Officer. Again, you have 30 days from the expiration of the 20-day period to request this hearing. If you request a hearing before the Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B–133 Portals 200, Washington DC 20410–0500.

(b) You may skip the conference with the official and you may request a hearing before a Departmental Hearing Officer. This must also be done within 30 days after receiving a notice of limited denial of participation. If you opt to have a hearing before a Departmental Hearing Officer, you must submit your request to the Debarment Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., B–133 Portals 200, Washington DC 20410–0500. The hearing before the Departmental Hearing Officer is more formal than the conference before the sanctioning official described above. The Departmental Hearing Officer will

conduct the hearing in accordance with 24 CFR part 26, subpart A. The Departmental Hearing Officer will issue findings of fact and make a recommended decision. The sanctioning official will then make a final decision, as promptly as possible, after the Departmental Hearing Officer's recommended decision is issued. The sanctioning official may reject the recommended decision or any findings of fact, only after specifically determining that the decision or any of the facts are arbitrary, capricious, or clearly erroneous.

(c) In deciding whether to terminate, modify, or affirm a limited denial of participation, the Departmental official or designee may consider the factors listed at 2 CFR 180.860. The Departmental Hearing Officer may also consider the factors listed at 2 CFR 180.860 in making any recommended decision.

§ 2424.1135 Do Federal agencies coordinate limited denial of participation actions?

Federal agencies do not coordinate limited denial of participation actions. As stated in § 2424.1100, a limited denial of participation is a HUD-specific action and applies only to HUD activities.

§ 2424.1140 What is the scope of a limited denial of participation?

The scope of a limited denial of participation is as follows:

(a) A limited denial of participation generally extends only to participation in the program under which the cause arose. A limited denial of participation may, at the discretion of the authorized official, extend to other programs, initiatives, or functions within the jurisdiction of an Assistant Secretary. The authorized official, however, may determine that where the sanction is based on an indictment or conviction, the sanction shall apply to all programs throughout HUD.

(b) For purposes of this subpart, participation includes receipt of any benefit or financial assistance through grants or contractual arrangements; benefits or assistance in the form of loan guarantees or insurance; and awards of procurement contracts.

(c) The sanction may be imposed for a period not to exceed 12 months, and shall be effective within the geographic jurisdiction of the office imposing it, unless the sanction is imposed by an Assistant Secretary or Deputy Assistant Secretary, in which case the sanction may be imposed on either a nationwide or a more restricted basis.

§ 2424.1145 May HUD impute the conduct of one person to another in a limited denial of participation?

For purposes of determining a limited denial of participation, HUD may impute conduct as follows:

(a) *Conduct imputed from an individual to an organization.* HUD may impute the fraudulent, criminal, or other improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with an organization, to that organization when the improper conduct occurred in connection with the individual's performance of duties for or on behalf of that organization, or with the organization's knowledge, approval, or acquiescence. The organization's acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

(b) *Conduct imputed from an organization to an individual or between individuals.* HUD may impute the fraudulent, criminal, or other improper conduct of any organization to an individual, or from one individual to another individual, if the individual to whom the improper conduct is imputed participated in, had knowledge of, or had reason to know of the improper conduct.

(c) *Conduct imputed from one organization to another organization.* HUD may impute the fraudulent, criminal, or other improper conduct of one organization to another organization when the improper conduct occurred in connection with a partnership, joint venture, joint application, association, or similar arrangement, or when the organization to whom the improper conduct is imputed has the power to direct, manage, control, or influence the activities of the organization responsible for the improper conduct. Acceptance of the benefits derived from the conduct is evidence of knowledge, approval, or acquiescence.

§ 2424.1150 What is the effect of a suspension or debarment on a limited denial of participation?

If you have submitted a request for a hearing pursuant to § 2424.1130 of this subpart, and you also receive, pursuant to subpart G or H of this part, a notice of proposed debarment or suspension that is based on the same transaction(s) or the same conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules shall apply:

(a) During the 30-day period after you receive a notice of proposed debarment or suspension, during which you may elect to contest the debarment under 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, all proceedings in the limited denial of participation, including discovery, are automatically stayed.

(b) If you do not contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, the final imposition of the debarment or suspension shall also constitute a final decision with respect to the limited denial of participation, to the extent that the debarment or suspension is based on the same transaction(s) or conduct as the limited denial of participation.

(c) If you contest the proposed debarment pursuant to 2 CFR 180.815, or the suspension pursuant to 2 CFR 180.720, then:

(1) Those parts of the limited denial of participation and the debarment or suspension based on the same transaction(s) or conduct, as determined by the debarring or suspending official, shall be immediately consolidated before the debarring or suspending official;

(2) Proceedings under the consolidated portions of the limited denial of participation shall be stayed before the hearing officer until the suspending or debarring official makes a determination as to whether the consolidated matters should be referred to a hearing officer. Such a determination must be made within 90 days of the date of the issuance of the suspension or proposed debarment, unless the suspending/debarring official extends the period for good cause.

(i) If the suspending or debarring official determines that there is a genuine dispute as to material facts regarding the consolidated matter, the entire consolidated matter will be referred to the hearing officer hearing the limited denial of participation, for additional proceedings pursuant to 2 CFR 180.750 or 180.845.

(ii) If the suspending or debarring official determines that there is no dispute as to material facts regarding the consolidated matter, jurisdiction of the hearing officer under 2 CFR part 2424, subpart J, to hear those parts of the limited denial of participation based on the same transaction[s] or conduct as the debarment or suspension, as determined by the debarring or suspending official, will be transferred to the debarring or suspending official, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official.

(3) The suspending or debarring official shall hear the entire consolidated case under the procedures

governing suspensions and debarments, and shall issue a final decision as to both the limited denial of participation and the suspension or debarment.

§ 2424.1155 What is the effect of a limited denial of participation on a suspension or a debarment?

The imposition of a limited denial of participation does not affect the right of the Department to suspend or debar any person under this part.

§ 2424.1160 May a limited denial of participation be terminated before the term of the limited denial of participation expires?

If the cause for the limited denial of participation is resolved before the expiration of the 12-month period, the official who imposed the sanction may terminate it.

§ 2424.1165 How is a limited denial of participation reported?

When a limited denial of participation has been made final, or the period for requesting a conference pursuant to § 2424.1130 has expired without receipt of such a request, the official imposing the limited denial of participation shall notify the Director of the Compliance Division in the Departmental Enforcement Center of the scope of the limited denial of participation.

TITLE 24—HOUSING AND URBAN DEVELOPMENT

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 2. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), and Sec. 327, Pub. L. 109–115, 119 Stat. 2936.

■ 3. Revise § 5.105(c) and (d) to read as follows:

§ 5.105 Other federal requirements.

* * * * *

(c) Debarred, suspended, or ineligible contractors and participants. The prohibitions at 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors and participants.

(d) Drug-Free Workplace. The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations at 24 CFR part 21.

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1978

■ 4. The authority citation for part 6 continues to read as follows:

Authority: 42 U.S.C. 3535(d); 42 U.S.C. 5309

■ 5. Revise § 6.12(a)(4) to read as follows:

§ 6.12 Procedure for effecting compliance.

(a) * * *

(4) Take such other actions as may be provided by law, including, but not limited to, the initiation of proceedings under 2 CFR part 2424 or any applicable proceeding under State or local law.

* * * * *

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

■ 6. The authority citation for part 8 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 3535(d) and 5309.

■ 7. Revise § 8.57(a)(2) to read as follows:

§ 8.57 Procedure for effecting compliance.

(a) * * *

(2) The initiation of debarment proceedings pursuant to 2 CFR part 2424; and

* * * * *

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

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

Authority: 42 U.S.C. 3535(d). Subpart A also issued under 5 U.S.C. 552. Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333. Subparts C and D also issued under 5 U.S.C. 301.

■ 9. Revise § 15.109(d) to read as follows:

§ 15.109 How will HUD respond to a request for information from form HUD–92410 (Statement of Profit and Loss)?

* * * * *

(d) What sanctions are available for improper disclosure of such information? An eligible potential purchaser or a potential investor (who has received the information from a potential purchaser and has been notified by that entity of its obligations under paragraph (b) of this section), who discloses information from form HUD–92410 in violation of this section, may be subject to sanctions under 2 CFR part 2424.

PART 21—GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

■ 10. The authority citation for part 21 continues to read as follows:

Authority: 41 U.S.C. 701; 42 U.S.C. 3535(d).

■ 11. Revise § 21.510(c) to read as follows:

§ 21.510 What actions will the Federal government take against a recipient determined to have violated this part?

* * * * *

(c) Suspension or debarment of the recipient under 2 CFR part 2424, for a period not to exceed five years.

■ 12. Revise § 21.605(a)(2) to read as follows:

§ 21.605 Award.

* * * * *

(a) * * *

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the governmentwide rule 24 CFR part 85 that implements OMB Circular A–102 and specifies uniform administrative requirements.

* * * * *

■ 13–14. Revise Part 24 to read as follows:

PART 24—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Authority: 42 U.S.C. 3535(d).

§ 24.1 Debarment and Suspension (Nonprocurement).

The policies, procedures, and requirements for debarment, suspension, and limited denial of participation are set forth in 2 CFR part 2424.

PART 25—MORTGAGEE REVIEW BOARD

■ 15. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 1708(c), 1708(d), 1709(s), 1715(b) and 1715(f)–14; 42 U.S.C. 3535(d).

§ 25.2 [Amended]

■ 16. In § 25.2, revise the reference to ''part 24 of this subtitle A'' to read ''2 CFR part 2424.''

■ 17. Revise § 25.9(n) to read as follows:

§ 25.9 Grounds for an administrative action.

* * * * *

(n) Employing or retaining:

(1) An officer, partner, director, or principal at such time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 2 CFR part 2424 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

(2) An employee who is not an officer, partner, director, or principal and who is or will be working on HUD/FHA program matters at a time when such person was suspended, debarred, ineligible, or subject to a limited denial of participation under 2 CFR part 2424 or otherwise prohibited from participation in HUD programs, where the mortgagee knew or should have known of the prohibition;

* * * * *

PART 26—HEARING PROCEDURES

■ 18. The authority citation for part 26 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 19. Revise § 26.1 to read as follows:

§ 26.1 Purpose.

This part sets forth rules of procedure in certain proceedings of the Department of Housing and Urban Development presided over by a hearing officer. These rules of procedure apply to hearings with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H, to hearings conducted pursuant to referrals by debarring or suspending officials under 2 CFR part 2424, and to hearings conducted pursuant to referrals by a hearing official under 24 CFR part 25, unless such regulations at 2 CFR part 2424, 24 CFR parts 25 or 200 provide otherwise. They also apply in any other case where a hearing is required by statute or regulation, to the extent that rules adopted under such statute or regulation are not inconsistent.

■ 20. Revise § 26.9 to read as follows:

§ 26.9 Notice of administrative action.

In every case, there shall be a notice of administrative action. The notice shall be in writing and inform the party of the determination. The notice shall state the reasons for the proposed or imposed action, except where general terms are permitted by 2 CFR part 2424. The notice shall inform the party of any right to a hearing to challenge the determination, and the manner and time in which to request such a hearing. A supplemental notice may be issued, at the discretion of the initiating official, to add to or modify the reasons for the action.

PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

■ 21. The authority citation for part 84 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 22. In § 84.2, revise the definition of ''*Suspension*'' to read as follows:

§ 84.2 Definitions.

* * * * *

Suspension means an action by HUD that temporarily withdraws HUD sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by HUD. Suspension of an award is a separate action from suspensions under HUD regulations implementing E.O. 12549 and E.O. 12689, ''Debarment and Suspension,'' at 2 CFR part 2424.

* * * * *

■ 23. Revise § 84.13 to read as follows:

§ 84.13 Debarment and suspension; Drug-Free Workplace.

(a) Recipients and subrecipients shall comply with the governmentwide nonprocurement debarment and suspension requirements in 2 CFR part 2424. These governmentwide requirements restrict subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

(b) Recipients and subrecipients shall comply with the requirements of the Drug-Free Workplace Act of 1988 (42 U.S.C. 701), as set forth at 24 CFR part 21.

■ 24. Revise § 84.44(d) to read as follows:

§ 84.44 Procurement procedures.

* * * * *

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; and financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by implementation of Executive Orders 12549 and 12689, ''Debarment and Suspension,'' at 2 CFR part 2424.

* * * * *

■ 25. Revise § 84.62(d) to read as follows:

§ 84.62 Enforcement.

* * * * *

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under HUD's regulations at 2 CFR part 2424 (see § 84.13).

■ 26. Revise § 84.84(e)(4) to read as follows:

§ 84.84 Procurement standards.

* * * * *

(e) * * *

(4) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity; compliance with public policy, including, where applicable, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u); record of past performance; and financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted, as set forth at 2 CFR part 2424.

* * * * *

■ 27. Revise § 84.86(b)(4) to read as follows:

§ 84.86 Termination and enforcement.

* * * * *

(b) * * *

(4) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under HUD's regulations at 2 CFR part 2424 (see § 84.13).

Appendix A to Part 84—[Amended]

■ 28. Remove paragraphs 8 and 9 from Appendix A.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

■ 29. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 3535(d).

■ 30. In § 85.3, revise the definition of ''Suspension'' to read as follows:

§ 85.3 Definitions.

* * * * *

Suspension means, depending on the context, either temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or an action taken by a suspending official in accordance with 2 CFR part 2424, to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

* * * * *

■ 31. Revise § 85.35 to read as follows:

§ 85.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR part 2424.

■ 32. Revise § 85.43(d) to read as follows:

§ 85.43 Enforcement.

* * * * *

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a grantee or subgrantee from being subject to 2 CFR part 2424 (see § 85.35).

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 33. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.225 [Amended]

■ 34. Remove § 91.225(a)(3) and redesignate paragraphs (a)(4), (5), (6), (7), and (8) as (a)(3), (4), (5), (6), and (7), respectively.

§ 91.325 [Amended]

■ 35. Remove § 91.325(a)(3) and redesignate paragraphs (a)(4), (5), (6), (7), and (8) as (a)(3), (4), (5), (6), and (7), respectively.

§ 91.425 [Amended]

■ 36. Remove § 91.425(a)(1)(iii) and redesignate paragraphs (a)(1)(iv), (v), (vi), (vii), and (viii) as (a)(1)(iii), (iv), (v), (vi), and (vii), respectively.

PART 92—HOME INVESTMENT PARTNERSHIP PROGRAM

■ 37. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

§ 92.61 [Amended]

■ 38. Remove § 92.61(c)(6) and redesignate paragraph (c)(7) as paragraph (c)(6).

■ 39. In § 92.508, revise paragraph (a)(7)(viii) to read as follows:

§ 92.508 Recordkeeping.

(a) * * *

(7) * * *

(viii) Records demonstrating compliance with debarment and suspension requirements in 2 CFR part 2424.

* * * * *

PART 103—FAIR HOUSING COMPLAINT PROCESS

■ 40. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3619.

■ 41. Revise § 103.510(b) to read as follows:

§ 103.510 Other action by HUD.

* * * * *

(b) Take appropriate steps to initiate proceedings leading to the debarment of the respondent under 2 CFR part 2424, or initiate other actions leading to the imposition of administrative sanctions, where HUD determines that such actions are necessary to the effective operation and administration of federal programs or activities.

* * * * *

PART 107—NONDISCRIMINATION AND EQUAL OPPORTUNITY IN HOUSING UNDER EXECUTIVE ORDER 11063

■ 42. The authority citation for part 107 continues to read as follows:

Authority: 42 U.S.C. 3535(d); E.O. 11063, 27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652; E.O. 12892, 59 FR 2939, 3 CFR, 1994 Comp., p. 849.

■ 43. Revise § 107.60(b) to read as follows:

§ 107.60 Sanctions and penalties.

* * * * *

(b) Such sanctions as are specified by E.O. 11063, the contract through which federal assistance is provided, and such sanctions as are specified by the rules or regulations of the Department governing the program under which federal assistance to the project is provided shall be applied in accordance with the relevant regulations. Actions that may be taken include: cancellation or termination, in whole or in part, of the contract or agreement; refusal to approve a lender or withdrawal of approval; or a determination of ineligibility, suspension, or debarment from any further assistance or contracts; provided, however, that sanctions of debarment, suspension, and ineligibility are subject to the Department's regulations under 2 CFR part 2424, and, further, that no sanction under section 302 (a), (b), and (c) of Executive Order 11063 shall be applied by the Assistant Secretary for Fair Housing and Equal Opportunity without the concurrence of the Secretary.

* * * * *

PART 135—ECONOMIC OPPORTUNITIES FOR LOW-AND VERY LOW-INCOME PERSONS

■ 44. The authority citation for part 135 continues to read as follows:

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

■ 45. Revise § 135.72(b) to read as follows:

§ 135.72 Cooperation in achieving compliance.

* * * * *

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 2 CFR part 2424 apply to the employment, engagement of services, awarding of contracts, or funding of any contractors or subcontractors during any

period of debarment, suspension, or otherwise ineligible status.

■ 46. Revise § 135.74(d) to read as follows:

§ 135.74 Section 3 compliance review procedures.

* * * * *

(d) *Continuing noncompliance by recipient or contractor.* A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor. Where appropriate, debarment, suspension, and limited denial of participation may be applied to the recipient or the contractor, pursuant to HUD's regulations at 2 CFR part 2424.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 47. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535(d).

■ 48. Revise § 200.31 to read as follows:

§ 200.31 Debarment and Suspension.

The requirements set forth in 2 CFR part 2424 apply to these programs.

■ 49. Revise § 200.172(d) to read as follows:

§ 200.172 Removal from the Inspector Roster.

* * * * *

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against an inspector, as provided in 2 CFR part 2424, or from seeking any other remedy against an inspector, available to HUD by statute or otherwise.

■ 50. Revise § 200.192(d) to read as follows:

§ 200.192 Removal of 203(k) consultant.

* * * * *

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against a consultant, as provided in 2 CFR part 2424, or from seeking any other remedy against a consultant, available to HUD by statute or otherwise.

■ 51. Revise § 200.195(d) to read as follows:

§ 200.195 Removal of nonprofit organization from Nonprofit Organization Roster.

* * * * *

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action against a nonprofit organization, as provided in 2 CFR part 2424, or from seeking any other remedy against a nonprofit organization, available to HUD by statute or otherwise.

■ 52. Revise § 200.204(a) introductory text and (e) to read as follows:

§ 200.204 What actions may HUD take against unsatisfactory appraisers on the Appraiser Roster?

* * * * *

(a) *Removal from the Appraiser Roster.* HUD officials, as designated by the Secretary, may at any time remove a listed appraiser from the Appraiser Roster for cause, in accordance with paragraphs (a)(1) through (a)(3) of this section. The provisions of paragraphs (a)(1) through (a)(3) of this section do not apply to removal actions taken under any section in 2 CFR part 2424 or to any other remedy against an appraiser, available to HUD by statute or otherwise.

* * * * *

(e) *Other action.* Nothing in this section prohibits HUD from taking any other action against an appraiser, as provided under 2 CFR part 2424, or from seeking any other remedy against an appraiser, available to HUD by statute or otherwise.

§ 200.226 [Amended]

■ 53. In § 200.226(a)(2)(i), revise the reference to ''24 CFR part 24'' to read ''2 CFR part 2424.''

§ 200.230 [Amended]

■ 54. In § 200.230(a), revise the reference to ''part 24 of this title'' to read ''2 CFR part 2424.''

■ 55. Revise § 200.236 to read as follows:

§ 200.236 Modification or withdrawal of certain approvals.

Approvals will not be modified or withdrawn, except in cases where the principal is subsequently suspended or debarred from further participation in any HUD programs under 2 CFR part 2424, or is found by the Review Committee to have obtained approval based upon submission to HUD of a false, fraudulent, or incomplete report or certificate. In such cases, the Review Committee may take such action, including modification or withdrawal of approval, as it determines to be in the best interest of the Department and the public. For the purpose of this section, the term ''approval'' includes conditional approval.

■ 56. Revise § 200.243(b) to read as follows:

§ 200.243 Hearing rules—How and when to apply.

* * * * *

(b) Hearings and review of determination by the Hearing Officer shall be governed by the procedures contained in 2 CFR part 2424, except as modified in paragraph (a) of this section and by § 200.245.

■ 57. Revise § 200.935(c)(3) to read as follows:

§ 200.935 Administrator qualifications and procedures for HUD building products certification programs.

* * * * *

(c) * * *

(3) *Acceptance.* HUD shall review each submission and notify the applicant whether or not they are accepted or rejected. HUD shall be notified immediately of any change(s) in the administrator's submission regarding program procedures and/or major personnel associated with the program. HUD reserves the right to suspend or debar an administrator in accordance with 2 CFR part 2424.

* * * * *

■ 58. Revise § 200.1500(b) to read as follows:

§ 200.1500 Sanctions against a MAP lender.

* * * * *

(b) The actions listed in paragraphs (a)(1) through (a)(4) of this section are carried out in accordance with the requirements of this subpart. An LDP is a sanction applied in accordance with subpart J of 2 CFR part 2424 to participants in loan transactions other than FHA-insured lenders. The Mortgagee Review Board procedures are found at 24 CFR part 25.

■ 59. Revise § 200.1530(b)(14) and (15) to read as follows:

§ 200.1530 Bases for sanctioning a MAP lender.

* * * * *

(b) * * *

(14) Employing or retaining an officer, partner, director, or principal at the time when the person was suspended, debarred, ineligible, or subject to an LDP under 2 CFR part 2424, or otherwise prohibited from participation

in HUD programs, when the MAP lender knew or should have known of the prohibition;

(15) Employing or retaining an employee who is not an officer, partner, director, or principal, and who is or will be working on HUD-FHA program matters, at a time when that person was suspended, debarred, ineligible, or subject to an LDP under 2 CFR part 2424, or otherwise prohibited from participation in HUD programs, when the MAP lender knew or should have known of the prohibition;

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

■ 60. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709, and 1715b; 42 U.S.C. 3535(d).

■ 61. Revise § 202.5(j)(1) to read as follows:

§ 202.5 General approval standards.

* * * * *

(j) * * *

(1) Be suspended, debarred, or otherwise restricted under 2 CFR part 2424 or part 25 of this title, or under similar procedures of any other federal agency;

* * * * *

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 62. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, and 1715u; 42 U.S.C. 3535(d).

■ 63. Revise § 203.202(b) and (d) to read as follows:

§ 203.202 Plan acceptability and acceptance renewal criteria—general.

* * * * *

(b) In evaluating applications for renewal of Plan acceptance, HUD will take into consideration such reliable evidence, as is made available to the Department, of a Plan issuer's failure to fulfill its obligations. Where HUD has credible evidence of a Plan issuer's failure to correct covered homeowner problems, or there are justifiable homeowner complaints about untimely problem resolution by a Plan issuer, HUD will consider this as cause for termination of a Plan's acceptance and as grounds for initiation of sanctions against a Plan issuer or insurance backer, in accordance with 2 CFR part 2424. If HUD proposes to terminate a Plan's acceptance, the issuer of the Plan will be advised of the reason therefore, and the procedural safeguards of 2 CFR part 2424 will apply.

* * * * *

(d) After a Plan has been accepted by HUD, there shall be no change in, or modification to, its provisions, or in its insurance backers or insurance contract(s), without prior written HUD acceptance of such change or modification, except that changes mandated by other applicable laws may not require HUD's prior approval. A violation of this condition may be cause for termination of a Plan's acceptance, and may be grounds for initiation of sanctions against the Plan issuer, in accordance with 2 CFR part 2424. Insofar as practicable, HUD will respond to a Plan issuer's request for acceptance of a change within 30 days of receipt of the request. Plan acceptance by HUD will be for a two-year period.

* * * * *

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ 64. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–1720; 42 U.S.C. 3535(d).

■ 65. Revise § 206.201(b) to read as follows:

§ 206.201 Mortgage servicing generally; sanctions.

* * * * *

(b) *Importance of timely payments.* The paramount servicing responsibility is the need to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including 2 CFR part 2424 (Debarment, Suspension, and Limited Denial of Participation), and part 25 of this title (Mortgagee Review Board).

* * * * *

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

■ 66. The authority citation for part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

■ 67. Revise § 245.135 to read as follows:

§ 245.135 Enforcement.

(a) Owners of housing identified in § 245.10, and their agents, as well as any principals thereof (as defined in 2 CFR part 2424), who violate any provision of this subpart so as to interfere with the organizational and participatory rights of tenants, may be liable for sanctions under 2 CFR part 2424. Such sanctions may include:

(1) *Debarment.* A person who is debarred is prohibited from future participation in federal programs for a period of time. The specific rules and regulations relating to debarment are found at 2 CFR part 2424.

(2) *Suspension.* Suspension is a temporary action with the same effect as debarment, to be taken when there is adequate evidence that a cause for debarment may exist and immediate action is needed to protect the public interest. The specific rules and regulations relating to suspension are found at 2 CFR part 2424.

(3) *Limited Denial of Participation.* An LDP generally excludes a person from future participation in the federal program under which the cause arose. The duration of an LDP is generally up to 12 months. The specific rules and regulations relating to LDPs are found at 2 CFR part 2424, subpart J.

(b) These sanctions may also apply to affiliates (as defined in 2 CFR part 2424) of these persons or entities.

(c) The procedures in 2 CFR part 2424 shall apply to actions under this subpart.

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

■ 68. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, 1551a, and 3535(d).

■ 69. Revise § 291.200(b) to read as follows:

§ 291.200 Future REO acquisition method.

* * * * *

(b) *Eligible entities.* An individual, partnership, corporation, or other legal entity will not be eligible to participate in this process if at the time of the sale, that individual or entity is debarred, suspended, or otherwise precluded from doing business with HUD under 2 CFR part 2424.

■ 70. Revise § 291.303 to read as follows:

§ 291.303 Eligible bidders.

HUD will provide information on the eligibility of bidders in the bid package, a notice in the **Federal Register**, or other means, at the Secretary's full discretion. However, an individual, partnership, corporation, or other legal entity will not be eligible to bid for any loan pool, either as an individual or a participant, if, at the time of the sale, that individual

or entity is debarred or suspended from doing business with HUD under 2 CFR part 2424.

PART 401—MULTIFAMILY MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)

■ 71. The authority citation for part 401 continues to read as follows:

Authority: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437(c)(8), 1437f(t), 1437f note, and 3535(d).

■ 72. Revise § 401.101(a) and (b)(1) to read as follows:

§ 401.101 Which owners are ineligible to request Restructuring Plans?

(a) *Mandatory rejection.* The request of an owner of an eligible project will not be considered for a Restructuring Plan if the owner is debarred or suspended under 2 CFR part 2424.

(b) * * *

(1) An affiliate is debarred or suspended under 2 CFR part 2424; or

* * * * *

■ 73. Revise § 401.403(b)(1) and (b)(2)(i) to read as follows:

§ 401.403 Rejection of a request for a Restructuring Plan because of actions or omissions of owner, or affiliate or project condition.

* * * * *

(b) * * *

(1) *Suspension or debarment.* Neither a PAE nor HUD will continue to develop or consider a Restructuring Plan if, at any time before a closing under § 401.407, the owner is debarred or suspended under 2 CFR part 2424.

(2) * * *

(i) An affiliate is debarred or suspended under 2 CFR part 2424;

* * * * *

PART 402—SECTION 8 PROJECT-BASED CONTRACT RENEWAL UNDER SECTION 524 OF MAHRA

■ 74. The authority citation for part 402 continues to read as follows:

Authority: 42 U.S.C. 1437(c)(8), 1437f note, and 3535(d).

■ 75. In § 402.7, revise the introductory text of paragraph (a) and paragraph (a)(1) to read as follows:

§ 402.7 Refusal to consider an owner's request for a Section 8 contract renewal because of actions or omissions of owner or affiliate.

(a) *Determination of eligibility.* Notwithstanding 2 CFR part 2424, HUD may elect to not consider a request for renewal of project-based assistance, if at any time before contract renewal:

(1) The owner or an affiliate is debarred or suspended under part 2 CFR part 2424;

* * * * *

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 76. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301–5320.

■ 77. Revise § 570.489(l) to read as follows:

§ 570.489 Program administrative requirements.

* * * * *

(l) *Debarment and suspension.* The requirements in 2 CFR part 2424 are applicable. CDBG funds may not be provided to excluded or disqualified persons.

* * * * *

§ 570.704 [Amended]

■ 78. Remove and reserve § 570.704(b)(5) and (6).

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

■ 79. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

■ 80. Revise § 572.225(b)(2)(v) to read as follows:

§ 572.225 Grant agreements; corrective and remedial actions.

* * * * *

(b) * * *

(2) * * *

(v) Taking action against the recipient under 2 CFR part 2424 with respect to future HOPE 3, HUD, or federal grant awards; and

* * * * *

PART 585—YOUTHBUILD PROGRAM

■ 81. The authority citation for part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

§ 585.502 [Amended]

■ 82. In § 585.502, remove paragraph (c) and redesignate paragraphs (d) through (j) as (c) through (i), respectively.

■ 83. Revise § 585.504 to read as follows:

§ 585.504 Use of debarred, suspended, or ineligible contractors.

The provisions of 2 CFR part 2424 apply to the employment of, engagement of services from, awarding of contracts to, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

PART 941—PUBLIC HOUSING DEVELOPMENT

■ 84. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

■ 85. Revise § 941.205(d) to read as follows:

§ 941.205 PHA contracts.

* * * * *

(d) Each PHA shall certify before executing any contract with a contractor that the contractor is not suspended, debarred, or otherwise ineligible under 2 CFR part 2424. Each PHA also shall ensure that all subgrantees, contractors, and subcontractors select only contractors who are not listed as suspended, debarred, or otherwise ineligible under 2 CFR part 2424.

PART 954—INDIAN HOME PROGRAM

■ 86. The authority citation for part 954 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

§ 954.4 [Amended]

■ 87. Remove § 954.4(i).

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

■ 88. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 89. Revise § 982.306(a) to read as follows:

§ 982.306 PHA disapproval of owner.

(a) The PHA must not approve an assisted tenancy if the PHA has been informed (by HUD or otherwise) that the owner is debarred, suspended, or subject to a limited denial of participation under 2 CFR part 2424.

* * * * *

■ 90. Revise § 982.628(c) to read as follows:

§ 982.628 Homeownership option: Eligible units.

* * * * *

(c) *PHA disapproval of seller.* The PHA may not commence homeownership assistance for occupancy of a home if the PHA has been informed (by HUD or otherwise) that the seller of the home is debarred,

suspended, or subject to a limited denial of participation under 2 CFR part 2424.
* * * * *

§ 982.631 [Amended]

■ 91. Remove § 982.631(c)(2)(v).

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 92. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

■ 93. In § 983.4, revise the entry for ''Debarment'' to read as follows:

§ 983.4 Cross-reference to other Federal requirements.

* * * * *

Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 2 CFR part 2424.

* * * * *

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 94. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d)

■ 95. Revise § 1000.44 to read as follows:

§ 1000.44 What prohibitions on the use of debarred, suspended, or ineligible contractors apply?

In addition to any tribal requirements, the prohibitions in 2 CFR part 2424 on the use of debarred, suspended, or ineligible contractors apply.

■ 96. Revise § 1000.46 to read as follows:

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 24 CFR part 21 apply.

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

■ 97. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

■ 98. Revise § 1003.608 to read as follows:

§ 1003.608 Debarment and Suspension.

The requirements in 2 CFR part 2424 are applicable. ICDBG funds cannot be provided to excluded or disqualified persons.

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

■ 99. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 1715z-13a; 42 U.S.C. 3535(d).

■ 100. Revise § 1005.107(b)(5)(ii) to read as follows:

§ 1005.107 What is eligible collateral?

* * * * *

(b) * * *

(5) * * *

(ii) *Review.* If the Department ceases to issue guarantees in accordance with paragraph (b)(5)(i) of this section, HUD will notify the tribe of the reasons for such action and that the tribe may, within 30 days after notification of HUD's action, file a written appeal with the Director, Office of Loan Guarantee (OLG), Office of Native American Programs (ONAP). Within 30 days after notification of an adverse decision by the OLG Director, the tribe may file a written request for review with the Deputy Assistant Secretary for ONAP. Upon notification of an adverse decision by the Deputy Assistant Secretary, the tribe has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time, if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 2 CFR part 2424.)

PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

■ 101. The authority citation for part 1006 continues to read as follows:

Authority: 25 U.S.C. 4221 *et seq.*; 42 U.S.C. 3535(d).

■ 102. Revise § 1006.375(b) to read as follows:

§ 1006.375 Other Federal requirements.

* * * * *

(b) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701, *et seq.*) and HUD's implementing regulations in 24 CFR part 21 apply to the use of assistance under this part.

* * * * *

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

■ 103. The authority citation for part 3282 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 42 U.S.C. 5424; and 42 U.S.C. 3535(d).

■ 104. Revise § 3282.151(d) to read as follows:

§ 3282.151 Applicability and scope.

* * * * *

(d) To the extent that these regulations provide for Formal or Informal Presentations of Views for parties that would otherwise qualify for hearings under 2 CFR part 2424, the procedures of 2 CFR part 2424 shall not be available and shall not apply.

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

■ 105. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*; 42 U.S.C. 3535(d).

■ 106. Revise § 3500.19(a) to read as follows:

§ 3500.19 Enforcement.

(a) *Enforcement policy.* It is the policy of the Secretary regarding RESPA enforcement matters to cooperate with Federal, State, or local agencies having supervisory powers over lenders or other persons with responsibilities under RESPA. Federal agencies with supervisory powers over lenders may use their powers to require compliance with RESPA. In addition, failure to comply with RESPA may be grounds for administrative action by the Secretary under 2 CFR part 2424 concerning debarment, suspension, ineligibility of contractors and grantees, or under part 25 of this title concerning the HUD Mortgagee Review Board. Nothing in this paragraph is a limitation on any other form of enforcement that may be legally available.

* * * * *

Dated: December 14, 2007.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E7–24908 Filed 12–26–07; 8:45 am]

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Federal Register

Thursday,
December 27, 2007

Part IV

Railroad Retirement Board

Privacy Act of 1974; New and Revised Systems of Records; Notice

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; New and Revised Systems of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice: Publication of New and Revised Systems of Records, Proposed Standard Disclosures and New Routine Uses, and Deletion of Systems of Records.

SUMMARY: The purpose of this document is to republish and update all existing systems of records in their entirety, to retire three systems of records, to publish four new systems of records, and to establish standard disclosures and new routine uses.

DATES: These changes will become effective as proposed without further notice in 40 calendar days from the date of this publication unless comments are received before this date which would result in a contrary determination.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Lynn Harvey, Chief Privacy Officer, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092; telephone 312–751–4869, e-mail *lynn.harvey@rrb.gov*.

SUPPLEMENTARY INFORMATION: Four new systems of records are being included: RRB–52 Board Orders, RRB–53 Employee Medical and Eye Examination Reimbursement Program, RRB–54 Virtual Private Network (VPN) Access Management, and RRB–55 Contact Log.

RRB–37 Medical Records on Railroad Retirement Board Employees is being retired; records are being held under government-wide system of records OPM/GOVT–10 Employee Medical File System Records.

RRB–44 Employee Test Score File is being retired; records are being held under government-wide system of records OPM/GOVT–6 Personnel Research and Test Validation Records.

The RRB–45 Employee Tuition Reimbursement File system of records has been removed in its entirety as a result of the discontinuance of the program and the final disposition of its records.

The RRB–46 Personnel Security Files system of records has been updated for new identity credential requirements under Homeland Security Presidential Directive 12, including a new routine use.

The RRB–48 Access Management System, formerly ''Identification Card Files (Building Passes) and Access Control (Key Cards),'' has been renamed and generally redescribed to accomodate changes in RRB headquarters building access credentialing system and any other system records associated with Homeland Security Presidential Directive 12 not covered under government-wide system of records GSA/GOVT–7 Personal Identity Verification Identity Management System (PIV IDMS). Routine uses have been added.

All other existing systems of records have been generally updated for names, titles and other minor changes as a result of the periodic system of records review and to correct inaccuracies in the last privacy issuances by the General Printing Office. Appendix I has been updated to reflect the current locations of RRB offices. Appendix II, which contained Railroad Medicare Part B carrier locations, has been retired. Lastly, the routine uses in each system of records have been updated to reflect the establishment of RRB standard disclosures. The standard disclosures represent a selection of existing routine uses that were previously repeated in each system of records (Standard Disclosures 1–4 and 6–7), as well as a new routine use specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach (Standard Disclosure 5).

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

RAILROAD RETIREMENT BOARD (RRB) SYSTEMS OF RECORDS

RRB–1	Social Security Benefit Vouchering System
RRB–2	[Reserved]
RRB–3	Medicare, Part B
RRB–4	Estimated Annuity, Total Compensation and Residual Amount File
RRB–5	Master File of Railroad Employees' Creditable Compensation
RRB–6	Unemployment Insurance Record File
RRB–7	Applications for Unemployment Benefits and Placement Service Under the Railroad Unemployment Insurance Act
RRB–8	Railroad Retirement Tax Reconciliation System (Employee Representatives)
RRB–9	[Reserved]
RRB–10	Legal Opinion and Correspondence Files
RRB–11	Files on Concluded Litigation
RRB–12	Railroad Employees' Registration File
RRB–13–15	[Reserved]
RRB–16	Social Security Administration Master Earnings File
RRB–17	Appeal Decisions from Initial Denials for Benefits Under the Provisions of the Railroad Retirement Act or the Railroad Unemployment Insurance Act
RRB–18	Miscellaneous Payments Posted to General Ledger
RRB–19	Payroll & Cost Accounting Records
RRB–20	Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (Medicare)
RRB–21	Railroad Unemployment and Sickness Insurance Benefit System
RRB–22	Railroad Retirement, Survivor, and Pensioner Benefit System
RRB–23–25	[Reserved]
RRB–26	Payment, Rate and Entitlement History File
RRB–27	Railroad Retirement Board—Social Security Administration Financial Interchange
RRB–28	[Reserved]
RRB–29	Railroad Employees' Annual Gross Earnings Master File
RRB–30–32	[Reserved]
RRB–33	Federal Employee Incentive Awards System
RRB–34	Employee Personnel Management Files
RRB–35	[Reserved]
RRB–36	Complaint, Grievance, Disciplinary and Adverse Action Files
RRB–37–41	[Reserved]
RRB–42	Overpayment Accounts
RRB–43	Investigation Files
RRB–44–45	[Reserved]
RRB–46	Personnel Security Files
RRB–47	[Reserved]
RRB–48	Access Management System
RRB–49	Telephone Call Detail Records
RRB–50	Child Care Tuition Assistance Program
RRB–51	Railroad Retirement Board's Customer PIN/Password (PPW) Master File System
RRB–52	Board Orders
RRB–53	Employee Medical and Eye Examination Reimbursement Program
RRB–54	Virtual Private Network (VPN) Access Management
RRB–55	Contact Log

Prefatory Statement Concerning RRB Standard Disclosures

Beside those disclosures provided under 5 U.S.C. 552a(b) of The Privacy Act which pertain generally to all of the RRB systems of records, the RRB proposes to adopt certain standard disclosures which also pertain generally to these systems of records, unless specifically excluded in a system notice, which are in addition to the particular routine uses listed under each system of records, as follows:

Standard Disclosure 1.—Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual if that individual would not be denied access to the information.

Standard Disclosure 2.—Disclosure of relevant information from the record of an individual may be made to the Office of the President in response to an inquiry from that office made at the request of that individual or a third party on the individual's behalf if that individual would not be denied access to the information.

Standard Disclosure 3.—Disclosure may be made to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, to the extent necessary to accomplish an RRB function related to this system of records.

Standard Disclosure 4.—Disclosure may be made to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating, enforcing, or prosecuting a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, if the disclosure would be to an agency engaged in functions related to the Railroad Retirement Act or the Railroad Unemployment Insurance Act, or if disclosure would be clearly in the furtherance of the interest of the subject individual.

Standard Disclosure 5.—Disclosure may be made, to appropriate agencies, entities, and persons when (1) the Railroad Retirement Board suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Railroad Retirement Board has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Railroad Retirement Board or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Railroad Retirement Board's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

Standard Disclosure 6.—Disclosure may be made to the National Archives and Records Administration or other Federal government agencies for records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

Standard Disclosure 7.—Disclosure of non-medical information in this system of records may be made to the attorney representing such individual upon receipt of a written letter or declaration stating the fact of representation, if that individual would not be denied access to the information. Medical information may be released to an attorney when such records are requested for the purpose of contesting a determination either administratively or judicially.

The standard disclosure number is referenced in any system notice where it takes the place of a previously published routine use, the letter of which is preserved for the purpose of any external references.

* * * * *

RRB–1

SYSTEM NAME:

Social Security Benefit Vouchering System.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants after December 31, 1974, for benefits under Title II of the Social Security Act who have completed ten years or at least five years after 1995 of creditable service in the railroad industry, the spouse and/or divorced spouse or survivor of such an individual.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, social security number, RRB claim number, type and amount of benefit, suspension and termination information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(2)).

PURPOSE(S):

Records in the Social Security Vouchering System are maintained to administer Title II of the Social Security Act with respect to payment of benefits to individuals with 10 or more years or at least five years after 1995 of railroad service and their families.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Benefit rate information may be disclosed to primary beneficiaries regarding secondary beneficiaries (or vice versa) when the addition of such beneficiary affects either the entitlement or benefit payment.

b. In the event the Board has determined to designate a person to be the representative payee of an incompetent beneficiary, disclosure of information concerning the benefit amount and other similar information may be made to the representative payee from the record of the individual.

c. Benefit rates, names and addresses may be released to the Department of Treasury to control for reclamation and return of outstanding benefit payments, to issue benefit payments, act on reports of non-receipt, to insure delivery of payments to the correct address of the beneficiary or representative payee or to proper financial organization, and to investigate alleged forgery, theft or unlawful negotiation of railroad retirement for social security benefit checks or improper diversion of payments directed to a financial organization.

d. Beneficiary's name, address, check rate and date plus supporting evidence may be released to the U.S. Postal Service for investigation of alleged forgery or theft of railroad retirement or social security benefit checks.

e. Beneficiary identifying information, effective date, benefit rates, and months paid may be furnished to the Veterans Administration for the purpose of assisting that agency in determining eligibility for benefits or verifying continued entitlement to and the correct amount of benefits payable under programs which it administers.

f. Benefit rates and effective dates may be disclosed to the Social Security Administration, Bureau of Supplemental Security Income, to Federal, State and local welfare or public aid agencies to assist them in processing applications for benefits under their respective programs.

g. Last addresses information may be disclosed to the Department of Health and Human Services in conjunction with the Parent Locator Service.

h. Benefit rates, entitlement and other necessary information may be released to the Department of Labor in conjunction with payment of benefits under the Federal Coal Mine and Safety Act.

i. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act or from

an organization under contract to an employer or employers, information regarding the Board's payment of benefits, the methods by which such benefits are calculated, entitlement data and present address may be released to the requesting employer or the organization under contract to the employer or employers for the purposes of determining entitlement to and the rates of private supplemental pension benefits and to calculate estimated benefits due.

j. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his benefit or anticipated benefit and concerning the method of calculating that benefit may be disclosed to the labor organization official.

k. (Standard Disclosure 1.)

l. (Standard Disclosure 3.)

m. Records may be disclosed to the Government Accountability Office for auditing purposes and for collection of debts arising from overpayments under Title II of the Social Security Act, as amended.

n. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Retirement Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

o. (Standard Disclosure 4.)

p. (Standard Disclosure 7.)

q. For payments made after December 31, 1983, beneficiary identifying information, address, amounts of benefits paid and repaid, beneficiary withholding instructions, and amounts withheld by the RRB for tax purposes may be furnished to the Internal Revenue Service for tax administration.

r. Beneficiary identifying information, entitlement data, and benefit rates may be released to the Department of State and embassy and consular officials, to the American Institute on Taiwan, and to the Veterans Administration Regional Office, Philippines, to aid in insuring the continued payment of beneficiaries living abroad.

s. (Standard Disclosure 2.)

t. Entitlement data and benefit rates may be released to any court, state, agency, or interested party, or to the representative of such court, state agency, or interested party, in connection with contemplated or actual legal or administrative proceeding concerning domestic relations and support matters.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, magnetic tape and microforms.

RETRIEVABILITY:

Social security account number, full name.

SAFEGUARDS:

Records are maintained in areas not accessible to the public; buildings are secured (guard service).

RETENTION AND DISPOSAL:

Paper: Individual claim folders with records of all actions pertaining to the payment of claims are transferred to the Federal Records Center, Chicago, Illinois 5 years after the date of last payment or denial activity if all benefits have been paid, no future eligibility is apparent and no erroneous payments are outstanding.

The claim folder is destroyed 25 years after the date it is received in the center. Accounts receivable listings and checkwriting operations daily activity listings are transferred to the Federal Records Center 1 year after date of issue and are destroyed 6 years and 3 months after receipt at the center. Other paper listings are destroyed 1 year after the date of issue. Changes of address source documents are destroyed after 1 year.

Magnetic tape: Tapes are updated at least monthly. For disaster recovery purposes, certain tapes are stored for 12–18 month periods.

Microforms: Originals are kept for 3 years, transferred to the Federal Records Center and destroyed when 8 years old. One duplicate copy is kept 2 years and destroyed by shredding. All other duplicate copies are kept 1 year and destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's records should be in writing, including full name, social security number and railroad retirement claim number (if any) of the individual. Before any information about any record will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Such requests should be sent to: Office of Programs—Director of Operations, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Individual applicant or his or her authorized representative, the Social Security Administration, other record systems maintained by the Railroad Retirement Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–2 [Reserved]

* * * * *

RRB–3

SYSTEM NAME:

Medicare: Part B (Supplementary Medical Insurance Payment System—Contracted to Palmetto Government Benefits Administrators).

SYSTEM LOCATION:

Main Office: Palmetto Government Benefit Administrators, 17 Technology Circle, Columbia, South Carolina 29203–9591; Regional Office: P.O. Box 10066, Augusta, Georgia 30999.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Qualified railroad retirement beneficiaries covered by MEDICARE, Part B, who file claims under the medical insurance program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, health insurance claim number, address, date of birth, telephone number, description of illness and treatment pertaining to claim, indication of other health insurance or medical assistance pertinent to claim, date(s) and place(s) of physician service, description of medical procedures, services or supplies furnished, nature of illness(es), medical charges, name, address and telephone of physician, identifying number of provider, designation of payee, Part B entitlement date, Part B deductible status and amount of payment to beneficiary or payee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d)).

PURPOSE(S):

Records in this system are maintained to administer the supplementary medical insurance (Part B) portion of Medicare under Title XVIII of the Social Security Act for qualified railroad retirement beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. In the event the Board has determined to designate a person to be the representative payee of an incompetent beneficiary, disclosure of information concerning the benefit amount and other similar information may be made to the representative payee from the record of the individual.

b. Information regarding payments and deductibles may be released to the Department of Health and Human Services for use in administering Title XVIII of the Social Security Act, as amended, and to establish, audit, and maintain account and vouchering records.

c. Records may be disclosed in a court proceeding relating to any claims for benefits under Title XVIII of the Social Security Act and may be disclosed during the course of an administrative appeal hearing to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

d. Records may be disclosed to the General Accountability Office for auditing purposes and for collection of debts arising from overpayments under Title XVIII of the Social Security Act.

e. (Standard Disclosure 1.)

f. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, information regarding the status of a qualified railroad retirement beneficiary's enrollment in Medicare and premium payment status may be released to the requesting employer for the purposes of coordinating employee supplemental welfare benefits.

g. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his or her entitlement and premium status may be disclosed to the labor organization official.

h. (Standard Disclosure 4.)

i. (Standard Disclosure 7.)

j. Information may be furnished to the U.S. Postal Service and to State and local police authorities for investigation of the loss, theft, and/or forgery of Medicare checks.

k. Information may be furnished to the State licensing boards for review of unethical practices or nonprofessional conduct. When such information has been disclosed to a State licensing board, it may also be disclosed when requested to State agencies investigating such conduct under Titles V and XIX of the Social Security Act and to the TRICARE organization and to TRICARE contractors that are not also Medicare contractors.

l. General guidelines dealing with length of stay, diagnosis and other criteria used in the claims process to establish the basis for payment may be disclosed to the requester. Information regarding physicians' prevailing or customary charges may be furnished.

m. The following general types of information may be disclosed to Title XIX agencies (to a state agency or to a carrier acting for a State agency charged with administration of a program under Title XIX): Physician, other practitioner and supplier identification numbers, and charges of physicians or other practitioners or suppliers for services furnished to beneficiaries.

n. Information on such matters as entitlement, benefit payment, or benefit utilization relating to an individual may be disclosed to any State agency or to a carrier acting for a State agency charged with the administration of a program under Title XIX. Note: Disclosure to State agencies administering other Federal grants-in-aid programs requires the authorization of the beneficiary or his/her legal representative.

o. (Standard Disclosure 2.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, magnetic tape and microforms.

RETRIEVABILITY:

Health insurance claim number, name.

SAFEGUARDS:

The contractor is bound by the contract set forth by the Railroad Retirement Board which contains specific instruction regarding its responsibility in claim information handled and released, and by guidance and procedures issued by the Centers for Medicare & Medicaid Services (CMS). It is also bound by the same regulations regarding disclosure and security of information as the Board itself.

RETENTION AND DISPOSAL:

Records are maintained by the insurance company office for 27 months. At the end of 27 months the material is sent to the storage areas maintained by the insurance company. Records are retained and stored in accordance with guidelines issued by CMS.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing, including the full name, social security number and railroad retirement claim (if any) of the individual. Before information about any record will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Requests should be sent to the Office of Programs—Director of Operations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Claimant, his/her authorized representative or his/her survivors, the Social Security Administration, the Centers for Medicare & Medicaid Services and its contractors, physicians, and hospitals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–4

SYSTEM NAME:

Estimated Annuity, Total Compensation and Residual Amount File (MARC).

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad employees who never filed an application for an annuity, have not been reported to be deceased and who either worked in the current reporting year or have at least 120 months of creditable railroad service or have at least 60 months of creditable railroad service after 1995.

CATEGORIES OF RECORDS IN THE SYSTEM:

For employees with less than 120 months of creditable railroad service, or less than 60 months of creditable railroad service after 1995: SSN, name, date of birth, sex, cumulative service, cumulative tier 1 compensation, daily pay rate, employer number, gross residual, year last worked, number and pattern of months worked in year last worked, tier 1 compensation for year last worked, tier 2 compensation for year last worked. For railroad employees with 120 or more months of creditable railroad service and for employees with at least 60 months of creditable railroad service after 1995; all of the above information plus estimated annuity data and SSA data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)).

PURPOSE(S):

The primary purpose of the system is to provide field offices with the capability of furnishing annuity estimates to prospective beneficiaries. The system is also used by field offices to provide temporary annuity rates that the Division of Operations may issue to applicants for employee and spouse benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Entitlement information may be disclosed to primary beneficiaries regarding secondary beneficiaries (or vice versa) when the addition of such beneficiary affects either the entitlement or benefit payment.

b. (Standard Disclosure 3.)

c. (Standard Disclosure 1.)

d. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, information regarding the Board's estimated payment of unemployment, sickness or retirement benefits, the methods by which such benefits are calculated and entitlement data may be released to the requesting employer for the purposes of determining entitlement to and the rates of private supplemental pensions, sickness or unemployment benefits and to calculate estimated benefits due.

e. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his anticipated benefit and concerning the method of calculating that benefit may be disclosed to the labor organization official.

f. (Standard Disclosure 2.)

g. (Standard Disclosure 7.)

h. Annuity estimates may be released to any court, state agency, or interested party, or the representative of such court, state agency, or interested party, in connection with contemplated or actual legal or administrative proceeding concerning domestic relations and support matters.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

On-line mainframe system.

RETRIEVABILITY:

Social security number.

SAFEGUARDS:

Only authorized personnel have access to these records. Access is determined by internal computer system security levels.

RETENTION AND DISPOSAL:

A maximum of three sets of MARC records (the current and prior two sets of MARC) are maintained on-line with the oldest set deleted when a new MARC is produced.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Request for information regarding an individual's record should be in writing, including the full name, social security number and railroad retirement claim number (if any) of the individual. Before information about any record will be released, the individual may be required to provide proof of identity, authorization from the individual to permit release of information. Requests should be sent to the Office of Programs—Director of Operations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Information which is secured from the original master records is made available to all authorized headquarters and field service users.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–5

SYSTEM NAME:

Master File of Creditable Service and Compensation of Railroad Employees.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals with creditable service under the Railroad Retirement and Railroad Unemployment Insurance Acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, social security number, RRB claim number, annuity beginning date, date of birth, sex, last employer identification number, amount of daily pay rate, separation allowance or severance payment, creditable service and compensation after 1937, home address, and date of death.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)) and section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

The purpose of this system is to store railroad earnings of railroad employees which are used to determine entitlement to and amount of benefits payable under the Railroad Retirement Act, the Railroad Unemployment Insurance Act and the Social Security Act, if applicable. The records are updated daily based on earnings reports received

from railroad employers and the Social Security Administration and are stored in the Employment Data Maintenance Application database and the Separation Allowance Lump Sum Adjustment master file (SALSA).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Records may be transferred to the Social Security Administration to correlate disability freeze actions and in the cases where the railroad employees do not acquire 120 creditable service months before retirement or death or have no current connection with the railroad industry, to enable SSA to credit the employee with the compensation and to pay or deny benefits.

b. Yearly service months, cumulative service months, yearly creditable compensation, and cumulative creditable compensation may be released to the employees directly or through their respective employer.

c. Service months and earnings may be released to employers or former employers for correcting or reconstructing earnings records for railroad employees.

d. (Standard Disclosure 3.)

e. Employee identification and potential entitlement may be furnished to the Social Security Administration, Bureau of Supplemental Security Income, to Federal, State, and local welfare or public aid agencies to assist them in processing application for benefits under their respective programs.

f. Employee identification and other pertinent information may be released to the Department of Labor in conjunction with payment of benefits under the Federal Coal Mine and Safety Act.

g. The last employer information may be disclosed to the Department of Health and Human Services in conjunction with the Parent Locator Service.

h. (Standard Disclosure 1.)

i. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, information, regarding the employee's potential eligibility for unemployment, sickness or retirement benefits may be released to the requesting employer for the purpose of determining entitlement to and the rates of private supplemental pension, sickness or unemployment benefits and to calculate estimated benefits due from the employer.

j. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his anticipated benefit may be disclosed to the labor organization official.

k. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Retirement Act or the Railroad Unemployment Insurance Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

l. (Standard Disclosure 4.)

m. (Standard Disclosure 7.)

n. All records may be disclosed to the Social Security Administration for purposes of administration of the Social Security Act.

o. Service and compensation and last employer information may be furnished, upon request, to state agencies operating unemployment or sickness insurance programs for the purposes of their administering such programs.

p. (Standard Disclosure 2.)

q. The name, address and gender of a railroad worker may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the worker about legislation which affects the railroad retirement or railroad unemployment and sickness insurance program.

r. The service history of an employee (such as whether the employee had service before a certain date and whether the employee had at least a given number of years of service) may be disclosed to AMTRAK when such information would be needed by AMTRAK to make a determination whether to award a travel pass to either the employee or the employee's widow.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Magnetic tape, magnetic disk and paper.

RETRIEVABILITY:

Social security number, claim number and name.

SAFEGUARDS:

Magnetic tape and magnetic disk: Computer and computer storage rooms are restricted to authorized personnel; on-line query safeguards include a lock/unlock password system, a terminal oriented transaction matrix and an audit trail.

Paper: Bound in hard covers and stored on steel shelving accessible to only authorized personnel.

RETENTION AND DISPOSAL:

Magnetic disk: Permanent.

Magnetic tape and digital media: Retained five years and destroyed acccording to National Institute of Standards and Technology (NIST) guidelines.

Paper: Retained five years and destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing, including the full name, social security number and railroad retirement claim number (if any) of the individual. Before any information about any record will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Requests should be sent to the Office of Programs—Assessment & Training, Chief of Employer Service and Training Center, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Railroad employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–6

SYSTEM NAME:

Unemployment Insurance Record File.

SYSTEM LOCATION:

District Offices: See Appendix I for addresses.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants for unemployment benefits under the Railroad Unemployment

Insurance Act (RUIA) and their respective employers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Development file containing letters from claimants, report of Railroad Unemployment Insurance Act fraud investigations and supporting evidence, erroneous payment investigations, protest and appeal requests and responses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

This system of records is used for filing general information about applicants for RUIA benefits. If an applicant files for unemployment insurance benefits, some of the information in this file will be also placed in the claimants UI file.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Beneficiary identifying information may be released to third party contacts to determine if incapacity of the beneficiary or potential beneficiary to understand or use benefits exists, and to determine the suitability of a proposed representative payee.

b. Benefit rate, name and address may be referred to the Treasury Department to control for reclamation and return of outstanding benefit checks, to issue benefit checks, reconcile reports of non-delivery, and to insure delivery of payments to the correct address or account of the beneficiary or representative payee.

c. Beneficiary's name, address, payment rate, date and number, plus supporting evidence may be released to the U.S. Postal Service for investigation of alleged forgery or theft of railroad unemployment or sickness benefit payments.

d. Identifying information such as full name, address, date of birth, social security number, employee identification number, and date last worked, may be released to any last employer to verify entitlement for benefits under the Railroad Unemployment Insurance Act.

e. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, information regarding the Board's payment of unemployment or sickness benefits, the methods by which such benefits are calculated, entitlement data and present address may be released to the requesting employer for the purposes of determining entitlement to and rates of private supplemental pension, sickness or unemployment benefits and to calculate estimated benefits due.

f. Benefit rates and effective dates may be released to the Social Security Administration, Bureau of Supplemental Security Income, to Federal, State and local welfare or public aid agencies to assist them in processing applications for benefits under their respective programs.

g. In the event the Board has determined to designate a person to be the representative payee of an incompetent beneficiary, disclosure of information concerning the benefit amount and other similar information may be made to the representative payee from the record of the individual.

h. Records may be disclosed to the General Accountability Office for auditing purposes and for collection of debts arising from overpayments under the Railroad Unemployment Insurance Act, as amended.

i. The last addresses and employer information may be disclosed to the Department of Health and Human Services in conjunction with the Parent Locator Service.

j. (Standard Disclosure 1.)

k. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning this benefit or anticipated benefit may be disclosed to the labor organization official.

l. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Unemployment Insurance Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

m. (Standard Disclosure 4.)

n. (Standard Disclosure 7.)

o. Beneficiary identifying and claim period information may be furnished to states for the purpose of their notifying the RRB whether claimants were paid state unemployment or sickness benefits and also whether wages were reported for them. For claimants that a state identifies as having received state unemployment benefits, RRB benefit information may be furnished the state for the purpose of recovery of the amount of the duplicate payments which were made.

p. (Standard Disclosure 2.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name, social security number.

SAFEGUARDS:

Kept in steel file cabinets away from the general public and are available only to district office and regional office personnel.

RETENTION AND DISPOSAL:

Shredded five years after end of benefit year in which originated.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's records should be in writing, including full name, social security number, and railroad retirement claim number (if any) of the individual. Before any information about any record will be released, the individual may be required to provide proof of identity or authorization from the individual to permit release of information. Requests should be sent to the Office of Programs—Director of Operations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Individual claimant or his authorized representative, employers, State employment and unemployment claims records, Federal, and Social Security Administration employer compensation reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–7

SYSTEM NAME:

Applications for Unemployment Benefits and Placement Service under the Railroad Unemployment Insurance Act.

SYSTEM LOCATION:

U.S. Railroad Retirement Board—Headquarters: 844 N. Rush Street, Chicago, Illinois 60611–2092; District Offices: See Appendix I for addresses.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for unemployment benefits and employment service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, account number, age, sex, education, employer, occupation, rate of pay, reason not working and last date worked, personal interview record, results of investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

The purpose of this system of records is to be used as an individual's UI file. The records contained in the file are pertinent to the individual's claim for unemployment benefits under the RUIA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Selected information may be disclosed to prospective employers for potential job placement.

b. In the event the Board has determined to designate a person to be the representative payee of an incompetent beneficiary, disclosure of information concerning the benefit amount and other similar information may be made to the representative payee from the record of the individual.

c. Beneficiary identification and entitlement information may be released to third party contacts to determine if incapacity of the beneficiary or potential beneficiary to understand or use benefits exists, and to determine the suitability of a proposed representative payee.

d. A record from this system of records may be disclosed 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 reporting of an investigation of an employee, 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 requesting agency's decision on the matter, provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

e. Beneficiary identification, entitlement, and benefit rate information may be released to the Treasury Department to control for reclamation and return of outstanding benefit payments, to issue benefit payments, reconcile reports of non-delivery and to insure delivery of payments to the correct address or account of the beneficiary or representative payee.

f. Information may be referred to the U.S. Postal Service for investigation of alleged forgery or theft of railroad unemployment or sickness benefit checks.

g. Beneficiary identification, entitlement, and benefit rate information may be released to the Social Security Administration, Bureau of Supplemental Security Income, to Federal, State, and local welfare or public aid agencies to assist them in processing applications for benefits under their respective programs.

h. The last addresses and employer information may be disclosed to Department of Health and Human Services in conjunction with the Parent Locator Service.

i. (Standard Disclosure 3.)

j. Records may be disclosed to the General Accountability Office for auditing purposes and for collection of debts arising from overpayments under the Railroad Unemployment Insurance Act, as amended.

k. Identifying information such as full name, address, date of birth, social security number, employee identification number, and date last worked, may be released to any last employer to verify entitlement for benefits under the Railroad Unemployment Insurance Act.

l. (Standard Disclosure 1.)

m. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, information regarding the Board's payment of unemployment or sickness benefits, the methods by which such benefits are calculated, entitlement data and present address will be released to the requesting employer for the purposes of determining entitlement to and rates of private supplemental pension, sickness or unemployment benefits and to calculate estimated benefits due.

n. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual information from the record of the individual concerning his benefit or anticipated benefit and concerning the method of calculating that benefit may be disclosed to the labor organization official.

o. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Unemployment Insurance Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

p. (Standard Disclosure 4.)

q. (Standard Disclosure 7.)

r. (Standard Disclosure 2.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, electronic records.

RETRIEVABILITY:

Social security number.

SAFEGUARDS:

Paper files stored in locked room; electronic files accessible by password and protected by network and physical security.

RETENTION AND DISPOSAL:

In routine cases, held for three years after end of benefit year in which originated. In those with adverse activities (claims denied), held for five years after end of benefit year in which originated. At end of both periods, files are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing, including the full name, social security number and railroad retirement claim number(if any) of the individual. Before information about any record will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Requests should be sent to the Office of Programs—Director of Operations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Individual applicant or his authorized representative, present and former employers, State and Federal departments of employment security, Social Security Administration and labor organizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–8

SYSTEM NAME:

Railroad Retirement Tax Reconciliation System (Employee Representatives).

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad employee representatives covered under the Railroad Retirement Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee quarterly railroad tax return.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 15 of the Railroad Retirement Act of 1974 (45 U.S.C. 231n).

PURPOSE(S):

The purpose of this system is to ensure that the earnings of employee representatives reported to the Internal Revenue Service for tax purposes agree with earnings reported to the RRB for benefit payment purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Service and earnings information may be released to the Internal Revenue Service and the Treasury Department to refund excess taxes.

b. Records may be disclosed to the General Accountability Office for auditing purposes.

c. Service and earnings information may be released to employers or former employers for correcting or reconstructing earnings records for railroad retirement, supplemental or unemployment/sickness employment tax purposes only, not to be construed as an extension of the statutory time limitation to amend such records.

d. (Standard Disclosure 4.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records are maintained in areas not accessible to the public and are not permitted to be removed without authorization; secured building.

RETENTION AND DISPOSAL:

Employee's representatives' quarterly tax returns and tax reporting reconciliation file are retained for 6 years and 3 months after the period covered by the records and then are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and Social Security number. Before information about any record is released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Railroad tax reports, creditable and taxable compensation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–9 [Reserved]

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RRB–10

SYSTEM NAME:

Legal Opinion and Correspondence Files.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for benefits under the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files include a copy of the question submitted to the legal department for an opinion and a copy of the response released. Responses may be a formal legal opinion, a letter, or a memorandum. There may be copies of any correspondence between the agency and the individual or his/her employer concerning the question presented.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)) and section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

The RRB needs to collect and maintain information contained in this system of records in order to make decisions regarding the claims for benefits of individual under various Acts administered by the RRB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Stored in areas not accessible to the public in offices locked during non-business hours; access to these files is restricted to attorneys and other authorized Board employees.

RETENTION AND DISPOSAL:

Opinions of precedential interest or otherwise of lasting significance, and correspondence related to these opinions are retained permanently. Opinions of limited significance beyond

the particular case, and correspondence related to these opinions, are retained in the individual's claim folder, if any, established under the Railroad Retirement Act. When no folder exists, these opinions, are destroyed by shredding 2 years after the date of the last action taken by the Bureau of Law on the matter.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name, social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

The subject person's authorized representative, other record systems maintained by the Railroad Retirement Board, employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–11

SYSTEM NAME:

Files on Concluded Litigation.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad employees, retired railroad employees, and individuals with some creditable railroad service who are involved in litigation in which the Railroad Retirement Board has some interest as a party or otherwise.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal briefs, reports on legal or factual issues involving copies of subpoenas which may have been issued, copies of any motions filed, transcripts of any depositions taken, garnishment process, correspondence received and copies of any correspondence released by the Board pertaining to the case, copies of any court rulings, and copies of the final decision in the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)) and section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

The RRB needs to collect and maintain records of concluded litigation to which the RRB was a party.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Stored in areas not accessible to the public in offices locked during non-business hours; access to these files is restricted to attorneys and other authorized Board employees.

RETENTION AND DISPOSAL:

Files relating to cases of precedential interest are retained permanently. Files of cases involving routine matters, other than garnishments, are retained for 5 years after the case is closed, then shredded. Files relating to garnishment of benefits are retained until 2 years after the date garnishment terminates, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

The individual himself or his authorized representative, other record systems maintained by the Railroad Retirement Board, employers, the Social Security Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–12

SYSTEM NAME:

Railroad Employees' Registration File.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who had any employment for a railroad employer after 1936 who were assigned Social Security Numbers beginning with 700 through 728. (Use of the registration form was discontinued January 1, 1981.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Railroad employee's name, address, social security number, date of birth, place of birth, mother's and father's names, sex, occupation and employer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)).

PURPOSE(S):

The purpose of the system is to provide information on railroad employees who completed Carrier Employee Registration forms (CER–1) to apply for a Social Security number (SSN). The information on these CERA–1 forms was available only at the Railroad Retirement Board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Records which consist of name, date and place of birth, social security number, and parents' names may be

disclosed to the Social Security Administration to verify social security number and date of birth.

b. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Retirement Act, or Unemployment Insurance Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

c. (Standard Disclosure 3.)

d. (Standard Disclosure 7.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche.

RETRIEVABILITY:

Social security number.

SAFEGUARDS:

Stored in steel cabinets; available to authorized unit personnel.

RETENTION AND DISPOSAL:

Permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing, addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Railroad employee and employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–13 through RRB–15 [Reserved]

* * * * *

RRB–16

SYSTEM NAME:

Social Security Administration Master Earnings File.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have at least 48 creditable service months under the Railroad Retirement Act (RRA) or who attain eligibility for RRA benefits when military service is included as creditable railroad service.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security account number, name, date of birth, gender, social security claim status, details of earnings and periods of employment that are creditable under the Social Security Act for years after 1936.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231(b)(6))

PURPOSE(S):

The purpose of this system of records is to have Social Security Act earnings information available to RRB benefit programs for determinations related to RRA benefit entitlement and amount. The records are stored in the Employment Data Maintenance database.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Internal RRB use only.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mainframe computer database.

RETRIEVABILITY:

Social security account number and name.

SAFEGUARDS:

Mainframe computer database; computer and computer storage rooms are restricted to authorized personnel; on-line query safeguards include a lock/unlock password system; a terminal oriented transaction matrix; and an audit trail.

RETENTION AND DISPOSAL:

Magnetic disk: permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing, including the full name, social security number and railroad retirement claim number (if any) of the individual. Before information about any record will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Such requests should be sent to the Office of Programs—Assessment and Training, Chief of Employer Service and Training Center, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Social Security Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

RRB–17

* * * * *

SYSTEM NAME:

Appeal Decisions from Initial Denials for Benefits Under the Provisions of the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Appellants under the provisions of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Narrative of the facts and law pertinent to the decision made by the Hearings Officer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6); sec. 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

Maintain copies of appeals decisions issued by the Bureau of Hearings and Appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. (Standard Disclosure 1.)

b. [reserved]

c. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his benefit or anticipated benefit and concerning the method of calculating that benefit may be disclosed to the labor organization official.

d. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Retirement Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

e. (Standard Disclosure 4.)

f. (Standard Disclosure 7.)

g. (Standard Disclosure 2.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Claim number or social security number, Bureau of Hearings and Appeals appeal number, or Bureau of Hearings and Appeal decision number.

SAFEGUARDS:

Only authorized personnel have access to these records which are kept in an office that is locked at the close of business each day and remains so until start of business the next day.

RETENTION AND DISPOSAL:

The decisions are retained for a period of 2 years and then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Hearings and Appeals, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Information furnished by the appellant or his/her authorized representative, information developed by the hearings officer relevant to the appeal, and information contained in other record systems maintained by the Railroad Retirement Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–18

SYSTEM NAME:

Miscellaneous Payments paid/posted to the General Ledger by FFS.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad Retirement Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel vouchers, miscellaneous reimbursement vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)) and Section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

The system is used to pay the operating expenses of the agency and reimbursements as needed to employees. Payment is made to vendors for goods and services. Employees are reimbursed for expenses related to the performance of their jobs. Payments are made within Federal limits and applicable guidelines.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Identifying information and check amount may be released to the Treasury Department to issue checks.

b. Records may be disclosed to the General Accountability Office for auditing purposes.

c. Identifying information, check number, date and amount may be released to the U.S. Postal Service for investigation of alleged forgery or theft of reimbursement checks.

d. (Standard Disclosure 4.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer storage media.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Records are maintained in areas not accessible to the public and are not permitted to be removed without authorization; secured building.

RETENTION AND DISPOSAL:

Retain at headquarters for two years then to Chicago Federal Records Center—GSA will destroy when authorized by General Accountability Office.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Employees travel records, memoranda from Regional Directors, and purchase orders.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–19

SYSTEM NAME:

Cost Accounting Records System.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad Retirement Board employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Time, leave, payroll information, and supporting documentation relating to participation in the agency's transit benefit program prior to July 2004.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pay Acts as amended.

PURPOSE(S):

The purpose of this system is to maintain employee data related to earnings. This includes hours worked, time off, and premium pay. It is also used to calculate employee gross to net pay based on mandatory and elective deductions. Earnings data is accumulated and reported to Federal, State, and local taxing authorities. Employee benefit data is reported to the Office of Personnel Management to ensure accuracy and proper coverage.

a. Routine uses of records maintained in the system, including categories of users, and the purposes of such uses:

b. Salary and tax information may be disclosed to the Internal Revenue Service, the Social Security Administration, and state and city taxing authorities for tax purposes.

c. Service history including pay, benefits, salary deductions for retirement, and other information necessary may be disclosed to the Office of Personnel Management for use in the computation of civil service annuities and to carry out its Government-wide personnel management functions.

d. Computer payment information may be released to the Department of Treasury for issuance of salary payments.

e. Identification information, check number, data and amount, plus other supporting evidence may be forwarded to the U.S. Postal Service for investigation of alleged forgery or theft of salary checks.

f. The last known address and employer information may be released to Department of Health and Human Services in conjunction with the Parent Locator Service.

g. Records may be disclosed to the General Accountability Office for auditing purposes.

h. (Standard Disclosure 4.)

i. A copy of the employee's Form W–2, Wage and Tax Statement, or other similar form containing the name, social security number, taxable earnings and amounts withheld, may be released to the state, city or other local jurisdiction which is authorized to tax the employee's compensation in accordance with a withholding agreement between the state, city or other local jurisdiction, and the Department of the Treasury or the Social Security Administration, or in absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Director of Budget and Fiscal Operations, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

j. For employees identified as having defaulted in the repayment of an obligation incurred under any statutory authority except the Internal Revenue Code, the Social Security Act or the U.S. tariff laws, pertinent payroll information, including home address information, may be disclosed to other Federal agencies for the purpose of collecting debts owed to those agencies or the RRB.

k. The names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support and enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Act, Pub. L. 104–193).

l. Transit benefit program documentation may be furnished to the Internal Revenue Service for tax administration purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, tape and microfiche.

RETRIEVABILITY:

Name.

SAFEGUARDS:

Housed in security building and maintained in areas not accessible to the public; information released only at employee's request or to approved federal and local authorities.

RETENTION AND DISPOSAL:

Consolidated pay tapes, first two master tapes, and last two master tapes for each year: Destroyed by erasing 3 years after close of calendar year in which prepared. Security record-current check issue tape: Destroyed by erasing when National Personnel Records Center receives second subsequent document covering same type of document. Paper: Destroyed by shredding after 3 years. Microfilm: Retained until replaced by a new record, usually within 1 year. Obsolete microfiche is destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Financial Officer, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Railroad Retirement Board employees personnel action, time and attendance reports, deduction authorizations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–20

SYSTEM NAME:

Health Insurance and Supplementary Medical Insurance Enrollment and Premium Payment System (MEDICARE).

SYSTEM LOCATION:

U.S. Railroad Retirement Board—Headquarters: 844 Rush Street, Chicago, Illinois 60611; District and Regional Offices: See Appendix I for addresses.

SECURITY CLASSIFICATION:

None

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Qualified Railroad Retirement beneficiaries who are eligible for Medicare coverage, attending physicians, chiropractors and physical therapists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim number, Social Security number, name, address, type of beneficiary under the Railroad Retirement Act, date of birth, method of Supplementary Medical Insurance premium payment, enrollment status, amount of premium, paid-thru date, third party premium payment information, coverage jurisdiction determination, direct premium billing and premium refund accounting, correspondence from beneficiaries, physicians suspected of over-utilization and those suspended from payment by Medicare.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(d))

PURPOSE(S):

Records in this system are maintained to administer Title XVIII of the Social Security Act for qualified railroad retirement beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Beneficiary identification, enrollment status and premium deductions information may be released to the Social Security Administration and the Centers for Medicare & Medicaid Services to correlate actions with the administration of Title II and Title XVIII (MEDICARE) of the Social Security Act.

b. Beneficiary identification may be disclosed to third party contacts to determine if incapacity of the beneficiary or potential beneficiary to understand or use benefits exists, and to determine the suitability of a proposed representative payee.

c. In the event the Board has determined to designate a person to be the representative payee of an incompetent beneficiary, disclosure of information concerning the benefit amount and other similar information may be made from the record of the individual to the representative payee.

d. Data may be disclosed to Department of Health and Human Services for reimbursement for work done under reimbursement provisions of Title XVIII of the Social Security Act, as amended.

e. Jurisdictional clearance, premium rates, coverage election, paid-through date, and amounts of payments in arrears may be released to the Social Security Administration and the Centers for Medicare & Medicaid Services to assist those agencies in administering Title XVIII of the Social Security Act, as amended.

f. Beneficiary identifying information, date of birth, sex, premium rate paid thru date, and Medicare Part A and Part B entitlement date/end date may be disclosed to effect state buy-in and third party premium payments.

g. Payment data may be disclosed to consultants to determine reasonable charges for hospital insurance payments in Canada.

h. Entitlement data may be disclosed to primary beneficiaries regarding secondary beneficiaries (or vice versa) when the addition of such beneficiary affects entitlement.

i. (Standard Disclosure 3.)

j. Beneficiary last address information may be disclosed to Department of Health and Human Services in conjunction with the Parent Locator Service.

k. Beneficiary identification, entitlement data and rate information may be released to the Department of State and embassy officials, to the American Institute on Taiwan, and to the Veterans Administration Regional Office, Philippines, to aid in the development of applications, supporting evidence and the continued eligibility of beneficiaries and potential beneficiaries living abroad.

l. Records may be released to the General Accountability Office for auditing purposes and for collection of debts arising from overpayments under Title XVIII of the Social Security Act, as amended.

m. (Standard Disclosure 1.)

n. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, or from an insurance company acting as an agent of an employer, information regarding the RRB's determination of Medicare entitlement, entitlement data, and present address may be released to the requesting employer or insurance company acting as its agent for the purposes of either determining entitlement to and rates of supplemental benefits under private employer welfare benefit plans or complying with requirements of law covering the Medicare program.

o. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his or her entitlement to Medicare may be disclosed to the labor organization official.

p. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Retirement Act, or Social Security Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

q. (Standard Disclosure 4.)

r. (Standard Disclosure 7.).

s. Information may be disclosed to the Department of the Treasury for the purpose of investigating alleged forgery or theft of Medicare reimbursement checks.

t. Information may be disclosed to the U.S. Postal Service for investigating alleged forgery or theft of Medicare checks.

u. (Standard Disclosure 2.)

v. Identifying information about Medicare-entitled beneficiaries who may be working may be disclosed to the Centers for Medicare & Medicaid Services for the purposes of determining whether Medicare should be the secondary payer of benefits for such individuals.

w. Whether a qualified railroad retirement beneficiary is enrolled in Medicare Part A or Part B, and if so, the effective date(s) of such enrollment may be disclosed to a legitimate health care provider, in response to its request, when such information is needed to verify Medicare enrollment.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, digital media, magnetic tape and microfilm.

RETRIEVABILITY:

Claim number, social security number, full name.

SAFEGUARDS:

Records are maintained in areas not accessible by the public and are not permitted to be removed from headquarters without authorization

RETENTION AND DISPOSAL:

Paper: Computer printouts, including daily and monthly statistics, premium payment listings, state-buy-in listings and voucher listings are kept for 2 years, transferred to the Federal Records Center, and destroyed when 5 years old. Other copies of computer printouts are maintained for 1 year, then shredded. Applications material in individual claim folders with records of all actions pertaining to the payment or denial or claims are transferred to the Federal Record Center, Chicago, Illinois 5 years after the date of last payment or denial activity if all benefits have been paid, no future eligibility is apparent and no erroneous payments are outstanding. The claim folder is destroyed 25 years after the date it is received in the center.

Magnetic tape: Updated weekly. Obsolete tape is written over.

Microfilm and CD–ROM: Originals are kept for 3 years, transferred to the Federal Records Center and destroyed 3 years and 3 months after receipt at the center. One copy is kept 3 years then destroyed when 6 months old or no longer needed for administrative use, whichever is sooner.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's records should be in writing, including the full name, social security number and railroad retirement claim number (if any) of the individual. Before information about any record will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Such requests should be sent to the Office of Programs—Director of Operations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Applicant (the qualified railroad beneficiary), his/her representative, Social Security Administration, Centers for Medicare & Medicaid Services, Palmetto Government Benefits Administrators, Federal, State or local agencies, their party premium payers, all other Railroad Retirement Board files, physicians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–21

SYSTEM NAME:

Railroad Unemployment and Sickness Insurance Benefit System

SYSTEM LOCATION:

U.S. Railroad Retirement Board-Headquarters: 844 Rush Street, Chicago, Illinois 60611; Regional and District Offices: See Appendix I for addresses.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants and claimants for unemployment and sickness (including maternity) benefits under the Railroad Unemployment Insurance Act: Some railroad employees injured at work who did not apply for Railroad Unemployment Insurance Act benefits; all railroad employees paid separation allowances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to payment or denial of an individual's claim for benefits under the Railroad Unemployment Insurance Act: Name, address, sex, Social Security number, date of birth, total months of railroad service (including creditable military service), total creditable compensation for base year, last employer and date last worked before applying for benefits, last rate of pay in base year, reason not working, applications and claims filed, benefit information for each claim filed, disqualification periods and reasons for disqualification, entitlement to benefits under other laws, benefit recovery information about personal injury claims and pay for time not worked, medical reports, placement data, correspondence and telephone inquiries to and about the claimant, record of protest or appeal by claimant of adverse determinations made on his claims.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 351, et seq.).

PURPOSE(S):

The purpose of this system of records is to carry out the function of collecting and storing information in order to administer the benefit program under the Railroad Unemployment Insurance Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Beneficiary identifying information may be disclosed to third party contacts to determine if incapacity of the beneficiary or potential beneficiary to understand or use benefits exists, and to determine the suitability of a proposed representative payee.

b. In the event the Board has determined to designate a person to be the representative payee of an incompetent beneficiary, disclosure of information concerning the benefit amount and other similar information may be made to the representative payee from the record of the individual.

c. Beneficiary identifying information, address, check rate, date and number may be released to the Treasury Department to control for reclamation and return outstanding benefit payments, to issue benefit payments, respond to reports of non-delivery and to insure delivery of check to the correct address or account of the beneficiary or representative payee.

d. Beneficiary identifying information, address, payment rate, date and number, plus other necessary supporting evidence may be released to the U.S. Postal Service for investigation of alleged forgery or theft of railroad unemployment/sickness benefit payments.

e. A record from this system of records may be disclosed 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 reporting of an investigation of an employee, the letting of a contract, 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 requesting agency's decision in the matter, provided that disclosure would be clearly in the furtherance of the interest of the subject individual.

f. Under Section 2(f), the Railroad Retirement Board has the right to

recover benefits paid to an employee who later receives remuneration for the same period, therefore, the Railroad Retirement Board may notify the person or company paying the remuneration of the Board's right to recovery and the amount of benefits to be refunded.

g. Under Section 12(o), the Railroad Retirement Board is entitled to reimbursement of sickness benefits paid on account of the infirmity for which damages are paid, consequently, the Railroad Retirement Board may send a notice of lien to the liable party, and, upon request by the liable party, advise the amount of benefits subject to reimbursement.

h. (Standard Disclosure 3.)

i. Beneficiary identifying information, rate and entitlement data may be released to the Social Security Administration to correlate actions with the administration of the Social Security Act.

j. The last addresses and employer information may be released to Department of Health and Human Services in conjunction with the Parent Locator Service.

k. Benefit rate, entitlement and periods paid may be disclosed to the Social Security Administration, Bureau of Supplemental Security Income to federal, state and local welfare or public aid agencies to assist them in processing applications for benefits under their respective programs.

l. Beneficiary identifying information, entitlement, rate and other pertinent data may be released to the Department of Labor in conjunction with payment of benefits under the Federal Coal Mine and Safety Act.

m. [Reserved]

n. Records may be referred to the General Accountability Office for auditing purposes and for collection of debts arising from overpayments under the Railroad Unemployment Insurance Act.

o. If a request for information pertaining to an individual is made by an official of a labor organization, of which the individual is a member, information from the record of the individual concerning his benefit or anticipated benefit and concerning the method of calculating that benefit may be disclosed to the labor organization official.

p. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, or from an organization under contract to an employer or employers, information regarding the Board's payment of unemployment or sickness benefits, the methods by which such benefits are calculated, entitlement data and present address may be released to the requesting employer or the organization under contract to an employer or employers for the purposes of determining entitlement to and rates of private supplemental pension, sickness or unemployment benefits and to calculate estimated benefits due.

q. (Standard Disclosure 1.)

r. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Unemployment Insurance Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

s. (Standard Disclosure 4.)

t. (Standard Disclosure 7.)

u. Beneficiary identifying information, entitlement data, benefit rates and periods paid may be released to the Veterans Administration to verify continued entitlement to benefits.

v. Identifying information such as full name, social security number, employee identification number, date last worked, occupation, and location last worked may be released to any last employer to verify entitlement for benefits under the Railroad Unemployment Insurance Act.

w. The amount of unemployment benefits paid, if 10 dollars or more in a calendar year, and claimant identifying information, may be furnished to the Internal Revenue Service for tax administration purposes.

x. The name and address of a claimant may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the claimant about legislation which affects the railroad unemployment insurance system.

y. Beneficiary identifying and claim period information may be furnished to states for the purposes of their notifying the RRB whether claimants were paid state unemployment or sickness benefits and also whether wages were reported for them. For claimants that a state identifies as having received state unemployment or sickness benefits, RRB benefit information may be furnished to the state for the purpose of recovery of the amount of the duplicate payments which is made.

z. The amount of each sickness benefit that is subject to a tier 1 railroad retirement tax and the amount of the tier 1 tax withheld may be disclosed to the claimant's last railroad employer to enable that employer to compute its tax liability under the Railroad Retirement Tax Act.

aa. (Standard Disclosure 2.)

bb. The amount of sickness benefits paid and claimant identifying information, except for sickness benefits paid for an on-the-job injury, may be furnished to the Internal Revenue Service for tax administration purposes.

cc. Entitlement data and benefit rates may be released to any court, state agency, or interested party, or to the representative of such court, state agency, or interested party in connection with contemplated or actual legal or administrative proceedings concerning domestic relations and support matters.

dd. Identifying information and information about a claim for benefits filed may be disclosed to an employee's base-year railroad employer and the employee's most recent railroad employer, if different, in order to afford that employer or those employers the opportunity to submit information concerning the claim. In addition, after the claim has been paid, if the base-year railroad employer appeals the decision awarding benefits, all information regarding the claim may be disclosed to such base-year railroad employer that is necessary and appropriate for it to fully exercise its rights of appeal.

ee. Non-medical information relating to the determination of sickness benefits may be disclosed to an insurance company administering a medical insurance program for railroad workers for purposes of determining entitlement to benefits under that program.

ff. Scrambled Social Security number and complete home address information of unemployment claimants may be furnished to the Bureau of Labor Statistics for use in its Local Area Unemployment Statistics (LAUS) program.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records, magnetic and optical media, and microforms.

RETRIEVABILITY:

Social Security number (claim number) and name.

SAFEGUARDS:

Paper and microforms: Maintained in areas not accessible to the public; offices are locked during non-business hours. Magnetic tape and magnetic disk; computer and computer storage rooms

are restricted to authorized personnel; on-line query safeguards include a lock/unlock password system, a terminal oriented transaction matrix and an audit trail; for computerized records electronically transmitted between headquarters and field office locations, systems securities are established in accordance with National Bureau of Standards guidelines. In addition to the online query safeguards, they include encryption of all data transmitted and exclusive use of leased telephone lines.

RETENTION AND DISPOSAL:

Paper: Destroyed by shredding 6 years and 3 months after the end of the benefit year in which the file was closed.

Magnetic tape and microform: destroyed by shredding 6 years and 3 months after the end of the benefit year.

Optical media and electronic media: destroyed by shredding, pulverizing, disintegrating, or incineration 6 years and 3 months after the end of the benefit year.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing, including the full name, Social Security number and railroad retirement claim number (if any) of the individual. Before information about any record will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Requests should be sent to the Office of Programs—Director of Operations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Applicant, claimant or his or her representative, physicians, employers, labor organizations, federal, state, and local government agencies, all Railroad Retirement Board files, insurance companies, attorneys, Congressmen, liable parties (in personal injury cases), funeral homes and survivors (for payment of death benefits).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–22

SYSTEM NAME:

Railroad Retirement, Survivor, and Pensioner Benefit System.

SYSTEM LOCATION:

U.S. Railroad Retirement Board-Headquarters: 844 Rush Street, Chicago, Illinois 60611; Regional and District Offices: See Appendix I for addresses.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for retirement and survivor benefits, their dependents (spouses, divorced spouses, children, parents, grandchildren), individuals who filed for lump-sum death benefits and/or residual payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information pertaining to the payment or denial of an individual's claim for benefits under the Railroad Retirement Act: Name, address, Social Security number, claim number, proofs of age, marriage, relationship, military service, creditable earnings and service months (including military service), entitlement to benefits under the Social Security Act, programs administered by the Veterans Administration, or other benefit systems, rates, effective dates, medical reports, correspondence and telephone inquiries to and about the beneficiary, suspension and termination dates, health insurance effective date, option, premium rate and deduction, direct deposit data, employer pension information, citizenship status and legal residency status (for annuitants living outside the United States), and tax withholding information (instructions of annuitants regarding number of exemptions claimed and additional amounts to be withheld, as well as actual amounts withheld for tax purposes).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (U.S.C. 231f(b)(6)).

PURPOSE(S):

Records in this system of records are maintained to administer the benefit provisions of the Railroad Retirement Act, sections of the Internal Revenue Code related to the taxation of railroad retirement benefits, and Title XVIII of the Social Security Act as it pertains to Medicare coverage for railroad retirement beneficiaries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Beneficiary identifying information may be disclosed to third party contacts to determine if incapacity of the beneficiary or potential beneficiary to understand or use benefits exists, and to determine the suitability of a proposed representative payee.

b. In the event the Board has determined to designate a person to be the representative payee of an incompetent beneficiary, disclosure of information concerning the benefit amount and other similar information may be made to the representative payee from the record of the individual.

c. Entitlement and benefit rates may be released to primary beneficiaries regarding secondary beneficiaries (or vice versa) when the addition of such beneficiary affects either the entitlement or benefit payment.

d. Identifying information such as full name, address, date of birth, social security number, employee identification number, and date last worked, may be released to any last employer to verify entitlement for benefits under the Railroad Retirement Act.

e. Beneficiary identifying information, address, check rates, number and date may be released to the Department of the Treasury to control for reclamation and return of outstanding benefit payments, to issue benefit payments, act on report of non-receipt, to insure delivery of payments to the correct address of the beneficiary or representative payee or to the proper financial organization, and to investigate alleged forgery, theft or unlawful negotiation of railroad retirement benefit checks or improper diversion of payments directed to a financial organization.

f. Beneficiary identifying information, address, check rate, date, number and other supporting evidence may be released to the U.S. Postal Service for investigation of alleged forgery or theft of railroad retirement or social security benefit checks.

g. Beneficiary identifying information, entitlement data, medical evidence and related evaluatory data and benefit rate may be released to the Social Security Administration and the Centers for Medicare & Medicaid Services to correlate actions with the administration of Title II and Title XVIII of the Social Security Act, as amended.

h. Beneficiary identifying information, including social security account number, and supplemental annuity amounts may be released to the Internal Revenue Service, State and

local taxing authorities for tax purposes (Form G–1099, for those annuitants receiving supplemental annuities).

i. Beneficiary identifying information, entitlement, benefit rates, medical evidence and related evaluatory data, and months paid may be furnished to the Veterans Administration for the purpose of assisting that agency in determining eligibility for benefits or verifying continued entitlement to and the correct amount of benefits payable under programs which it administers.

j. Beneficiary identifying information, entitlement data and benefit rates may be released to the Department of State and embassy and consular officials, the American Institute on Taiwan, and to the Veterans Administration Regional Office, Philippines, to aid in the development of applications, supporting evidence, and the continued eligibility of beneficiaries and potential beneficiaries living abroad.

k. Beneficiary identifying information, entitlement, benefit rates and months paid may be released to the Social Security Administration (Bureau of Supplemental Security Income) the Centers for Medicare & Medicaid Services, to federal, state and local welfare or public aid agencies to assist them in processing applications for benefits under their respective programs.

l. The last addresses and employer information may be released to the Department of Health and Human Services in conjunction with the Parent Locator Service.

m. Beneficiary identifying information, entitlement, rate and other pertinent data may be released to the Department of Labor in conjunction with payment of benefits under the Federal Coal Mine and Safety Act.

n. [Reserved]

o. Medical evidence may be released to Board-appointed medical examiners to carry out their functions.

p. Information obtained in the administration of Title XVIII (Medicare) which may indicate unethical or unprofessional conduct of a physician or practitioner providing services to beneficiaries may be released to Professional Standards Review Organizations and State Licensing Boards.

q. Information necessary to study the relationship between benefits paid by the Railroad Retirement Board and civil service annuities may be released to the Office of Personnel Management.

r. Records may be disclosed to the General Accountability Office for auditing purposes and for collection of debts arising from overpayments under Title II and Title XVIII of the Social Security Act, as amended, or the Railroad Retirement Act.

s. (Standard Disclosure 3.)

t. (Standard Disclosure 1.)

u. Pursuant to a request from an employer covered by the Railroad Retirement Act or the Railroad Unemployment Insurance Act, or from an organization under contract to an employer or employers, information regarding the Board's payment of retirement benefits, the methods by which such benefits are calculated, entitlement data and present address may be released to the requesting employer or the organization under contract to an employer or employers for the purposes of determining entitlement to and rates of private supplemental pension, sickness or unemployment benefits and to calculate estimated benefits due.

v. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his benefit or anticipated benefit and concerning the method of calculating that benefit may be disclosed to the labor organization official.

w. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Retirement Act, and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

x. (Standard Disclosure 4.)

y. (Standard Disclosure 7.)

z. The amount of a residual lump-sum payment and the identity of the payee may be released to the Internal Revenue Service for tax audit purposes.

aa. The amount of any death benefit or annuities accrued but unpaid at death and the identity of such payee may be released to the appropriate state taxing authorities for tax assessment and auditing purposes.

bb. Beneficiary identifying information, including but not limited to name, address, social security account number, payroll number and occupation, the fact of entitlement and benefit rate may be released to the Pension Benefit Guaranty Corporation to enable that agency to determine and pay supplemental pensions to qualified railroad retirees.

cc. Medical records may be disclosed to vocational consultants in administrative proceedings.

dd. Date employee filed application for annuity to the last employer under the Railroad Retirement Act for use in determining entitlement to continued major medical benefits under insurance programs negotiated with labor organizations.

ee. Information regarding the determination and recovery of an overpayment made to an individual may be released to any other individual from whom any portion of the overpayment is being recovered.

ff. The name and address of an annuitant may be released to a Member of Congress when the Member requests it in order that he or she may communicate with the annuitant about legislation which affects the railroad retirement system.

gg. Certain identifying information about annuitants, such as name, social security number, RRB claim number, and date of birth, as well as address, year and month last worked for a railroad, last railroad occupation, application filing date, annuity beginning date, identity of last railroad employer, total months of railroad service, sex, disability onset date, disability freeze onset date, and cause and effective date of annuity termination may be furnished to insurance companies for administering group life and medical insurance plans negotiated between certain participating railroad employers and railway labor organizations.

hh. For payments made after December 31, 1983, beneficiary identifying information, address, amounts of benefits paid and repaid, beneficiary withholding instructions, and amounts withheld by the RRB for tax purposes may be furnished to the Internal Revenue Service for tax administration purposes.

ii. (Standard Disclosure 2.)

jj. Last address and beneficiary identifying information may be furnished to railroad employers for the purpose of mailing railroad passes to retired employees and their families.

kk. Entitlement data and benefits rates may be released to any court, state agency, or interested party, or to the representative of such court, state agency, or interested party, in connection with contemplated or actual legal or administrative proceedings concerning domestic relations and support matters.

ll. Identifying information about annuitants and applicants may be furnished to agencies and/or companies from which such annuitants and applicants are receiving or may receive worker's compensation, public pension, or public disability benefits in order to

verify the amount by which Railroad Retirement Act benefits must be reduced, where applicable.

mm. Disability annuitant identifying information may be furnished to state employment agencies for the purpose of determining whether such annuitants were employed during times they receive disability benefits.

nn. Identifying information about Medicare-entitled beneficiaries who may be working may be disclosed to the Centers for Medicare & Medicaid Services for the purposes of determining whether Medicare should be the secondary payer of benefits for such individuals.

oo. Disclosure of information in claim folders is authorized for bonafide researchers doing epidemiological/mortality studies approved by the RRB who agree to record only information pertaining to deceased beneficiaries.

pp. Identifying information for beneficiaries, such as name, SSN, and date of birth, may be furnished to the Social Security Administration and to any State for the purpose of enabling the Social Security Administration or State through a computer or manual matching program to assist the RRB in identifying surviving spouse beneficiaries who remarried but who may not have notified the RRB of their remarriage.

qq. An employee's date last worked, annuity filing date, annuity beginning date, and the month and year of death may be furnished to AMTRAK when such information is needed by AMTRAK to make a determination whether to award a travel pass to either the employee or the employee's widow.

rr. The employee's Social Security number may be disclosed to an individual eligible for railroad retirement benefits on the employee's earnings record when the employee's Social Security number would be contained in the railroad retirement claim number.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microforms, magnetic tape and magnetic disk.

RETRIEVABILITY:

Claim number, Social Security number and full name.

SAFEGUARDS:

Papers and microforms: Maintained in areas not accessible to the public, offices are locked during non-business hours. Magnetic tape and magnetic disk: Computer and computer storage rooms are restricted to authorized personnel; on-line query safeguards include a lock/unlock password system, a terminal oriented transaction matrix and an audit trail; for computerized records electronically transmitted between headquarters and field office locations, system securities are established in accordance with National Institute of Standards and Technology guidelines. In addition to the on-line query safeguards, they include encryption of all data transmitted and exclusive use of leased telephone lines.

RETENTION AND DISPOSAL:

Paper: Individual claim folders with records of all actions pertaining to the payment of claims are transferred to the Federal Records Center, Chicago, Illinois 5 years after the date of last payment or denial activity if all benefits have been paid, no future eligibility is apparent and no erroneous payments are outstanding. The claim folder is destroyed 25 years after the date it is received in the center. Account receivable listings and checkwriting operations daily activity listings are transferred to the Federal Records Center 1 year after the date of issue and are destroyed 6 years and 3 months after receipt at the center. Other paper listings are destroyed 1 year after the date of issue. Change of address source documents are destroyed after 1 year.

Microforms—Originals are kept for 3 years, transferred to the Federal Records Center, and destroyed when 8 years old. One duplicate copy is kept 2 years and destroyed by shredding. All other duplicate copies are kept 1 year and destroyed by shredding.

Magnetic tape: Magnetic tape records are used to daily update the disk file, are retained for 90 days and then written over. For disaster recovery purposes certain tapes are stored 12–18 months.

MAGNETIC DISK: CONTINUALLY UPDATED AND PERMANENTLY RETAINED.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's records should be in writing, including the full name, Social Security number and railroad retirement claim number(if any) of the individual. Before information about any records will be released, the individual may be required to provide proof of identity, or authorization from the individual to permit release of information. Requests should be sent to the Office of Programs—Director of Operations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Individual applicants or their representatives, railroad employers, other employers, physicians, labor organizations, federal, state and local government agencies, attorneys, funeral homes, congressmen, schools, foreign government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–23 through RRB–25 [Reserved]

* * * * *

RRB–26

SYSTEM NAME:

Payment, Rate and Entitlement History File.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received or are receiving benefits under the Railroad Retirement Act or the Social Security Act, including retired and disabled railroad employees, their qualified spouses, dependents, and survivors, and recipients of other, non-recurring benefits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data supporting the benefits and historical data recording the benefits paid to the above categories of individuals under the Railroad Retirement and Social Security Acts. Includes name, address, social security number, claim number, date of birth, dates of military service, creditable service months, amounts of benefits received under the Social Security Act, components of and final rates payable under the Railroad Retirement Act, health insurance premium deduction, direct deposit data, employer pension

information and tax withholding information (actual amounts withheld for tax purposes).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6))

PURPOSE(S):

The purpose of this system is to record in one file all data concerning payment, rate, and entitlement history for recipients of Railroad Retirement benefits.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. (Standard Disclosure 3.)

b. Records may be released to the Internal Revenue Service for the purpose of their checking amounts shown on individual tax returns as pensions and annuities received under the Railroad Retirement Act.

c. Benefit data regarding persons who, it is determined, are both RRB and VA beneficiaries may be furnished to the Veterans Administration for the purpose of assisting the VA in the administration of its income dependent benefit programs.

d. Disability annuitant identifying information may be furnished to state employment agencies for the purpose of determining whether such annuitants were employed during times they receive disability benefits.

e. Identifying information about Medicare-entitled beneficiaries who may be working may be disclosed to the Centers for Medicare & Medicaid Services for the purposes of determining whether Medicare should be the secondary payer of benefits for such individuals.

f. Benefit information may be furnished to state agencies for the purposes of determining entitlement or continued entitlement to state income-dependent benefits and, if entitled, to adjusting such benefits to the amount to which the individual is entitled under state law, provided the state agency furnishes identifying information for the individuals for whom it wants the RRB benefit information.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape and magnetic disk.

RETRIEVABILITY:

By claim number or beneficiary's Social Security number.

SAFEGUARDS:

Access is limited to authorized personnel only.

RETENTION AND DISPOSAL:

Magnetic tapes are retained for 2 years then written over; magnetic disk files are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisory Data Manager, Bureau of Information Services, Information Resources Management Center, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Transmissions from the following computerized systems: Railroad Retirement Act benefit payment; Social Security benefit payment; disability rating decisions; and primary insurance amount calculations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–27

SYSTEM NAME:

Railroad Retirement Board-Social Security Administration Financial Interchange System

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

One-percent sample of former railroad employees and members of their families who would have been eligible for social security benefits if railroad employment had been covered by the social security system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim number, social security number, date of birth, and administrative cost and payment data on imputed and actual social security benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(c)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(2))

PURPOSE(S):

The purpose of this system is to calculate benefit amounts required to determine the financial interchange transfer amounts each year.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Findings, including individual records, may be released to the Social Security Administration, determining amounts which, if added to or subtracted from the OASDI Trust Funds, would place the Social Security Administration in the position it would have been if employment covered by the Railroad Retirement Act had been covered by the Social Security and Federal Insurance Contributions Acts.

b. Information may be released to the General Accountability Office for auditing purposes.

c. (Standard Disclosure 3.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, paper and computer hard disk.

RETRIEVABILITY:

Claim and social security account numbers.

SAFEGUARDS:

Records are maintained in areas not accessible to the public and are not permitted to be removed.

RETENTION AND DISPOSAL:

Retained indefinitely, except that periodically, inactive materials are sent to the Federal Records Center to be retained for ten years, then destroyed by the General Services Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Financial Interchange, Bureau of the Actuary, U.S. Railroad

Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security account number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

The Social Security Administration and other Railroad Retirement Board files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–28 [Reserved]

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RRB–29

SYSTEM NAME:

Railroad Employees' Annual Gross Earnings Master File

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad workers whose Social Security account number ends in ''30''.

CATEGORIES OF RECORDS IN THE SYSTEM:

Gross earnings by individual by month, quarter or year.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(c)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(c)(2)).

PURPOSE(S):

The purpose of this system is to maintain gross earnings reports for Financial Interchange sample employees for use in the calculation of payroll tax amounts used in the financial interchange determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

None.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic media, paper, and computer hard disk.

RETRIEVABILITY:

Social Security account number.

SAFEGUARDS:

Records are maintained in areas not accessible to the public and are not permitted to be removed; secured building.

RETENTION AND DISPOSAL:

Original reports are kept for 6 years. Final summarized file is kept for 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Benefit and Employment Analysis, Bureau of the Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security account number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Railroad employers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–30 through RRB–32 [Reserved]

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RRB–33

SYSTEM NAME:

Federal Employee Incentive Awards System.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad Retirement Board employees who have submitted suggestions or have been nominated for awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee suggestions, special achievement awards, quality increase awards, public service awards, government-sponsored awards, performance awards, and time off awards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 45, Title 5, U.S. Code.

PURPOSE(S):

Past suggestion and award nominations and awards presented are maintained to provide historical and statistical records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Information may be released to the public media for public relations purposes.

b. Records may be disclosed to the General Accountability Office for auditing purposes.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

System indexed by number assigned when suggestion or nomination is received. Suggestions are cross-referenced by name of suggester and subject of suggestion.

SAFEGUARDS:

Only authorized staff has access to the files.

RETENTION AND DISPOSAL:

Denied suggestions are purged and destroyed five years after denial date. Adopted suggestions are retained permanently as are all special achievement awards, quality increase and public service awards, RRB Award for Excellence, and government-sponsored awards.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Suggestion or award submitted by suggester or nominator. Suggestions submitted by employees; recommendations for award submitted by supervisory personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–34

SYSTEM NAME:

Employee Personnel Management Files.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current employees of the U.S. Railroad Retirement Board.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address and phone number of the person to notify in case of emergency and personal physician; copies of SF–52, Request for Personnel Action, SF–50, Personnel Action, service computation date form, performance ratings, other awards and nominations for recognition, supervisory informal and formal written notes, memorandums, etc., relative to admonishment, caution, warnings, reprimand or similar notices, within-grade increase materials, SF–171, Employment Application, official position descriptions, task lists and performance plans, information concerning training received and seminars attended, and miscellaneous correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(9) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(9)) and 5 U.S.C. Part III.

PURPOSE(S):

The system is maintained to provide information to managers and supervisors to assist in their work, and meet OPM regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. (Standard Disclosure 1.)

b. Records may be disclosed in a court proceeding and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

c. A record from this system of records may be disclosed 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 reporting of an investigation of an employee, the letter 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 requesting agency's decision on the matter.

d. (Standard Disclosure 4.)

e. Information in this system of records may be released to the attorney representing such individual, upon receipt of a written letter or declaration stating the fact of representation, subject to the same procedures and regulatory prohibitions as the subject individual.

f. (Standard Disclosure 2.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic disk.

RETRIEVABILITY:

Name of employee.

SAFEGUARDS:

Kept in lockable file cabinets or lockable desks in secured building, access limited to authorized personnel, limited access to automated system.

RETENTION AND DISPOSAL:

The paper folder is maintained for the period of the employee's service in the agency and is then transferred to the National Personnel Records Center for storage or, to the next employing Federal agency. Other records are either retained at the agency for various lengths of time in accordance with the National Archives and Records Administration records schedules or destroyed when they have served their purpose or when the employee leaves the agency.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be addressed to the System Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Employee, agency officials and management personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–35 [Reserved]

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RRB–36

SYSTEM NAME:

Complaint, Grievance, Disciplinary and Adverse Action Files.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Railroad Retirement Board employees who are the subjects of disciplinary or adverse actions or who have filed a complaint or grievance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to proposals and decisions in cases of discipline and adverse actions; including supporting documents; information relating to grievances filed under the agency and negotiated grievance procedures, including the grievance, final decision and any evidence submitted by the employee and/or the agency in support of or contesting the grievance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5 U.S.C. sections 7503(c), 7513(e), 7543(e).

PURPOSE(S):

The purpose of this system of records is to maintain information related to grievances, disciplinary actions, and adverse actions in order to furnish information to arbitrators, EEO investigators, the Merit Systems protection Board, the Federal Labor Relations Authority, and the Courts, as necessary. The information is also used for statistical purposes, as needed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. (Standard Disclosure 1.)

b. Information in this system of records may be released to the attorney representing such individual, upon receipt of a written letter or declaration stating the fact of representation, subject to the same procedures and regulatory prohibitions as the subject individual.

c. Records may be disclosed to officials of the Merit Systems Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counse; or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties.

d. (Standard Disclosure 2.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name of employee.

SAFEGUARDS:

Maintained in locked file cabinets in an area not accessible to the public.

RETENTION AND DISPOSAL:

Maintained for four years, then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be addressed to the System Manager identified above and should include the name and social security number of the individual involved. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

The Railroad Retirement Board employee, the employee's supervisor, bureau or regional director, the executive director, or the employee's representative.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–37 through RRB–41 [Reserved]

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RRB–42

SYSTEM NAME:

Overpayment Accounts.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or businesses who were overpaid in the salaries or benefits they received from the Railroad Retirement Board. Benefits overpaid are further delineated in the following two categories.

—Individuals or businesses overpaid the following types of annuities or benefits payable under the Railroad Retirement Act: retirement, disability, supplemental, and survivor.

—Individuals overpaid unemployment or sickness insurance benefits payable under the Railroad Unemployment Insurance Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security number, Railroad Retirement claim number, whether salary or benefit and if benefit type of benefit previously paid, amount of overpayment, debt identification number, cause of overpayment, source of overpayment, original debt amount, current balance of debt, installment repayment history, recurring accounts receivable administrative offset history, waiver, reconsideration and debt appeal status, general billing, dunning, referral, collection, and payment history, amount of interest and penalties assessed and collected, name of Federal agency to which account is referred for collection, date of such referral and amount collected.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)); sec. 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)); Pub. L. 97–92, Joint Resolution; Pub. L. 97–365 (Debt Collection Act of 1982); Federal Claims Collection Act (31 U.S.C. 3701 et seq.); Pub. L. 104–134 (Debt Collection Improvement Act of 1996), 5 U.S.C. section 5514 and 20 CFR part 361.

PURPOSE(S):

The records in this system are created, monitored and maintained to enable the Railroad Retirement Board to fulfill regulatory and statutory fiduciary responsibilities to its trust funds, the individuals to whom it pays salaries or benefits and the Federal Government as directed under the Railroad Retirement Act, Railroad Unemployment Insurance Act, Debt Collection Act of 1982, Federal Claims Collection Improvement Act of 1998. These responsibilities include: Accurate and timely determination of debt; sending timely, accurate notice of the debt with correct repayment and rights options; taking correct and timely action when rights/appeals have been requested; assessing appropriate charges; using all appropriate collection tools, releasing required, accurate reminder notices; and correctly and timely entering all recovery, write-off and waiver offsets to debts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Benefit overpayment amounts, history of collectible, history of collection efforts and identification information (name, address, Social Security number, Railroad Retirement claim number) whether salary or benefit overpayment, if benefit, type of benefit,

may be disclosed to agencies of the Federal government for the purpose of recovering overpayments.

b. Records may be disclosed to the General Accountability Office for auditing purposes.

c. (Standard Disclosure 4.)

d. (Standard Disclosure 1.)

e. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his overpayment may be disclosed to the labor organization official.

f. (Standard Disclosure 2.)

g. Debtors' names, Social Security Numbers, Railroad Retirement claim numbers, and the amounts of debts owed may be disclosed to the Defense Manpower Data Center of the Department of Defense, to the Office of Personnel Management, and to the Postal Service to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by the Railroad Retirement Board in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, or by administrative or salary offset procedures.

h. Debtors' names, Social Security Numbers, the amounts of debts owed, and the history of the debts, may be released to any Federal agency for the purpose of enabling such agency to collect debts on RRB's behalf by administrative or salary offset under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365).

i. Debtors' names, Social Security Numbers, Railroad Retirement claims numbers, accounts of debts, history of the debts, and other relevant and necessary information may be disclosed to the Financial Management Service, Department of the Treasury, for the purpose of recovery of debts under the provisions of the Debt Collection Improvement Act of 1996.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, magnetic tape, and magnetic disk.

RETRIEVABILITY:

Salary overpayments retrievable by Social Security number and name. Benefit overpayments retrievable by Social Security number, Railroad Retirement claim number, and name.

SAFEGUARDS:

Salary overpayment records are maintained at the General Services Administration under safeguards equal to those of the Railroad Retirement Board (see GSA–PPFM–9). All benefit overpayment records are maintained in a secured building in areas not accessible to the public and are restricted to personnel whose official duties require access. Paper: Records are stored in locked file cabinets. Magnetic tape and magnetic disk: Computer and computer storage rooms are restricted to authorized personnel; on-line query safeguards include a lock/unlock password system, terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

Salary overpayments are maintained at the General Services Administration and follow that agency's retention and disposal guidelines.

Benefit overpayments are initially maintained in an on-line database. Overpayments are removed five years after balances reach 0.00. These records are identified and removed annually. Overpayments declared uncollectible and written off are removed ten years after being so declared. Removed records are written to tape and disk. The information written is general case history, which includes cause and type of overpayment, regular recovery actions, account adjustments resulting from posting interest, charges and cash receipts. Other activity, such as reconsideration, waiver and appeal actions, and delinquent recovery actions are also included. The tapes are retained for five years and, then, made available for overwrite. There is no retention schedule for records written to disk. Paper documents, with benefit overpayment data, are shredded three years after receipt. These records are identified and destroyed annually.

SYSTEM MANAGER(S) AND ADDRESS:

Salary overpayments: Director, General Services Administration National Payroll Center, Attention: 6BCY, 1500 Bannister Road, Kansas City, Missouri 64131–3088;

Benefit overpayments: Chief Financial Officer, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's salary overpayment record should be in writing addressed to the Director, General Services Administration National Payroll Center at the address above.

Requests for information regarding an individual's or business' benefit overpayment record should be in writing addressed to the System Manager identified above, including the full name, claim number, and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Salary overpayments: General Services Administration Records salary records, Railroad Retirement Board employee overpaid.

Benefit overpayments: Railroad Retirement Board beneficiaries' claim folders, the overpaid individuals, other Board systems of records, and debt collection agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–43

SYSTEM NAME:

Investigation Files

SYSTEM LOCATION:

Office of Inspector General, U.S. Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any of the following categories of individuals on whom a complaint is made alleging a violation of law, regulation, or rule pertinent to the administration of programs by the RRB, or, with respect to RRB employees, alleging misconduct or conflict of interest in the discharge of their official duties: Current and former employees of the Retirement Railroad Board; contractors; subcontractors; consultants, applicants for, and current and former

recipients of, benefits under the programs administered by the Railroad Retirement Board; officials and agents of railroad employers; members of the public who are alleged to have stolen or unlawfully received RRB benefit or salary or assisted in such activity; and others who furnish information, products, or services to the RRB.

CATEGORIES OF RECORDS IN THE SYSTEM:

Letters, memoranda, and other documents alleging a violation of law, regulation or rule, or alleging misconduct, or conflict of interest; reports of investigations to resolve allegations with related exhibits, statements, affidavits or records obtained during the investigation; recommendations on actions to be taken; transcripts of, and documentation concerning requests and approval for, consensual monitoring of communications; photographs, video and audio recordings made as part of the investigation; reports from law enforcement agencies; prior criminal or noncriminal records as they relate to the investigation; reports of actions taken by management personnel regarding misconduct; reports of legal actions resulting from violations referred to the Department of Justice or other law enforcement agencies for prosecution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978; Pub. L. 95–452, 5 U.S.C. App., as amended.

PURPOSE(S):

The Office of Inspector General maintains this system of records to carry out its statutory responsibilities under the Inspector General Act. These responsibilities include a mandate to investigate allegations of fraud, waste, and abuse related to the programs and operations of the RRB and to refer such matters to the Department of Justice for prosecution.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Department of Justice or other law enforcement authorities in connection with actual or potential criminal prosecution or civil litigation initiated by the RRB, or in connection with requests by RRB for legal advice.

b. Records may be disclosed to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee or the issuance of a security clearance, provided that the subject individual is not an individual on whom the RRB has obtained information in conjunction with its administration of the Railroad Retirement Act, the Railroad Unemployment Act, the Milwaukee Railroad Restructuring Act, or the Rock Island Railroad Transition and Employee Assistance Act.

c. (Standard Disclosure 1.)

d. (Standard Disclosure 7.)

e. Records may be disclosed to members of the President's Council on Integrity and Efficiency for the preparation of reports to the President and Congress on the activities of the Inspector General.

f. Records may be disclosed to members of the President's Council on Integrity and Efficiency, or the Department of Justice, as necessary, for the purpose of conducting qualitative assessment reviews of the investigative operations of RRB–OIG to ensure that adequate internal safeguards and management procedures are maintained.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic media.

RETRIEVABILITY:

Name, SSN, RRB Claim Number, and assigned number, all of which are cross-referenced to the other information.

SAFEGUARDS:

General access is restricted to the Inspector General and members of his staff; disclosure within the agency is on a limited need-to-know basis; files and paper documents are maintained in locked file cabinets located in areas not accessible to the public. Office is locked during non-business hours. Access to computers which store the electronic index is restricted to authorized personnel, and on-line query safeguards include a password unlock system.

RETENTION AND DISPOSAL:

Paper files are retained for 10 years after the investigation has been closed before they are destroyed by shredding. They are destroyed by shredding in the fiscal year following the expiration of the 10-year retention period. The electronic index records are retained until no longer required for any operational or administrative purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Inspector General, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name, claim number, and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information. Many records in this system are exempt from the notification requirements under 5 U.S.C. 552a(k) listed under ''Exemptions Claimed for the System.'' To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination whether an exemption applies shall be made at the time a request for notification is received.

RECORD ACCESS PROCEDURE:

Requests for access to the record of an individual and requests to contest such a record should be in writing addressed to the System Manager identified above, including the full name, claim number, and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

CONTESTING RECORD PROCEDURE:

See notification section above.

RECORD SOURCE CATEGORIES:

The subject; the complainant; third parties, including but not limited to employers and financial institutions; local, state, and federal agencies; and other RRB record systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(j)(2) records in this system of records which are compiled for the purposes of criminal investigations are exempted from the requirements under 5 U.S.C. 552a(c)(3) and (4) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), (2), (3), (4), (G), (H), and (I), (5) and (8) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) of 5 U.S.C. 552a.

Pursuant to 5 U.S.C. 552a(k)(2) records in this system of records which consist of investigatory material compiled for law enforcement purposes are exempted from the notice, access and contest requirements under 5 U.S.C. 552a(c)(3), (d) (e)(1), (e)(4)(G), (H), and

(I) and (f); however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

The reasons why the head of the Railroad Retirement Board decided to exempt this system of records under 5 U.S.C. 552a(k) are given in 20 C.F.R. 200(g).

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RRB–44 through RRB–45 [Reserved]

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RRB–46

SYSTEM NAME:

Personnel Security Files.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Railroad Retirement Board (RRB) employees and individuals being considered for possible employment, or contractor work, by the RRB.

CATEGORIES OF RECORDS IN THE SYSTEM:

Completed and signed suitability investigation requests; information concerning identity source documents; results of applicable background checks; copies of relevant material used to validate applicant's identity, including photos and fingerprint impressions. Records of actions taken by the Railroad Retirement Board in a personnel security investigation. If the action is favorable, the information will include identifying information and the action taken; if the action is unfavorable, the information will include the basis of the action which may be a summary of, or a selection of, information contained in an OPM investigation report. Information in an OPM investigation report may include: date and place of birth, marital status, dates and places of employment, foreign countries visited, membership in organizations, birth date and place of birth of relatives, arrest records, prior employment reports, dates and levels of clearances, and names of agencies and dates when, and reasons why, they were provided clearance information on Board employees.

Note: This system of records does not include the OPM investigation report itself, even though it is in possession of the Railroad Retirement Board. The report is covered under the system of records OPM Central-9. Access to the report is governed by OPM.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, OMB Circular A–130 dated December 15, 1985, and Homeland Security Presidential Directive 12.

PURPOSE(S):

The purpose of this system of records is to maintain files documenting the processing of investigations on RRB employees and applicants for employment or contract work used in making security/suitability determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to the Office of Personnel Management in carrying out its functions.

b. Records may be disclosed to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, 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 requesting agency's decision on the matter.

c. (Standard Disclosure 1.)

d. (Standard Disclosure 2.)

e. In the event of litigation where one of the parties is (1) the Board, any component of the Board, or any employee of the Board in his or her official capacity; (2) the United States where the Board determines that the claim, if successful, is likely to directly affect the operations of the Board or any of its components; or (3) any Board employee in his or her individual capacity where the Justice Department has agreed to represent such employees, the Board may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

f. (Standard Disclosure 4.)

g. Disclosure may be made to the PIV card applicant's representative at the written request of the individual who is applying for a PIV card with the RRB.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper.

RETRIEVABILITY:

Name.

SAFEGUARDS:

The records are kept in secure storage, in a locked room. Access to RRB personnel security files is limited to the Director of Human Resources (Personnel Security Officer) and the Chief of Human Services and Labor Relations. Access to contractor personnel security files is limited to the Director of Administration. Access to OIG personnel security files is limited to the Assistant Inspector General for Investigations.

RETENTION AND DISPOSAL:

GRS 18–22; Destroy upon notification of death or not later than 5 years after separation or transfer of employee, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

RRB Employees: Human Resources Security Officer, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092; RRB OIG Employees: Assistant Inspector General for Investigations, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092; Contractors: Director of Administration, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

The individual to whom the information applies, the Railroad Retirement Board, the Office of Personnel Management, the FBI and other law enforcement agencies, and other third parties.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–48

SYSTEM NAME:

Access Management System.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Railroad Retirement Board employees, contractors, Federal agency tenant employees, and other persons assigned responsibilities that require the issuance of credentials for identification and/or access privileges to locations within federally controlled properties and information systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of completed credential requests; name, photograph, signature, ID badge serial number, date and time of requests for access, system record of access granted and/or allowed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Homeland Security Presidential Directive 12; Federal Information Processing Standards 201; Federal Property and Administrative Act of 1949, as amended.

PURPOSE(S):

The purpose of this system of records is to validate individuals who have been given credentials to access federally controlled property, secured areas or information systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to another Federal agency or to a court when the government is party to a judicial proceeding before the court;

b. Records may be disclosed to a Federal agency, on request, in connection with the hiring and/or retention of an employee;

c. Records may be disclosed to officials of the Merit Systems Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties;

d. Records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee to whom the information pertains;

e. Records may be disclosed to the agency's Office of Inspector General for any official investigation or review related to the programs and operations of the RRB.

f. Records may be disclosed to agency officials for any official investigation or review related to the programs and operations of the RRB.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Name, badge serial number.

SAFEGUARDS:

The records are secured in a locked room. Access to records is limited to the Assistant to the Director of Administration. Access to the electronic records is limited to RRB employees and officials designated as issuers; it is also controlled through a user id and password security process. The security mechanism also limits access to data based on a user's role needs for accessing the data.

RETENTION AND DISPOSAL:

GRS 18–17(a) applies to access control records—destroy 5 years after final entry or 5 years after date of document, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant to the Director of Administration, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record(s) should be in writing to the System Manager identified above, and must include the full name. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requestor to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Individuals to whom credentials are issued.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–49

SYSTEM NAME:

Telephone Call Detail Records.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (generally agency employees and contractor personnel) who make or receive telephone calls from agency owned telephones at the agency's 844 North Rush Street headquarters building.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of employee, telephone number, location of telephone, date and time phone call made or received, duration of call, telephone number called from agency telephone, city and state of telephone number called, cost of call made on agency phone.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 1348(b).

PURPOSE(S):

The purpose of this system of records are to verify the correctness of telephone service billing and to detect and deter possible improper use of agency telephones by agency employees and contractors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. [Reserved.]

b. Relevant records may be released to a telecommunications company providing support to permit servicing the account.

c. (Standard Disclosure 1.)
d. (Standard Disclosure 2.)
e. Relevant records may be disclosed to representatives of the General Services Administration or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.
f. Records may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding.
g. Records may be disclosed in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding.
h. (Standard Disclosure 4.)
i. Relevant records may be disclosed to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer hard disk, cartridge, and tape.

RETRIEVABILITY:

Name, telephone extension, number dialed.

SAFEGUARDS:

Only designated personnel in the Bureau of Administration have access to the computerized records. Access to the PC database containing call detail information is password protected. An additional password is required for access to the personal computer on which the database is housed.

RETENTION AND DISPOSAL:

Computerized records are retained for approximately 180 days and then are written over by more current call detail information. Paper reports, when issued, are disposed of as provided in National Archives and Records Administration General Records Schedule 12.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Administration, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the Systems Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Telephone assignment records; computer software that captures telephone call information and permits query and reports generation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–50

SYSTEM NAME:

Child Care Tuition Assistance Program.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Railroad Retirement Board employees who voluntarily applied for child care tuition assistance, the employee's spouse, the employee's children and their child care providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee (parent) name, Social Security Number, pay grade, home and work numbers, addresses, total family income, spouse employment information, names of children on whose behalf the employee parent is applying for tuition assistance, each applicable child's date of birth, information on child care providers used (including name, address, provider license number and state where issued, tuition cost, and provided tax identification number), and copies of IRS Form 1040 and 1040A for verification purposes. Other records may include the child's social security number, weekly expense, pay statements, records relating to direct deposits, verification of qualification and administration for child care assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–58, Section 643 and E.O. 9397.

PURPOSE(S):

The purpose of the system is to determine eligibility for, and the amount of, the child care tuition assistance for lower income RRB employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. [Reserved.]
b. (Standard Disclosure 1.)
c. (Standard Disclosure 2.)
d. (Standard Disclosure 6.)
e. Records may be disclosed in response to a request for discovery or for the appearance or a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding.
f. Records may be disclosed in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding.
g. (Standard Disclosure 4.)
h. Relevant records may be disclosed to respond to a Federal agency's request made in connection with the hiring or retention of an employee, the letting of a contract or issuance of a grant, license or other benefit by the requesting agency, but only to the extent that the information disclosed is relevant and necessary to the requesting agency's decision on the matter.
i. Relevant records may be disclosed to the Office of Personnel Management or the General Accountability Office when the information is required for evaluation of the subsidy program.
j. (Standard Disclosure 3.)
k. Relevant records may be disclosed to child care providers to verify a covered child's dates of attendance at the provider's facility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and computer hard disk, cartridge, and tape.

RETRIEVABILITY:

Name, Social Security Number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable cabinets in a building with security cameras and 24-hour security guards. Access to electronic records require the use of restricted passwords.

RETENTION AND DISPOSAL:

These records will be maintained permanently until their official retention period is established.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Human Resources, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the Systems Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Applications for child care tuition assistance submitted voluntarily by RRB employees; forms completed by child care providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–51

SYSTEM NAME:

Railroad Retirement Board's Customer PIN/Password (PPW) Master File System.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All RRB customers (applicants, claimants, annuitants and other customers) who elect to conduct transactions with RRB in an electronic business environment that requires the PPW infrastructure, as well as those customers who elect to block PPW access to RRB electronic transactions by requesting RRB to disable their PPW capabilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information includes identifying information such as the customer's name, Social Security number (which functions as the individual's personal identification number (PIN)) and mailing address. The system also maintains the customer's Password Request Code (PRC), the password itself, and the authorization level and associated data (e.g. effective date of authorization).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 2(b)(6) of the Railroad Retirement Act, 45 U.S.C. 231f(b)(6); and the Government Paperwork Elimination Act.

PURPOSE(S):

The purpose of this system is to enable RRB customers who wish to conduct business with the RRB to do so in a secure environment.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. [Reserved.]

b. (Standard Disclosure 1.)

c. (Standard Disclosure 2.)

d. (Standard Disclosure 6.)

e. Records may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative proceeding and provided that the disclosure would be clearly in the furtherance of the interest of the subject individual.

f. Records may be disclosed in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding and provided that the disclosure would be clearly in the furtherance of the interest of the subject individual.

g. (Standard Disclosure 4.)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and paper form.

RETRIEVABILITY:

Name and Social Security number (which acts as the individual's PIN).

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable cabinets in a secure building. Access to electronic records requires the use of restricted passwords.

RETENTION AND DISPOSAL:

These records will be maintained permanently until their official retention period is established.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs—Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the Systems Manager identified above, including the full name and social security number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Data for the system are obtained primarily from the individuals to whom the record pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–52

SYSTEM NAME:

Board Orders Concerning Benefit Appeals to the Three-member Board.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Appellants for benefits under the Railroad Retirement or Railroad Unemployment Insurance Acts.

CATEGORIES OF RECORDS IN THE SYSTEM:

Appellant name, social security number, railroad retirement board claim number, address, date of birth, sex, medical records, marriage or relationship records, military service, creditable earnings and service months, benefit payment history, work history, citizenship and legal residency status, correspondence and inquiries, and appeals of adverse determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6); sec. 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

Record decisions of the Board in benefit appeals cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. If a request for information pertaining to an individual is made by an official of a labor organization of which the individual is a member and the request is made on behalf of the individual, information from the record of the individual concerning his benefit or anticipated benefit and concerning the method of calculating that benefit may be disclosed to the labor organization official.

b. Records may be disclosed in a court proceeding relating to any claims for benefits by the beneficiary under the Railroad Retirement Act and may be disclosed during the course of an administrative appeal to individuals who need the records to prosecute or decide the appeal or to individuals who are requested to provide information relative to an issue involved in the appeal.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Name, railroad retirement claim number, social security account number, Board Order number, docket number.

SAFEGUARDS:

Paper records kept in locked cabinet in locked room in a secure building. Electronic records are protected in a restricted private network with access controlled by password authentication.

RETENTION AND DISPOSAL:

No records from this system will be disposed of pending a record schedule determination.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary of the Board, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section.

CONTESTING RECORD PROCEDURE:

See Notification section.

RECORD SOURCE CATEGORIES:

Applications for benefits and appeal of decisions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–53

SYSTEM NAME:

Employee Medical and Eye Examination Reimbursement Program.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any/all RRB employees that request reimbursement for the physical examination co-payment and eye examination.

CATEGORIES OF RECORDS IN THE SYSTEM:

RRB employee name and medical documentation including receipts for the physical exam co-pay and payment of the eye examination.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)) and Section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(1)). Negotiated Labor Management Agreement between the U.S. Railroad Retirement Board and the Council of A.F.G.E. Locals in the Board.

PURPOSE(S):

To provide reimbursement for and maintain the records of the RRB's physical and eye examination program.

For purposes of adjudicating the claim/reimbursement and authority for payment of fees related to RRB employee physical examination co-payment and eye examination fee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Internal RRB use only.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper copy, hard disc removal storage kept in locked file cabinet. Individual digital files password protected.

RETRIEVABILITY:

Name and social security account number.

SAFEGUARDS:

Paper and removable media kept in locked file cabinet in locked office. Electronic records are accessible after proper network authentication and also are password protected.

RETENTION AND DISPOSAL:

No records from this system will be disposed of pending a record schedule determination.

SYSTEM MANAGER(S) AND ADDRESS:

Employee Health Services, U.S. Railroad Retirement Board, 844 North. Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number and claim number of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section.

CONTESTING RECORD PROCEDURE:

See Notification section.

RECORD SOURCE CATEGORIES:

Employee reimbursement claim and proofs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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RRB–54

SYSTEM NAME:

Virtual Private Network (VPN) Access Management.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

RRB employees and contractors who are authorized to remotely access internal RRB information systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, home telephone number, work telephone number, login, password, group name, source IP address, remote computer name, home address, software serial numbers, access levels.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(6)) and Section 12(l) of the Railroad Unemployment Insurance Act (45 U.S.C. 362(l)).

PURPOSE(S):

Control and secure employees and contractors remote access to internal RRB information systems for official business.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Records may be disclosed to officials of the Merit Systems Protection Board, including the Office of Special Counsel; the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties;

b. Records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee to whom the information pertains;

c. Records may be disclosed to the agency's Office of Inspector General for any official investigation or review related to the programs and operations of the RRB.

d. Records may be disclosed to agency officials for any official investigation or review related to the programs and operations of the RRB.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Name, e-mail address.

SAFEGUARDS:

Paper records are kept in a locked cabinet, accessible only to authorized personnel. Electronic internal network records are accessible only after appropriate individual authentication. Electronic service provider (Sprint) records are secured and accessible after proper authentication only to authorized personnel.

RETENTION AND DISPOSAL:

No records from this system will be disposed of pending a record schedule determination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Infrastructure Services, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Requests for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and enrolled e-mail address of the individual. Before information about any record will be released, the System Manager may require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification procedure above.

CONTESTING RECORD PROCEDURE:

See Notification procedure above.

RECORD SOURCE CATEGORIES:

VPN access application Form G–68, and infrastructure profiles.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

* * * * *

RRB–55

SYSTEM NAME:

Contact Log.

SYSTEM LOCATION:

U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

SECURITY CLASSIFICATION:

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Annuitants, their representatives and other recipients of railroad retirement, survivor, disability, Medicare and supplemental annuities payable under the Railroad Retirement Act (RRA) and individuals receiving or applying for unemployment or sickness insurance benefits payable under the Railroad Unemployment Insurance Act (RUIA).

CATEGORIES OF RECORDS IN THE SYSTEM:

The Railroad Retirement Board (RRB) claim number, social security number of the annuitant/claimant, annuitant's name, contact name (if different from the annuitant), telephone number of the contact, name and office code of the RRB employee who submitted the contact, and the entered contact record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(b)(6) of the Railroad Retirement Act (RRA) of 1974 (45 U.S.C. 231f(b)(6); and Section 12(l) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 362(1)).

PURPOSE(S):

The Contact Log records, maintains and displays RRA and RUIA activities associated with customer initiated contacts with the RRB. It is used by RRB customer service staff to ensure public inquiries are handled efficiently.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

a. Beneficiary identifying information may be disclosed to third party contacts to determine whether the beneficiary or potential beneficiary is capable of understanding and managing their benefit payments in their own best interest and to determine the suitability of a proposed representative payee.

b. Disclosure of information concerning the annuitant/claimant may be made to the representative payee on the record for the annuitant.

c. Records may be disclosed in response to a request for discovery or for the appearance of a witness, to the extent that what is disclosed is relevant to the subject matter involved in a pending judicial or administrative

proceeding and provided that the disclosure would be clearly in the furtherance of the interest of the subject individual.

d. Records may be disclosed in a proceeding before a court or adjudicative body to the extent that they are relevant and necessary to the proceeding and provided that the disclosure would be clearly in the furtherance of the interest of the subject individual.

e. Disclosure of records concerning the annuitant/claimant may be made to the attorney representing the annuitant/claimant, upon receipt of a written letter or declaration of representation.

f. Records may be disclosed to the annuitant/claimant's railroad union representative(s) to the extent that what is disclosed is relevant to the subject matter involved in the union issue or proceeding and provided that the disclosure would be clearly in the furtherance of the interest of the subject individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Railroad retirement claim number, social security account number, or name.

SAFEGUARDS:

Access to records in the contact log are controlled by: (1) NT authentication of all user logins; (2) encryption of data entered and transmitted by field service personnel; (3) maintained audit trail of user actions; (4) lock/unlock password system on network workstations; and, (5) role-based access.

Magnetic media: Computer system and computer storage rooms are restricted to authorized personnel; on-line query safeguards include a lock/unlock password system, a terminal oriented transaction matrix and an audit trail; for computerized records electronically transmitted between headquarters and field office locations, system securities are established in accordance with National Institute of Standards and Technology guidelines. In addition to the on-line query safeguards, they include encryption of all data transmitted and exclusive use of leased telephone lines.

RETENTION AND DISPOSAL:

No records from this system will be disposed of pending a record schedule determination.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Programs-Director of Policy and Systems, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

NOTIFICATION PROCEDURE:

Request for information regarding an individual's record should be in writing addressed to the System Manager identified above, including the full name and social security number. Before information about any record is released, the System Manager will require the individual to provide proof of identity or require the requester to furnish an authorization from the individual to permit release of information.

RECORD ACCESS PROCEDURE:

See Notification section above.

CONTESTING RECORD PROCEDURE:

See Notification section above.

RECORD SOURCE CATEGORIES:

Contact Log information is obtained from members of the public who contacted the RRB and to whom the record pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix I

Offices of the U.S. Railroad Retirement Board (refer to *http://www.rrb.gov* for the most current addresses):

Headquarters: 844 North Rush Street, Chicago, Illinois 60611–2092
Office of Legislative Affairs: 1310 G Street Northwest, Suite 500, Washington, DC 20005–3004

A. Regional Offices

Region 1

Peachtree Summit Bldg, 401 West Peachtree Street, Room 1703, Atlanta, Georgia 30308–3519

Region 2

Nix Federal Building, 900 Market Street, Suite 304, Philadelphia, Pennsylvania 19107

Region 3

1999 Broadway, Suite 2260, Denver, Colorado 80202

B. District Offices

Alabama

Medical Forum Bldg., 950 22nd Street North, Room 426, Birmingham, Alabama 35203–1134

Arizona

Financial Plaza, 1201 South Alma School Road, Suite 4850, Mesa, Arizona 85210–2097

Arkansas

1200 Cherry Brook Drive, Suite 500, Little Rock, Arkansas 72211–4122

California

858 South Oak Park Road, Suite 102, Covina, California 91724–3674
Oakland Federal Building, 1301 Clay Street, Suite 392N, Oakland, California 94612–5217
801 I Street, Room 205, Sacramento, California 95814–2559

Colorado

721 19th Street, Room 177, Post Office Box 8869, Denver, Colorado 80201–8869

Florida

550 Water Street, Suite 330, Jacksonville, Florida 32202–5122
Timberlake Federal Building, 500 East Zack Street, Suite 300, Tampa, Florida 33602–3918

Georgia

Peachtree Summit Building, 401 West Peachtree Street, Room 1702, Atlanta, Georgia 30308–3519

Illinois

844 North Rush Street, Room 901, Chicago, Illinois 60611–2092
Millikin Court, 132 South Water Street, Suite 517, Decatur, Illinois 62523–1077
63 West Jefferson Street, Suite 102, Post Office Box 457, Joliet, Illinois 60434–0457

Indiana

The Meridian Centre, 50 South Meridian Street, Suite 303, Indianapolis, Indiana 46204–3538

Iowa

Federal Building, 210 Walnut Street, Room 921, Des Moines, Iowa 50309–2116

Kansas

1861 North Rock Road, Suite 390, Wichita, Kansas 67206–1264

Kentucky

Theatre Building, 629 South 4th Avenue, Suite 301, Post Office Box 3705, Louisville, Kentucky 40201–3705

Louisiana

Hale Boggs Federal Building, 500 Poydras Street, Suite 1045, New Orleans, Louisiana 70130–3399

Maryland

George H. Fallon Building, 31 Hopkins Plaza, Suite 820, Baltimore, Maryland 21201–2826

Massachusetts

408 Atlantic Avenue, Room 441, Post Office Box 52126, Boston, Massachusetts 02205–2126

Michigan

McNamara Federal Building, 477 West Michigan Avenue, Suite 1199, Detroit, Michigan 48226–2596

Minnesota

Federal Building, 515 West First Street, Suite 125, Duluth, Minnesota 55802–1399
180 East 5th Street, Suite 195, St. Paul, Minnesota 55101–1640

Missouri

601 East 12th Street, Room 113, Kansas City, Missouri 64106–2808
Young Federal Building, 1222 Spruce Street, Room 7.303, St. Louis, Missouri 63103–2846

Montana

Judge Jameson Federal Building, 2900 Fourth Avenue North, Room 101, Billings, Montana 59101–1266

Nebraska

Hruska U.S. Court House, 111 South 18 Plaza, Suite C125, Post Office Box 815, Omaha, Nebraska 68101–0815

New Jersey

20 Washington Place, Room 516, Newark, NJ 07102–3127

New Mexico

300 San Mateo Boulevard Northeast, Suite 401, Albuquerque, New Mexico 87108–1503

New York

O'Brien Federal Building, Clinton Avenue & Pearl Street, Room 264, Post Office Box 529, Albany, New York 12201–0529
186 Exchange Street, Suite 110, Buffalo, New York 14204–2085
1400 Old Country Road, Suite 202, Westbury, New York 11590–5119
Federal Building, 26 Federal Plaza, Room 3404, New York, New York 10278–3499

North Carolina

Quorum Business Park, 7508 East Independence Boulevard, Suite 120, Charlotte, North Carolina 28227–9409

North Dakota

U.S. Post Office Building, 657 Second Avenue North, Room 312, Fargo, North Dakota 58102–4727

Ohio

URS Building, 36 East 7th Street, Suite 201, Cincinnati, Ohio 45202–4456
Celebrezze Federal Building, 1240 East 9th Street, Room 907, Cleveland, Ohio 44199–2001

Oregon

Green-Wyatt Federal Building, 1220 Southwest 3rd Avenue, Room 377, Portland, Oregon 97204–2807

Pennsylvania

1514 11th Avenue, Post Office Box 990, Altoona, Pennsylvania 16603–0990
Federal Building, 228 Walnut Street, Room 576, Box 11697, Harrisburg, Pennsylvania 17108–1697
Nix Federal Building, 900 Market Street, Suite 301, Post Office Box 327, Philadelphia, Pennsylvania 19105–0327
Moorhead Federal Building, 1000 Liberty Avenue, Room 1511, Pittsburgh, Pennsylvania 15222–4107
Siniawa Plaza II, 717 Scranton Carbondale Highway, Scranton, Pennsylvania 18508–1121

Tennessee

233 Cumberland Bend, Suite 104, Nashville, Tennessee 37228–1806

Texas

819 Taylor Street, Room 10G02, Post Office Box 17420, Fort Worth, Texas 76102–0420
Leland Federal Building, 1919 Smith Street, Suite 845, Houston, Texas 77002–8098

Utah

125 South State Street, Room 1205, Salt Lake City, Utah 84138–1137

Virginia

400 North 8th Street, Suite 470, Richmond, Virginia 23219–4819
First Campbell Square, 210 First Street Southwest, Suite 260, Post Office Box 270, Roanoke, VA 24002–0270

Washington

Pacific First Plaza, 155 108th Avenue Northeast, Suite 201, Bellevue, Washington 98004–5901
U.S. Court House, W 920 Riverside Avenue, Room 492B, Spokane, Washington 99201–1008

West Virginia

New Federal Building, 640 4th Avenue, Room 145, Post Office Box 2153, Huntington, West Virginia 25721–2153

Wisconsin

Reuss Plaza, 310 West Wisconsin Avenue, Suite 1300, Milwaukee, Wisconsin 53203–2219

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Federal Register

Thursday,
December 27, 2007

Part V

Securities and Exchange Commission

17 CFR Parts 230 and 239
Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S–3 and F–3; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–8878; File No. S7–10–07]

RIN 3235–AJ89

Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S–3 and F–3

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the eligibility requirements of Form S–3 and Form F–3 to allow certain domestic and foreign private issuers to conduct primary securities offerings on these forms without regard to the size of their public float or the rating of debt they are offering, so long as they satisfy the other eligibility conditions of the respective form, have a class of common equity securities listed and registered on a national securities exchange, and the issuers do not sell more than the equivalent of one-third of their public float in primary offerings over any period of 12 calendar months. The amendments are intended to allow more companies to benefit from the greater flexibility and efficiency in accessing the public securities markets afforded by Form S–3 and Form F–3 without compromising investor protection. The expanded form eligibility does not extend to shell companies, however, which are prohibited from using the new provisions until 12 calendar months after they cease being shell companies. In addition, we are adopting an amendment to the rules and regulations promulgated under the Securities Act to clarify that violations of the one-third restriction will also violate the requirements as to proper registration form, even though the registration statement has been declared effective previously.

EFFECTIVE DATE: January 28, 2008.

FOR FURTHER INFORMATION CONTACT: Raymond A. Be, at (202) 551–3430, or the Office of Chief Counsel, at (202) 551–3500, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

SUPPLEMENTARY INFORMATION: We are amending Form S–3,[1] Form F–3 [2] and Rule 401(g) [3] under the Securities Act of 1933.[4]

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I. Discussion

A. Background

1. Proposing Release and Public Comment Letters

On May 23, 2007, we proposed revisions to the eligibility requirements of Form S–3 and Form F–3 to allow domestic and foreign private issuers, respectively, to conduct primary securities offerings on these forms without regard to the size of their public float or the rating of debt they are offering, so long as they satisfy the other eligibility conditions of the applicable form and do not sell securities valued in excess of 20% of their public float in primary offerings pursuant to the new instructions on these forms over any period of 12 calendar months.[5]

In response to our request for comment on the Proposing Release, we received comment letters from a variety of groups and constituencies, most of whom expressed their general support for the proposed form amendments and the objectives that we articulated in the Proposing Release. Notwithstanding their general support, however, several commenters thought that some modifications to the proposal were advisable, either to improve the usefulness of the form amendments to smaller public companies seeking capital,[6] or to ensure that the rule changes are consistent with investor protection.[7] After considering each of the comments, we are adopting amendments to Form S–3 and Form F–3 substantially in the form proposed, but with certain modifications as discussed more fully in this release.

These amendments are intended to allow a larger number of public companies to benefit from the greater flexibility and efficiency in accessing the public securities markets afforded by Form S–3 and Form F–3 in a manner that is consistent with investor protection. Accordingly, we are placing certain restrictions on the class of issuers who will be eligible under the new rules and are adopting a ceiling on the amount of securities that eligible issuers may offer pursuant to these rules. In creating new opportunities to facilitate capital formation consistent with the protection of investors, we believe that a careful and modest expansion of Form S–3 and Form F–3 eligibility is warranted at this time. However, as we indicated in the Proposing Release, we may revisit the appropriateness of the form restrictions at a later time if our experience with this revised requirement suggests issuer eligibility for primary offerings on Form S–3 and Form F–3 should be further revised.[8]

2. Form S–3

Form S–3 is the ''short form'' used by eligible domestic companies to register securities offerings under the Securities Act of 1933. The form also allows these companies to rely on their reports filed under the Securities Exchange Act of

[1] 17 CFR 239.13.

[2] 17 CFR 239.33.

[3] 17 CFR 230.401(g).

[4] 15 U.S.C. 77a *et seq.*

[5] *Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S–3 and F–3,* Release No. 33–8812 (June 20, 2007) [72 FR 35118] (the ''Proposing Release'').

[6] See, for example, letters from the American Bar Association, Committees on Federal Regulation of Securities and State Regulation of Securities (''ABA''); Brinson Patrick Securities Corporation (''Brinson Patrick''); Feldman Weinstein and Smith LLP (''Feldman Weinstein''); Malizia Spidi & Fisch (''Malizia Spidi''); Morrison & Foerster LLP (''Morrison & Foerster''); Office of Advocacy, Small Business Administration (''SBA''); Roth Capital Partners, LLP (''Roth Capital''); Marshal Shichtman (''M. Shichtman''); and Williams Securities Law (''Williams Securities''). All comment letters are publicly available at *http://www.sec.gov/comments/s7–10–07/s71007.shtml.*

[7] See letter from the Council of Institutional Investors (''CII'').

[8] Proposing Release, at 35124.

1934 [9] to satisfy the form's disclosure requirements. Prior to today's amendments, companies have been able to register *primary* offerings (that is, securities offered by or on behalf of the registrant for its own account) on Form S–3 only if their non-affiliate equity market capitalization, or ''public float,'' was $75 million or more.[10] In contrast, transactions involving primary offerings of non-convertible investment grade securities, certain rights offerings, dividend reinvestment plans and conversions, and offerings by selling shareholders of securities registered on a national securities exchange do not require the company to have a minimum public float.[11]

Recently, the issue of Form S–3 eligibility for primary offerings was addressed by the Commission's Advisory Committee on Smaller Public Companies (the ''Advisory Committee''), which the Commission chartered in 2005 to assess the current regulatory system for smaller companies under U.S. securities laws.[12] In its April 23, 2006 Final Report to the Commission, the Advisory Committee recommended that we allow all reporting companies with securities listed on a national securities exchange or Nasdaq,[13] or quoted on the Over-the-Counter Bulletin Board electronic quotation service, to be eligible to use Form S–3 if they have been reporting under the Exchange Act for at least one year and are current in their reporting at the time of filing.[14]

3. Reasons for New Form S–3 Amendments

The ability to conduct primary offerings on Form S–3 confers significant advantages on eligible companies.[15] Form S–3 permits the incorporation of required information by reference to a company's disclosure in its Exchange Act filings, including Exchange Act reports that were previously filed and those that will be filed in the future.[16]

Form S–3 eligibility for primary offerings also enables companies to conduct primary offerings ''off the shelf'' under Rule 415 of the Securities Act.[17] Rule 415 provides considerable flexibility in accessing the public securities markets from time to time in response to changes in the markets and other factors. The shelf eligibility resulting from Form S–3 eligibility and the ability to forward incorporate information on Form S–3, therefore, allow companies to avoid additional delays and interruptions in the offering process and can reduce or even eliminate the costs associated with preparing and filing post-effective amendments to the registration statement.

By having more control over the timing of their offerings, these companies can take advantage of desirable market conditions, thus allowing them to raise capital on more favorable terms (such as pricing) or to obtain lower interest rates on debt. As a result, the ability to take securities off the shelf as needed gives issuers a significant financing alternative to other widely available methods, such as private placements with shares usually priced at discounted values based in part on their relative illiquidity.[18] Consequently, we believe that extending Form S–3 short-form registration to additional issuers should enhance their ability to access the public securities markets. Likewise, a significant proportion of commenters to the Proposing Release welcomed an expansion of Form S–3 eligibility, agreeing that such a measure would greatly enhance smaller public companies' access to capital in the securities markets, with far less burden and cost.[19]

Given the great advances in the electronic dissemination and accessibility of company disclosure transmitted over the Internet in the last several years,[20] we believe that moderately expanding the class of transactions that are permitted on Form S–3 for primary securities offerings is warranted once again. In contrast to 1992, when the Commission last adjusted the issuer eligibility requirements for Form S–3,[21] most public filings under the Securities Act and the Exchange Act, and all Forms S–3, are now filed on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR''). The pervasiveness of the Internet in daily life and the advent of EDGAR as a central repository of company filings have combined to allow widespread, direct, and contemporaneous accessibility to company disclosure at little or no cost to those interested in obtaining the information. For this reason, we think it is appropriate to once again expand the class of companies who may register primary offerings on Form S–3 in a limited manner.

4. Limited Expansion of Form Eligibility

We are not prepared at this time to abandon our longstanding prerequisite contained in the instructions to Form S–3 and allow unlimited use of this form for primary offerings by companies who do not have at least $75 million in

[9] 15 U.S.C. 78a *et seq.*

[10] General Instruction I.B.1. of Form S–3. The history and use of Form S–3 are discussed in greater detail in the Proposing Release.

[11] See General Instructions I.B.2. through I.B.4. of Form S–3.

[12] More information about the Advisory Committee is available at *http://www.sec.gov/info/smallbus/acspc.shtml.*

[13] There is no longer a distinction between Nasdaq and national securities exchanges. On January 13, 2006, the Commission approved Nasdaq's application to become a national securities exchange. The Nadsaq Stock Market commenced operations on August 1, 2006.

[14] Recommendation IV.P.3. of the Final Report of the Advisory Committee on Smaller Public Companies (Apr. 23, 2006) (the ''Final Report''), at 68–72. The Final Report is available at *http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf.* In addition to elimination of the public float requirement, Recommendation IV.P.3. also called for (1) elimination of General Instruction I.A.3.(b) to Form S–3 requiring that the issuer has timely filed all required reports in the last year and (2) extending Form S–3 eligibility for secondary transactions to issuers quoted on the Over-the-Counter Bulletin Board. The Proposing Release also included additional discussion of the Advisory Committee and its recommendations.

[15] See generally, *Shelf Registration,* Release No. 33–6499 (Nov. 17, 1983) [48 FR 5289] (discussing the benefits of shelf registration).

[16] Item 12 of Form S–3: ''Incorporation of Certain Information by Reference.''

[17] Rule 415 [17 CFR 230.415] provides that:

(a) Securities may be registered for an offering to be made on a continuous or delayed basis in the future, *Provided,* That:

(1) the registration statement pertains only to: * * *

(x) Securities registered (or qualified to be registered) on Form S–3 or Form F–3 which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary.

[18] See, for example, Susan Chaplinsky and David Haushalter, *Financing Under Extreme Uncertainty: Contract Terms and Returns to Private Investments in Public Equity* (May 2006), available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=907676* (discussing the typical contractual terms of PIPEs (Private Investments in Public Equities) financings, where the average purchase discount is between 18.5% to 19.7%, depending on the types of contractual rights embedded in the securities).

[19] See, for example, letters from Feldman Weinstein; Malizia Spidi; and M. Shichtman.

[20] See, for example, *Internet Availability of Proxy Materials,* Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597] and the Final Report of the Advisory Committee, at 69:

The Commission has recently taken several steps acknowledging the widespread accessibility over the Internet of documents filed with the Commission. In its recent release concerning Internet delivery of proxy materials, the Commission notes that recent data indicates that up to 75% of Americans have access to the Internet in their homes, and that this percentage is increasing steadily among all age groups. As a result we believe that investor protection would not be materially diminished if all reporting companies on a national securities exchange, NASDAQ or the Over-the-Counter Bulletin Board were permitted to utilize Form S–3 and the associated benefits of incorporation by reference.

[21] *Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 48970].

public float. Although the Advisory Committee recommended the qualified elimination of this requirement [22] and some commenters supported removing the concept of float altogether as a criterion of eligibility,[23] we believe that retaining some capitalization restrictions on Form S–3 eligibility is still advisable. We are persuaded that the technological advances that have revolutionized communications between companies and the market should allow us to ease the Form S–3 eligibility standards without undermining investor protection or the integrity of the markets. However, as explained more fully below, we believe this warrants only the limited expansion of certain offerings on Form S–3, not the wholesale elimination of public float as an important criterion of form eligibility. The Commission's system of integrated disclosure has, since its inception, been premised on the idea that a company's disclosure in its registration statement can be streamlined to the extent that the market has already taken that information into account.[24] Public float has for many years been used as an approximate measure of a stock's market following and, consequently, the degree of efficiency with which the market absorbs information and reflects it in the price of a security.[25] While current technology provides investors with access to information about publicly reporting companies at an unprecedented level of ease and speed, it does not guarantee that the market has fully absorbed and synthesized all of the available information of a given company. Technology can facilitate and enhance market following, but it does not ensure it. Therefore, we are retaining public float as a factor in determining the extent of short-form eligibility. While the purpose of these amendments is to give smaller companies added flexibility to quickly respond to favorable market conditions by conducting some primary shelf offerings on Form S–3, this objective must be balanced against the imperatives of investor protection.

Concerns have been raised in the past when the Commission considered easing the restrictions of shelf registration eligibility to allow smaller public companies to use a modified form of shelf registration,[26] and similar concerns were voiced again during the comment period.[27] It has been observed that the securities of smaller public companies are comparatively more vulnerable to price manipulation than the securities of larger public companies,[28] and may also be more prone to financial reporting error and abuses.[29] As we stated in the Proposing Release, although we believe that the public securities markets have benefited from advances in both technology and corporate disclosure requirements, we are nevertheless mindful that companies with a smaller market capitalization as a group have a comparatively smaller market following than larger, well-seasoned issuers and are more thinly traded. In such markets, the potential for manipulative practices is more acute.[30] As such, we are sensitive to the market effects of loosening the standards for shelf eligibility without limitation.

We also note that the disclosure obligations and liability imposed by the federal securities laws on smaller public companies are comparable, but not identical, to the largest reporting companies.[31] We are comfortable that

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[22] The Advisory Committee's recommendation to expand Form S–3 eligibility encompassed only companies whose securities are listed on a national securities exchange or Nasdaq (which, at the time, was not yet a national securities exchange), or quoted on the Over-the Counter Bulletin Board. Refer to Recommendation IV.P.3. of the Final Report.

[23] See letters from the ABA; Morrison & Foerster; and Roth Capital.

[24] See Release No. 33–6499, at 5:

Forms S–3 and F–3 recognize the applicability of the efficient market theory to those companies which provide a steady stream of high quality corporate information to the marketplace and whose corporate information is broadly disseminated. Information about these companies is constantly digested and synthesized by financial analysts, who act as essential conduits in the continuous flow of information to investors, and is broadly disseminated on a timely basis by the financial press and other participants in the marketplace. Accordingly, at the time S–3/F–3 registrants determine to make an offering of securities, a large amount of information already has been disseminated to and digested by the marketplace.

See also Harold S. Bloomenthal and Samuel Wolff, *Securities and Federal Corporate Law,* § 9:30, available through Westlaw at 3B Sec. & Fed. Corp. Law § 9:30 (2d. ed.) (''Form S–3 epitomizes the efficient market concept.''). See also Randall S. Thomas and James F. Cotter, Measuring Securities Market Efficiency in the Regulatory Setting, 63 Law & Contemp. Probs. 105 (2000) at 106.

[25] See *Reproposal of Comprehensive Revision to System for Registration of Securities Offerings,* Release No. 33–6331 (Aug. 6, 1981) [46 FR 41902], at 9: ''The Commission views as significant the strong relationship between float and information dissemination to the market and following by investment institutions.'' See also Thomas and Cotter, *Measuring Securities Market Efficiency in the Regulatory Setting,* at 108 (stating that the numerical thresholds of Form S–3 were intended to be a rough proxy for which companies were widely followed by the investment community).

[26] See, for example, *Report of the Task Force on Disclosure Simplification* (Mar. 5, 1996), available at *http://www.sec.gov/news/studies/smpl.htm.* See also *Delayed Pricing for Certain Registrants,* Release No. 33–7393 (Feb. 20, 1997) [62 FR 9276].

[27] See letter from the CII.

[28] See, for example, Rajesh Aggarwal and Guojon Wu, *Stock Market Manipulations,* 79 Journal of Business, No. 4 (2006). The authors' data indicate that manipulative practices predominantly occur in the Over-the-Counter Bulletin Board, Pink Sheets and other regional or unidentified markets characterized by very low average trading volume and market capitalization. The authors conclude that stock manipulation is more likely to occur ''in relatively inefficient markets * * * that are small and illiquid.''

[29] In its letter commenting on the Proposing Release, the CII ''strongly opposed any weakening of the proposed limitations on eligibility in the final rule,'' stating:

We share the Commission's concerns that the Proposed Rule presents ''risks to investor protection by expanding the base of companies eligible for primary offerings'' on Forms S–3 and F–3 * * * In addition [to the risks discussed by the Commission in the Proposing Release], we believe that the final rule should explicitly acknowledge that smaller public companies have long been especially prone to financial reporting fraud. Consistent with the historical evidence, a recent analysis of the reporting by public companies in response to SEC Staff Accounting Bulletin 108 found that (1) reporting errors at smaller public companies ''*tend to be more significant*'' than those of larger companies; and (2) smaller public companies ''are more likely to sit on errors that decrease earnings than big companies.'' Thus, the Commission should ensure that the final rule avoids understating the significant risks that smaller public companies present to investors [emphasis in original].

[30] The Commission's staff has stated previously that, with respect to short sales in reliance on the safe harbor of Rule 144 where the borrower closes out using the restricted securities, all the conditions of Rule 144 must be met at the time of the short sale. See Questions 80 through 82 of *Resales of Restricted and Other Securities,* Release No. 33–6099 (Aug. 2, 1979) [44 FR 46752, 46765]. In the Commission's view, the term ''sale'' under the Securities Act includes contract of sale. See *Securities Offering Reform,* Release No. 33–8591 (Jul. 19, 2005) [70 FR 44722, 44765] and *Short Selling in Connection With a Public Offering,* Release No. 34–56206 (Aug. 6, 2007) [72 FR 45094]. The Commission has previously indicated that, in a short sale, the sale of securities occurs at the time the short position is established, rather than when shares are delivered to close out that short position, for purposes of Section 5 of the Securities Act. See, for example, Questions 3 and 5 of *Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules Thereunder to Trading in Security Futures Products,* Release No. 33–8107 (June 21, 2002) [67 FR 43234] and Release No. 34–56206 n. 46 (Aug. 6, 2007) [72 FR 45094, 45096].

[31] Beginning with its introduction in 1992, Regulation S–B of the Securities Act provided for a scaled set of disclosure requirements for small business issuers. *Small Business Initiatives,* Release No. 33–6949 (July 30, 1992) [57 FR 36442]. Recent amendments to the disclosure regime for smaller companies maintain these scaled disclosure requirements, but integrate them into Regulation S–K. *Smaller Reporting Company Regulatory Relief and Simplification,* Release No. 33–8876 (Dec. 19, 2007).

In addition, we acknowledge that the companies implicated in this rulemaking are not yet fully subject to Section 404 of Sarbanes-Oxley. See *Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies,* Release No. 33–8760 (Dec. 15, 2006) [71 FR 76580]. We have taken steps to implement a plan to improve the efficiency and effectiveness of Section 404 implementation, including its scalability to smaller companies. See *Commission Guidance Regarding Management's Report on Internal Control Over*

the scaled disclosure standards for smaller public companies are sufficiently comparable to those governing larger issuers such that the limited expansion of Form S–3 primary offering eligibility, as we are adopting it, will not adversely impact investors. However, the level of disclosure required of smaller public companies under the federal securities laws is yet another factor that we believe weighs against expanding Form S–3 eligibility further than we have in this release.[32]

In revising the shelf eligibility requirements, therefore, we must consider the unique set of investment risks posed by smaller public companies in the context of shelf registration, which provides speed and flexibility to issuers, but at the same time may limit Commission and underwriter involvement in the registration process. Extending the benefits of shelf registration to an expanded group of transactions will limit the staff's direct prior involvement in takedowns of securities off the shelf. Although the Commission's staff may review registration statements before they are declared effective, individual takedowns are not conditioned on further Commission action or subject to prior selective staff review.[33] In addition, the short time horizon of shelf offerings may also reduce the time that participating underwriters have to apply their independent scrutiny and judgment to an issuer's prospectus disclosure. Historically, concerns such as these have been at the center of the debate when the Commission has previously considered expanding shelf registration eligibility.[34]

Accordingly, since the Commission first introduced the system of integrated disclosure more than twenty-five years ago, the ability to use Form S–3 to conduct primary offerings ''off the shelf'' has been carefully tempered by restricting the class of companies eligible for this benefit. Consistent with this well-established approach, we are amending the Form S–3 eligibility requirements to enable more companies to use Form S–3 for primary offerings,[35] but only to the extent that they are consistent with investor protection.

B. Amendments to Form S–3

We are adopting new General Instruction I.B.6. to Form S–3 to allow companies with less than $75 million in public float to register primary offerings of their securities on Form S–3,[36] provided they:

- Meet the other registrant eligibility conditions for the use of Form S–3; [37]

Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 34–55929 (June 20, 2007) [72 FR 35323]. It is true, however, that, unlike ''large accelerated filers'' and ''accelerated filers,'' companies that are ''non-accelerated filers'' (companies with less than $75 million in float) will not need to comply with the auditor's attestation report requirements of Section 404 until they file their annual report for the fiscal year ending on or after December 15, 2008. For large accelerated filers and accelerated filers, the auditor's attestation report is required for all annual reports for fiscal years ending on or after November 15, 2004. In light of this fact, one commenter recommended that Form S–3 eligibility be contingent on full implementation of both the management and auditor attestation report requirements of Section 404. See letter from the CII. Because adding this condition would effectively delay the benefits of these Form S–3 amendments to smaller public companies for at least one year, and because the decision has been made to allow smaller public companies to phase in full compliance with Section 404, we have decided not to delay the effective date of this rulemaking. We may revisit the limitation on our expansion of Form S–3 after full compliance with Section 404 is complete.

[32] This is especially true given that, under recent amendments, the scaled detailed disclosure regime for smaller companies will now extend to issuers who have a public float between $25 and $75 million. Release No. 33–8876. Prior to such amendments, only companies with less than $25 million in public float were covered by the disclosure requirements of Regulation S–B.

[33] We note some commenters suggested that our concerns about expanding the base of companies eligible to use Form S–3 for primary offerings ''off the shelf'' could be alleviated by requiring more detailed disclosure from these companies. See letters from Feldman Weinstein and Morrison & Foerster. However, requiring additional disclosure would not address the fact that the staff does not have the ability to review, in advance, individual takedowns off an effective shelf registration statement. Prospectus supplements reflecting such takedowns are filed after the fact. Similarly, the fact that the Form S–3 filed by reporting companies with smaller public floats would not become automatically effective and would therefore remain subject to pre-effective review and comment by the Commission's staff does not satisfactorily address the lack of the staff's prior involvement in shelf takedowns. See letter from the ABA.

[34] Among other things, the Commission's 1996 Task Force on Disclosure Simplification made several recommendations to amend the shelf registration procedure ''so as to provide increased flexibility to a wider array of companies with respect to their capital-raising activities.'' These recommendations included a ''modified form of shelf registration'' that would have allowed smaller companies to price their securities on a delayed basis for up to one year in order to time securities offerings more effectively with opportunities in the marketplace. The Task Force stated:

While this recommendation will afford small companies time and cost savings, the Task Force appreciates concerns raised about possible adverse effects shelf registration may have on the adequacy and accuracy of disclosures provided to investors, on Commission oversight of the disclosures and on the role of underwriters in the registration process. These concerns are similar to those raised when the shelf registration rule was first being considered on a temporary basis and was made available to any offering including an initial public offering.

Report of the Task Force on Disclosure Simplification, at 33. Following on the Task Force's recommendations, in 1997 the Commission proposed to permit certain smaller companies to price registered securities offerings on a delayed basis for up to one year after effectiveness. Release No. 33–7393. In that release, the Commission noted:

Concerns have been raised that the expedited access to the markets that would be provided by these proposals could make it difficult for gatekeepers, particularly underwriters, to perform adequate due diligence for the smaller companies that would be eligible to use expanded Rule 430A.

[35] As part of Recommendation IV.P.3 of the Final Report, the Advisory Committee also recommended that the Commission extend S–3 eligibility for secondary transactions to issuers with securities quoted on the Over-the-Counter Bulletin Board. General Instruction I.B.3. to Form S–3 limits the use of the form for secondary offerings to securities ''listed and registered on a national securities exchange or * * * quoted on the automated quotation system of a national securities association,'' a restriction that excludes the securities of Over-the-Counter Bulletin Board and Pink Sheets issuers. In addition, some commenters to the Proposing Release echoed the recommendation of the Advisory Committee and supported extending the use of Form S–3 for secondary offerings to additional issuers who are ineligible under current rules. See letters from the ABA; Feldman Weinstein; SBA; and Williams Securities. After considering the recommendation of the Advisory Committee and commenters, we are not at this time amending the Form S–3 eligibility rules for secondary offerings. As we made clear in the Proposing Release, this rulemaking pertains only to the limited issue of Form S–3 eligibility for primary securities offerings and is not intended to encompass or otherwise impact existing requirements for secondary offerings on Form S–3. Moreover, any amendment of the Form S–3 requirements for secondary offerings would have to be carefully weighed against the costs of further exposing the markets to the potential for abusive primary offerings disguised as secondary offerings. Therefore, at this time we are not revising secondary offering eligibility under General Instruction I.B.3.

[36] Form S–3 eligibility under new General Instruction I.B.6. (and Form F–3 eligibility under new General Instruction I.B.5.) applies only to an issuer's ability to conduct a limited primary offering on Form S–3 (or Form F–3, as applicable). That is, an issuer's eligibility to use Form S–3 or Form F–3 under these new form instructions does not mean that the issuer meets the requirements of Form S–3 or Form F–3 for purposes of any other rule or regulation of the Commission (apart from Rule 415(a)(1)(x), which pertains to shelf registration). Instruction 6 to new General Instruction I.B.6. of Form S–3 and Instruction 6 to new General Instruction I.B.5. of Form F–3.

Rule 415(a)(1)(x) permits shelf offerings of securities ''registered (*or qualified to be registered*)'' on Form S–3 or Form F–3 (emphasis added). We note that a closed-end investment company, including a business development company, (''closed-end fund'') that meets the eligibility standards enumerated in Form S–3, as revised by new General Instruction I.B.6., may register its securities in reliance on Rule 415(a)(1)(x) notwithstanding the fact that closed-end funds register their securities on Form N–2 rather than Form S–3.

[37] See General Instruction I.A. of Form S–3. Among other things, General Instruction I.A. requires that the registrant:

- Has a class of securities registered pursuant to Sections 12(b) or 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act; and
- Has been subject to the requirements of Sections 12 or 15(d) of the Exchange Act and has filed in a timely manner all the material required to be filed pursuant to Sections 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the Form S–3 registration statement.

• Have a class of common equity securities that is listed and registered on a national securities exchange; [38]

• Do not sell more than the equivalent of one-third of their public float in primary offerings under General Instruction I.B.6. of Form S–3 over the previous period of 12 calendar months; [39] and

• Are not shell companies [40] and have not been shell companies for at least 12 calendar months before filing the registration statement.

1. One-Third Cap and Listed Securities Only

As discussed above, we are sensitive to the risks associated with making shelf registration available to more issuers. At the same time, we are also sensitive to the possibility that constraining the rule too much may limit its utility to the companies that qualify for its use. Therefore, we have decided to increase the limitation on the amount of securities that can be offered by companies under the new rules from 20% of public float to one-third of public float, while at the same time conditioning a company's eligibility under new General Instruction I.B.6. of Form S–3 on having a class of common equity securities listed and registered on a national securities exchange (often described as ''listed'' securities).[41]

As proposed, new General Instruction I.B.6. of Form S–3 would have limited the amount of securities eligible companies could sell in accordance with its provisions to no more than the equivalent of 20% of their public float over any period of 12 calendar months. We proposed a cap of 20% in order to allow an offering that is large enough to help an issuer obtain financing when market opportunities arise, yet small enough to take into account the effect such new issuance may have on the market for a thinly traded security. As we stated in the Proposing Release, we believed that the 20% ceiling would help a large number of smaller public companies with their capital raising.[42]

Some commenters, however, were critical of this proposed restriction and concerned that capping issuers at 20% of the value of their public float every twelve months would limit the usefulness of the rule.[43] The commenters thought that the 20% ceiling would be of limited utility because they believed that the capital needs of small businesses would, in many cases, greatly exceed the amount of securities that could be sold under the rule.[44] Several commenters also suggested various alternatives to a 20% limit,[45] including raising the ceiling from 20% to at least one-third of a company's public float.[46]

After considering these comments, we have decided to set the twelve-month offering threshold under new General Instruction I.B.6. of Form S–3 at one-third of an issuer's public float. We are comfortable making this adjustment in light of the additional protection afforded by the new requirement in General Instruction I.B.6(c) of Form S–3 that eligibility under this instruction is contingent upon the registrant having a class of common equity securities listed and registered on a national

[38] A ''national securities exchange'' is a securities exchange that has registered with the Commission under Section 6 of the Exchange Act [15 U.S.C. 78f]. There are currently ten securities exchanges registered under Section 6(a) of the Exchange Act as national securities exchanges. These are the New York Stock Exchange, American Stock Exchange and Nasdaq, as well as the Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, International Securities Exchange, National Stock Exchange (formerly the Cincinnati Stock Exchange), NYSE Arca (formerly the Pacific Exchange) and the Philadelphia Stock Exchange. In addition, an exchange that lists or trades security futures products (as defined in Section 3(a)(56) of the Exchange Act [15 U.S.C. 78c(56)]) may register as a national securities exchange under Section 6(g) of the Exchange Act solely for the purpose of trading security futures products. For purposes of new General Instruction I.B.6., however, only exchanges registered under Section 6(a) of the Exchange Act will be deemed to be ''national securities exchanges.'' Instruction 8 to new General Instruction I.B.6.

[39] The meaning of the phrase ''period of 12 calendar months'' is intended to be consistent with the way in which the phrase ''12 calendar months'' is used for purposes of the registrant eligibility requirements in Form S–3. A ''calendar month'' is a month beginning on the first day of the month and ending on the last day of that month. For example, for purposes of Form S–3 registrant eligibility, if a registrant were not timely on a Form 10–Q due on September 15, 2006, but was timely thereafter, it would first be eligible to use Form S–3 on October 1, 2007. Similarly, for purposes of new General Instruction I.B.6. of Form S–3, if a registrant relies on this Instruction to conduct a shelf takedown equivalent to one-third of its public float on September 15, 2007, it will next be eligible to do another takedown (assuming no change in its float) on October 1, 2008.

[40] The term ''shell company'' is defined in Rule 405 of the Securities Act [17 CFR 230.405]. See also *Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies,* Release No. 33–8587 (July 15, 2005) [70 FR 42233] (adopting definition of shell company).

[41] New General Instruction I.B.6(c) of Form S–3.

[42] As we noted in the Proposing Release, the Division of Corporation Finance undertook a study of shelf registration takedowns in 2006 by companies with a public float of moderate size in order to evaluate the appropriate public float ceiling for the new rule. Specifically, the Division looked at all prospectus supplements filed pursuant to shelf registration statements in calendar year 2006 by companies with a public float between $75 million and $140 million. While we observed a wide range of variously sized shelf takedowns (from less than 1% of float to greater than 80% of float), the data indicated that 20% of float was approximately the median annual takedown for companies in the band considered. This suggested that limiting smaller public companies to 20% of their public float in any 12-month period might increase the capital raising alternatives for these companies consistent with investor protection.

[43] See, for example, letters from the ABA; SBA; Feldman Weinstein; Malizia Spidi; Morrison & Foerster; M. Shichtman; and Roth Capital.

[44] See letters from the SBA; Brinson Patrick; Feldman Weinstein; Malizia Spidi; M. Shichtman; and Roth Capital. For an opposing viewpoint, see letter from the CII.

[45] See, for example, letters from Feldman Weinstein; Morrison & Foerster; and Williams Securities (commenters suggesting that a percentage of trading volume be used as an alternative to public float); Malizia Spidi and Roth Capital (commenters suggesting that shareholder approval be obtained for dilutive issuances constituting over 20% of public float); and letters from Feldman Weinstein and Morrison & Foerster (commenters suggesting that additional disclosure be required in lieu of imposing a 20% ceiling). Some commenters were also concerned that the Commission might amend Rule 430B of the Securities Act to vary the application of Section 11 liability to the various parties involved in a shelf registration statement based on the size of the issuer. See letters from BDO Seidman, LLP; Center for Audit Quality; Deloitte & Touche LLP; Ernst & Young LLP (''Ernst & Young''); and KPMG LLP (''KPMG''). These commenters maintained that the filing of a prospectus supplement to a shelf registration statement should not be considered a new effective date for purposes of Section 11 liability for auditors, regardless of the size of the issuer's public float. The set of comprehensive amendments in 2005, known as ''Securities Offering Reform,'' provide in Rule 430B that the effective date for auditors who previously provided consent in an existing registration statement for their report on previously issued financial statements or previous reports on management's assessment of internal control over financial reporting does not change upon the filing of a prospectus supplement unless the prospectus supplement (and any Exchange Act report incorporated by reference into the prospectus and registration statement) contains new audited financial statements or other information as to which the auditor is an expert and for which a new consent is required. Release No. 33–8591. Two of the commenters emphasized that taking a different approach for smaller issuers would run the risk of creating substantial delays in the filing process (as auditors would have to provide new consents) and issuers would likely lose a substantial amount of flexibility in accessing the public markets. See letters from Ernst & Young and KPMG. We agree with these commenters and are not modifying Rule 430B in connection with this rulemaking.

[46] See letters from the ABA; Feldman Weinstein; Morrison & Foerster; M. Shichtman; and Williams Securities. The SBA also suggested raising the threshold in its letter, but did not specify the size of the increase it favored. We note that some of the commenters who advocated increasing the threshold to one-third of a company's public float reasoned that doing so would harmonize the amount of securities which could be registered in a primary offering on Forms S–3 and F–3 under the proposed rule with a purported staff position in a different context. See letter from Feldman Weinstein. See also letters from Morrison & Foerster and Williams Securities. The purported staff position is not related to the instant Form S–3 and Form F–3 amendments, which concern expanding the availability of these forms for primary offerings to more companies. Rather, the staff has indicated that some resale registration statements may raise a concern where, among other things, there is an unusually large number of shares being registered in relation to the number of the issuer's outstanding shares held by nonaffiliates. In these situations, the staff may question whether the offering is a bona fide secondary transaction or a disguised primary offering.

securities exchange, as discussed below. We think raising the cap to one-third of public float will allow an offering that is large enough to help an issuer raise a relatively significant amount of capital when market opportunities arise, but still small enough for us to moderate the expansion of shelf eligibility with appropriate attention to the protection of investors, including the effect such new issuance may have on the market for a thinly traded security.

Under these amendments, offerings above the one-third cap would violate the form requirements of Form S–3. In order to provide absolute clarity on this point, we are adopting a corresponding amendment to Rule 401(g)[47] of the Securities Act to provide that violations of the one-third cap would also violate the requirements as to proper form under Rule 401 even though the registration statement previously has been declared effective.[48]

Our objective with this rulemaking is to provide smaller companies some additional financing flexibility that will aid them in their efforts to raise capital, but at the same time give the Commission an opportunity to consider the impact of this expansion in an environment where there are limitations in place to address investor protection. As a general proposition, the greater the magnitude of the offering, the more likely it is that the transaction will be transformative to the issuer rather than routine in nature, such as the incremental expansion of the issuer's business. At the current time, we believe that securities transactions exceeding one-third of the value of an issuer's public float are generally of such significance to the issuer that the opportunity for specific staff review of the transaction and a greater window for underwriter due diligence are advisable.

We believe that the one-third cap will help a substantial number of smaller public companies with their capital raising needs, which is supported by our observations of market activity of recent shelf registrants.[49] Moreover, it is important to understand that the one-third cap imposed by new General Instruction I.B.6. to Form S–3 only relates to other primary offerings conducted pursuant to this instruction. Accordingly, an issuer that is temporarily prevented from utilizing Form S–3 for shelf offerings to raise capital would not be foreclosed from registering a primary offering of securities on Form S–1 or in private placements. The new eligibility instruction that we are adopting today is not meant to be mutually exclusive. Rather, it is designed to provide added flexibility to smaller public companies by giving them supplemental avenues of capital formation. As we have stated previously, our adoption of this amendment does not foreclose the possibility that we may revisit the appropriateness of this one-third cap at a later time. For now, however, we think that this limitation promotes small business capital formation consistent with the protection of investors.

At the same time that we are adopting an offering ceiling under new General Instruction I.B.6. of one-third of an issuer's public float, we are also making eligibility under this new rule contingent on the issuer having a class of common equity securities listed and registered on a national securities exchange.[50] In the Proposing Release, we requested comment as to whether we should allow all companies with a public trading market, including companies with securities traded in the over-the-counter market such as the Pink Sheets, to use the amended Form S–3 as proposed or whether we should limit eligibility to inter-dealer quotations systems with some level of oversight and operated by a self-regulatory organization.[51] In addition, we asked whether there were other restraints on the proposed expansion of Form S–3 eligibility that should be considered, such as restrictions on the class of issuers that could utilize the revised forms.[52] Most commenters did not address these specific points directly, but their responses generally suggested that they would not favor further restrictions on a registrant's form eligibility in addition to those already proposed.[53] However, one commenter expressed concern over the risks inherent in expanding the base of companies eligible for primary offerings on Forms S–3 and F–3 and, accordingly, recommended that Form S–3 and Form F–3 eligibility be contingent on full implementation of both the management and auditor attestation report requirements of Section 404.[54] At a minimum, the commenter opposed any weakening of the proposed limitations on eligibility in the final rule.

Allowing only companies with at least one class of listed common equity securities to avail themselves of new General Instruction I.B.6. should help to minimize potential abuses that may arise from expanded shelf registration. This is because the exchanges' listing rules and procedures, as well as other requirements, provide an additional measure of protection for investors.[55] Exchanges have both quantitative and qualitative listing rules that are designed to evidence that their listed issuers meet specified minimum requirements when the issuer first lists on the exchange and thereafter. Initial listing standards serve as a means for an exchange to screen issuers and to provide listed status to issuers with sufficient public float, investor base, and trading interest to assure that the market for the issuer's security has the depth and liquidity necessary to maintain fair and orderly markets. Maintenance listing criteria help assure that the issuer continues to meet the exchange's standards for depth and liquidity. While the exchanges' listing standards with respect to common equity securities can vary,[56] generally the exchanges require the issuer to meet minimum standards relating to number of public shareholders and shares outstanding, shareholder approval of specified matters, and, in certain cases, earnings or income. Moreover, the exchanges' listing standards generally require issuers of common equity securities to meet strong corporate governance standards, including the requirement that the issuer's board be composed of a majority of independent directors and that key committees be composed solely of independent directors.[57] Exchange-listed securities

[47] 17 CFR 230.401(g).

[48] See letter from the ABA (recommending that the Commission not revise current Rule 401(g) to provide that an issuer will be deemed to have used an incorrect registration form if it exceeds the one-third cap under new General Instruction I.B.6.).

[49] When we further narrowed the set of shelf registration takedowns reviewed (the original review is referenced in n. 42) to companies with at least one class of listed common equity, the data indicated that 75% of sample registrants took down the equivalent of one-third or less of their public float annually off the shelf. For the majority of these sample registrants, therefore, an offering ceiling of one-third would appear satisfactory.

[50] New General Instruction I.B.6(c) of Form S–3.

[51] The Proposing Release, at 35127.

[52] *Id.*

[53] See, for example, letters from the ABA; Feldman Weinstein; Malizia Spidi; Morrison & Foerster; SBA; M. Shichtman; and Williams Securities.

[54] See letter from the CII. See also nn. 29 and 31 discussing this letter.

[55] In contrast to the national securities exchanges, automated inter-dealer quotation systems such as the Over-the-Counter Bulletin Board and the Pink Sheets do not provide companies with the ability to list their securities, but, rather, serve as a medium for the over-the-counter securities market by collecting and distributing market maker quotes to subscribers. These automated inter-dealer quotation systems do not maintain or impose listing standards, nor do they have a listing agreement or arrangement with the companies whose securities are quoted through them.

[56] See, for example, Nasdaq Rules 4300 *et seq.,* and NYSE Listed Company Manual (''LCM''), Sections 1 through 9.

[57] See, for example, Nasdaq Rule 4350 and NYSE LCM Section 3, which require listed issuers to

Continued

also are subject to real-time reporting of quotation and transaction information, which benefits investors by apprising them of current market information about the security. Together, these common attributes allow the exchanges to sustain efficient and liquid markets that should help monitor the expansion of shelf registration eligibility on Form S–3 and help mitigate any attendant risks posed by expansion.[58]

We also note that limiting eligibility under new General Instruction I.B.6. to companies with common equity securities listed on a national securities exchange is more consistent with our historical treatment of secondary offering eligibility on Form S–3.[59] We think this parallel approach is sensible given that Form S–3 has for many years allowed registrants to conduct secondary offerings on the form irrespective of public float, so long as the securities offered thereby were listed securities.[60]

Some commenters noted that, under the proposed amendments, companies with securities not listed or authorized for listing on a national securities exchange would nevertheless be eligible to offer such securities in primary offerings on Form S–3 or Form F–3 so long as there was a public trading market for their securities.[61] Because such securities would not be ''covered securities,'' as defined by Section 18(b) of the Securities Act, commenters expressed concern that some companies registering transactions under new General Instruction I.B.6. might well be subject to state securities registration requirements, which would frustrate the speed and efficacy of shelf registration. However, because we are limiting eligibility under the new rules to companies with listed equity, in most cases issuers will not be subject to state securities registration requirements in their efforts to raise capital utilizing new General Instruction I.B.6. By requiring issuers to have at least one listed class of common equity securities, most securities offered pursuant to the new eligibility rules will be ''covered securities,'' as defined by Section 18(b) of the Securities Act, and therefore exempt from state Blue Sky regulation.[62]

2. Calculation of Amount of Securities That May Be Sold

To ascertain the amount of securities that may be sold pursuant to Form S–3 by registrants with a public float below $75 million, the new rule requires a two-step process:

- Determination of the registrant's public float immediately prior to the intended sale; and
- Aggregation of all sales of the registrant's securities pursuant to primary offerings under General Instruction I.B.6. of Form S–3 in the previous 12-month period (including the intended sale) to determine whether the one-third cap would be exceeded.

The new rule requires registrants to compute their public float by reference to the price at which their common equity was last sold, or the average of the bid and asked prices of their common equity, in the principal market for the common equity as of a date within 60 days prior to the date of sale.[63] Then, for purposes of calculating the aggregate market value of securities sold during the preceding period of 12 calendar months, the rule requires registrants to add together the gross sales price for all primary offerings pursuant to new General Instruction I.B.6. to Form S–3 during the preceding period of 12 calendar months. Based on that calculation, registrants will be permitted to sell securities with a value up to, but not greater than, the difference between one-third of their public float and the value of securities sold in primary offerings on Form S–3 under new General Instruction I.B.6. in the prior period of 12 calendar months.

The aggregate gross sales price includes sales of equity as well as debt offerings.[64] Therefore, eligible registrants will also be able to offer non-investment grade debt on Form S–3.[65] In the case of securities that are convertible into or exercisable for equity shares, such as convertible debt or warrants, however, we are requiring that registrants calculate the amount of securities they may sell in any period of 12 calendar months by reference to the aggregate market value of the underlying equity shares in lieu of the market value of the convertible securities. The aggregate market value of the underlying equity will be based on the maximum number of shares into which the securities sold in the prior period of 12 calendar months are convertible as of a date within 60 days prior to the date of sale, multiplied by the same per share market price of the registrant's equity used for purposes of calculating its public float pursuant to Instruction 1 to new General Instruction I.B.6. of Form S–3. We believe calculating the one-third cap based on the market value of the underlying securities makes it less likely that convertible securities would be structured and offered in a manner designed to avoid the effectiveness of the cap.

It is important to note that the one-third cap on sales is not intended to impact a holder's ability to convert or exercise derivative securities purchased from the company. For example, this limit will apply to the amount of common stock warrants that a company can sell under Form S–3, and the number of common shares into which the warrants are exercisable will be relevant for determining the company's compliance with the one-third cap at the time the warrants were sold, but the number will not impede the purchaser's later exercise of the warrants.

As adopted, the one-third cap is designed to allow issuers flexibility. Because the restriction on the amount of

comply with Rule 10A–3 under the Exchange Act, 17 CFR 240.10A–3, with regard to audit committee responsibility and independence, as well as an additional, broader array of corporate governance standards.

[58] See n. 28.

[59] See General Instruction I.B.3. of Form S–3.

[60] In its comment letter, the ABA pointed out that, as proposed, the eligibility standards for primary offerings on Form S–3 would have allowed both ''listed and unlisted'' reporting companies to make primary offerings on the form, while resale transactions on Form S–3 are limited to reporting companies whose securities are listed on a national securities exchange or quoted on the automated quotation system of a national securities association. In addition, the ABA noted that the staff of the Commission, through interpretive guidance, has historically permitted unlisted companies that are primarily eligible to use Form S–3 under the existing rules to register resale transactions on Form S–3 notwithstanding that the resale eligibility rules of Form S–3 require that the securities be listed on an exchange or quoted on the automated quotation system of a national securities association. We believe that the final rules, by limiting primary offering eligibility under new General Instruction I.B.6. to companies with equity securities listed on a national securities exchange, address these inconsistencies noted by the ABA in its comment letter.

[61] See letters from the ABA; Feldman Weinstein; Morrison & Foerster; and Williams Securities Law.

[62] The exception would be a class of securities that are neither listed nor at least equal in seniority to a class of the issuer's listed securities. See Section 18(b)(1)(A) through (C) of the Securities Act [15 U.S.C. 77r(b)(1) (A) through (C)].

[63] Instruction 1 to new General Instruction I.B.6. of Form S–3. This is modeled after the calculation of public float provided in the instruction to General Instruction I.B.1. of Form S–3. However, the relevant date for purposes of Instruction 1 to new General Instruction I.B.6. is the date of sale, while the relevant date for purposes of General Instruction I.B.1. is the date of filing.

[64] As adopted, the method of calculating the one-third cap on sales is the same whether the registrant is selling equity or debt securities, or a combination of both. As we discussed in the Proposing Release, we had some concern that we would be inadvertently encouraging issuances of debt securities over equity if the proposed limitation on sales excluded debt. Because we do not intend for the rule to dictate or otherwise influence the overall form of security that companies offer, we have adopted the one-third cap on sales to include both equity and debt.

[65] The provisions of Form S–3 in effect today allow registrants to offer non-convertible investment grade debt securities on Form S–3 regardless of the size of their public float. General Instruction I.B.2. to Form S–3.

securities that can be sold over a period of 12 calendar months is calculated by reference to a registrant's public float immediately prior to a contemplated sale, as opposed to the time of the initial filing of the registration statement, the amount of securities that an issuer is permitted to sell can continue to grow over time as the issuer's public float increases. Therefore, the value of one-third of a registrant's float during the period that a shelf registration statement is effective may, at any given time, be much greater than at the time the registration statement was initially filed. Registrants may therefore benefit from increases in the size of their public float during the time that the registration statement is effective. Conversely, the amount of securities that an issuer is permitted to sell at any given time may also decrease if the issuer's public float contracts. It is important to note, however, that a contraction in a registrant's float, such that the value of one-third of the float decreases from the time the registration statement was initially filed, would not necessarily run afoul of the cap because the relevant point in time for determining whether a registrant has exceeded the threshold is the time of sale. If the sale of securities, together with all securities sold in the preceding period of 12 calendar months, does not exceed one-third of the registrant's float calculated within 60 days of the sale, then the transaction would not violate new General Instruction I.B.6. to Form S–3 even if the registrant's public float later drops to a level such that the prior sale now accounts for over one-third of the new lower float.[66] To keep track of the securities sold under General Instruction I.B.6., the revised instructions to Form S–3 require registrants to disclose in each prospectus filed with the Commission their updated calculation of public float and the amount of securities offered pursuant to this instruction during the prior 12 calendar month period that ends on, and includes, the date of the prospectus.[67]

Because Form S–3 registrants who meet the $75 million float threshold of existing General Instruction I.B.1. at the time their registration statement is filed are not subject to restrictions on the amount of securities they may sell under the registration statement even if their float falls below $75 million subsequent to the effective date of the Form S–3 but prior to the update required under Section 10(a)(3) of the Securities Act, we believe it is appropriate to provide issuers registering on Form S–3 pursuant to new General Instruction I.B.6. the same flexibility if their float increases to a level that equals or exceeds $75 million subsequent to the effective date of their Form S–3 without the additional burden of filing a new Form S–3 registration statement. Therefore, we are adopting an instruction to I.B.6. that lifts the one-third cap on additional sales in the event that the registrant's float increases to $75 million or more subsequent to the effective date of the registration statement.[68] Of course, pursuant to Rule 401 under the Securities Act, registrants are also required to recompute their public float each time an amendment to the Form S–3 is filed for the purpose of updating the registration statement in accordance with Section 10(a)(3) of the Securities Act—typically when an annual report on Form 10-K is filed. In the event that the registrant's public float as of the date of the filing of the annual report is less than $75 million, the one-third cap will be reimposed for all subsequent sales made pursuant to new General Instruction I.B.6. and will remain in place until the registrant's float equals or exceeds $75 million.

The following examples illustrate how the new Instruction will operate.[69] For purposes of these examples, we are assuming that the hypothetical registrants satisfy the registrant eligibility requirements in General Instruction I.A. of Form S–3, are not shell companies, and have at least one class of common equity securities listed and registered on a national securities exchange.

Example A

On January 1, 2009, a registrant with a public float of $25 million files a shelf registration statement on Form S–3 pursuant to new General Instruction I.B.6. intending to register the offer and sale of up to $50 million of debt and equity securities over the next three years from time to time as market opportunities arise.[70] The registration statement is subsequently declared effective. In March 2009, the registrant decides to sell common stock off the registration statement. To determine the amount of securities that it may sell in connection with the intended takedown, the registrant calculates its public float as of a date within 60 days prior to the anticipated date of sale, pursuant to Instruction 1 to new General Instruction I.B.6. Calculating that its public float has risen to $30 million, the registrant determines that the total market value of all sales effected pursuant to new General Instruction I.B.6. over the past year, including the intended sale, may not exceed $10 million, or one-third of the registrant's float. Since the registrant has conducted no prior securities offerings on Form S–3 pursuant to new General Instruction I.B.6., it is able to sell the entire $10 million off the Form S–3.

Assuming that it sold the entire $10 million of securities in March 2009, the registrant in September 2009 once again contemplates a takedown off the shelf. It determines that its public float (as calculated pursuant to Instruction 1 to new General Instruction I.B.6.) has again risen, this time to $54 million. Because one-third of $54 million is $18 million, the registrant is now able to sell additional securities in accordance with new General Instruction I.B.6(a), even though in March 2009 it took down the equivalent of what was then the entire one-third of its float. However, because the registrant has already sold $10 million worth of its securities within the 12 calendar months prior to the contemplated sale, the registrant may sell no more than $8 million of additional securities at this time ($18 million minus $10 million of securities previously sold).

In December 2009, the registrant determines that its public float has risen to $78 million. To this point, assuming it has only sold an aggregate of $18 million of its securities pursuant to the subject Form S–3 as described above, it has $32 million of securities remaining on the registration statement and potentially available for takedown (the total amount registered of $50 million, less the $18 million previously sold).

[66] Along these lines, under the amendments registrants will be able to sell up to the equivalent of the full one-third of their public float immediately following the effective date of their registration statement, provided that there were no prior sales pursuant to new General Instruction I.B.6. of Form S–3. This is consistent with Rule 415(a)(1)(x), which was amended in 2005 to allow primary offerings on Form S–3 or Form F–3 to occur immediately after effectiveness of a shelf registration statement. Release No. 33–8591. Assuming that the sale of the entire one-third of public float allotted under the new form eligibility rules complied with the rule at the time of the takedown, the subsequent contraction in the registrant's public float will not invalidate this prior sale.

[67] Instruction 7 to new General Instruction I.B.6.

[68] Instruction 3 to new General Instruction I.B.6. of Form S–3.

[69] The examples that follow are for illustrative purposes only and are not intended to be indicative of actual market activity.

[70] Although only one-third of the public float may be sold in any year, a company may register a larger amount. Release No. 33–8591 at 44774–5 (discussing the adoption of an amendment to Rule 415 that eliminated limits on the amount of securities that may be registered on Form S–3 or Form F–3 under Rule 415(a)(1)(x) and Rule 415(a)(1)(ix)).

Because one-third of $78 million is $26 million, and the registrant has already sold $18 million within the previous year, new General Instruction I.B.6(a) will, in most circumstances, prohibit the registrant from selling more than an additional $8 million of securities in the latest offering. However, under Instruction 3 to new General Instruction I.B.6., the registrant is no longer subject to the one-third cap on annual sales because its float has exceeded $75 million. If it chooses, the registrant may sell the entire $32 million of securities remaining on the registration statement all at once or in separate tranches at any time until the company next updates the registration statement pursuant to Section 10(a)(3) by filing its Form 10-K. This will be the case even if the registrant's float subsequently falls below $75 million before it files that Form 10-K, at which time the registrant is required to recompute its public float in accordance with Rule 401. In the event that the registrant's public float as of the date of that Form 10-K filing is less than $75 million, the one-third cap will be reimposed for all subsequent sales made pursuant to new General Instruction I.B.6. and will remain in place until the registrant's float equals or exceeds $75 million.

Example B

A registrant has 12 million shares of voting common equity outstanding held by nonaffiliates. The market price of this stock is $5 per share, so the registrant has a public float of $60 million. The registrant has an effective Form S–3 shelf registration statement filed in reliance on new General Instruction I.B.6. of Form S–3, pursuant to which the registrant wants to issue $10 million of convertible debt securities which will be convertible into common stock at a 10% discount to the market price of the common stock. Pursuant to Instruction 2 to new General Instruction I.B.6., the amount of securities issued is measured by reference to the value of the underlying common stock rather than the amount for which the debt securities will be sold. At the 10% discount, the conversion price is $4.50 and, as a result, 2,222,222 shares currently underlie the $10 million of convertible debt. Because the current market price of those underlying shares is $5 per share, for purposes of General Instruction I.B.6. the value of the securities being offered is $11,111,110 (2,222,222 shares at $5 per share), which is less than the $20 million allowed by the one-third cap (one-third of $60 million).

After the convertible debt securities are sold and are outstanding, the registrant contemplates an additional takedown. To determine the amount of securities that the registrant may sell under General Instruction I.B.6. in the anticipated offering, the registrant must know its current public float and must calculate the aggregate market value of all securities sold in the last year on Form S–3 pursuant to General Instruction I.B.6. Instruction 2 to new General Instruction I.B.6. requires that the registrant compute the market value of convertible debt securities sold under I.B.6. by reference to the value of the underlying common stock rather than the amount for which the debt securities were sold. With respect to the notes that were sold and have been converted, the aggregate market value of the underlying common stock is calculated by multiplying the number of common shares into which the outstanding convertible securities were converted times the market price on the day of conversion. With respect to the notes that were sold but have not yet been converted, the aggregate market value of the underlying common stock is calculated by multiplying the maximum number of common shares into which the notes are convertible as of a date within 60 days prior to the anticipated sale by the per share market price of the registrant's equity used for purposes of determining its current float.[71]

In this example, assume that the registrant has a current per share stock price of $5.55. If half of the notes converted into common stock while the per share market price was $5.00 ($4.50 discount), then, for purposes of Instruction 2 to new General Instruction I.B.6., the value of that prior issuance is $5,555,555 (half of the notes divided by the discounted conversion price of $4.50 and then multiplied by $5, the market price on the day of conversion).

As for the notes that have not yet been converted, the aggregate market value of the underlying common stock is determined by calculating the number of shares that may be received upon conversion and multiplying that by the current market value of $5.55. Therefore, the outstanding note amount ($5 million) is divided by the discount conversion price ($5), resulting in 1,000,000 shares and this amount is then multiplied by the current market value of $5.55. Thus, for purposes of Instruction 2 to new General Instruction I.B.6., $5,550,000 is the value of the outstanding notes that have not yet been converted. Adding this to the value of the notes that have already been converted results in a total value of $11,105,555 having been issued under this Form S–3.

To determine the amount of additional securities that the registrant may sell under General Instruction I.B.6., the registrant should add the value of the notes issued ($11,105,555) plus the value of all other securities sold by the registrant pursuant to Instruction I.B.6. during the preceding 12 calendar months. If this amount is less than one-third of the registrant's current public float, it may sell additional securities with a value up to, but not greater than, the difference between one-third of its current public float and the value of all securities sold by it pursuant to Instruction I.B.6. during the preceding 12 calendar months.

Example C

A registrant has an effective registration statement on Form S–3, filed pursuant to new General Instruction I.B.6., through which it intends to conduct shelf offerings of its securities. At the time of its first shelf takedown, the registrant's public float is equal to $21 million (which means that the maximum amount available to be sold under the one-third cap would be $7 million). Based on new General Instruction I.B.6(a), the registrant sells $3 million of its debt securities. Six months later, the registrant's public float has decreased to $9 million. The registrant wishes to conduct an additional takedown of debt securities off the shelf but, because of the reduction in its float, it is prohibited from doing so. This is because with a public float of $9 million, General Instruction I.B.6(a) only allows the registrant to sell a maximum of $3 million worth of securities (one-third of $9 million) pursuant to the registration statement during the prior period of 12 calendar months that ends on the date of the contemplated sale. However, the registrant has already sold securities valued (for purposes of new General Instruction I.B.6.) at $3 million in the 6 months prior to the contemplated sale and so must wait until at least one full year has passed since the $3 million sale of securities to undertake another offering off the Form S–3 unless its float increases. Note that although the registrant's float does not allow additional sales, the $3 million takedown of securities 6 months prior does not violate the one-third cap because, at the time of that prior sale, the registrant's float was $21 million.

[71] The date chosen by the registrant for determination of the maximum number of shares underlying the convertible notes must be the same date that the registrant chooses for determining its market price in connection with the calculation of public float pursuant to new General Instruction I.B.6. See Instruction 5 to new General Instruction I.B.6.

Example D

Pursuant to new General Instruction I.B.6., a registrant with a public float of $48 million files a Form S–3, which the registrant intends to use as a universal shelf registration statement to sell up to $100 million of debt or equity securities, or a combination of both at any time or from time to time.

After the registration statement is declared effective, the registrant decides to do a takedown off the shelf comprised of convertible promissory notes and warrants to purchase to common stock. The notes are convertible into shares of common stock at a 50% discount to the market price of the common stock. The warrants are exercisable for shares of common stock at an exercise price equal to $5 per share. Because the registrant's float is $48 million, it may sell up to $16 million of securities (one-third of $48 million) pursuant to General Instruction I.B.6. The registrant wants to do a takedown of $1 million in convertible promissory notes. The registrant intends to issue the notes along with warrants to purchase an additional 10,000 shares of its common stock.

In order to determine if this sale is permissible under General Instruction I.B.6., the registrant must calculate the amount of securities it has sold pursuant to General Instruction I.B.6. in the previous 12 months and add this to the value of the securities in the intended sale. If the combined value is $16 million or less, it may proceed with the sale.

Assume that the registrant has not sold any securities pursuant to the Instruction I.B.6. in the previous 12 months. To determine the value of the convertible promissory notes, the registrant is required by Instruction 2 to General Instruction I.B.6. to calculate the value of the shares underlying the convertible notes. The notes are convertible into shares of common stock at a 50% discount to the market price of the common stock. Assuming that the market price of the common stock is $2 per share, the notes are convertible as follows: $1 million (the price of the notes) divided by 1 (50% of the market price of the common stock) is equal to 1 million shares of common stock that the purchasers will receive upon conversion. Since the market price of the stock is $2 per share, the value of the 1 million shares is $2 million (1 million shares at $2 per share). Therefore, the value of the accompanying warrants for 10,000 shares must be less than $14 million for the sale to be within the one-third cap (one-third of $48 million, less the $2 million of common stock underlying the convertible notes).

To calculate the value of the warrants, which are derivative securities, Instruction 2 to General Instruction I.B.6. requires that the registrant calculate the value of the shares underlying the warrants in lieu of the market value of the warrants. Under the terms of the warrants, the warrants are exercisable for 10,000 shares at an exercise price of $5 per share.

Instruction 2 to General Instruction I.B.6. states that the aggregate market value of the underlying equity shall be calculated by multiplying the maximum number of common equity shares into which the derivative securities are convertible or for which they are exercisable, as of a date within 60 days prior to the date of sale, by the same per share market price of the registrant's equity used for purposes of calculating the registrant's float. Assuming that the market price of the registrant's stock is $2 per share, the value of the shares underlying the warrants is $20,000 (10,000 shares multiplied by $2 per share). Because the underlying value of the convertible notes is $2 million and the underlying value of the warrants is $20,000, the intended sale has a value of $2,020,000 and does not exceed the one-third cap (of $16 million).

3. Exclusion of Shell Companies

In accordance with our desire to expand Form S–3 eligibility consistent with the protection of investors, the expanded eligibility rules specifically exclude shell companies, which will be prohibited from registering securities in primary offerings on Form S–3 unless they meet the minimum $75 million float threshold of General Instruction I.B.1.[72] While we are not passing on the relative merits of shell companies and we recognize that these entities are used for many legitimate business purposes, we have repeatedly stated our belief that these entities may give rise to disclosure abuses.[73] Under the final rules, a former shell company that cannot meet the $75 million float criterion but otherwise satisfies the registrant requirements of Form S–3 will become eligible to use Form S–3 to register primary offerings of its securities, provided that:

- It has not been a shell company for at least 12 calendar months;[74]
- It has filed information that would be required in a registration statement on Form 10 or Form 20–F, as applicable, to register a class of securities under Section 12 of the Exchange Act;[75] and
- It has been timely reporting for 12 calendar months.[76]

Ordinarily, the information required to be filed would be in a current report on Form 8–K, reporting completion of the transaction that caused it to cease being a shell company.[77] In other cases, the information may be filed in a Form 10 or Form 20–F. Consistent with the current registrant eligibility rules of Form S–3 that require at least 12 calendar months of timely reporting, the 12 calendar-month delay under the new rules is intended to provide investors in the former shell company with the benefit of disclosure over a full 12-month period in the newly structured entity prior to its use of Form S–3 for primary securities offerings.

Commenters held contrasting opinions of our proposal to exclude shell companies[78] and the requirement that former shell companies may not rely on General Instruction I.B.6. to

[72] This prohibition is intended to apply equally to ''blank check companies,'' as such entities are defined in Rule 419 of the Securities Act. However, because we believe that the definition of ''shell company'' under Rule 405 is expansive enough to encompass blank check companies for purposes of excluding them from S–3 eligibility under new General Instruction I.B.6., we do not exclude them separately. See *Use of Form S–8 and Form 8–K by Shell Companies*, Release No. 33–8407 (Apr. 15, 2004) [69 FR 21650], at n. 20:

We believe that under today's proposals all blank check companies as defined in Rule 419 would be considered shell companies until they acquire an operating business or more than nominal assets. Not all shell companies, however, would be classified as blank check companies under Rule 419.

[73] See, for example, Release No. 33–8591; Release No. 33–8587; Release No. 33–7393; and *Penny Stock Definition for Purposes of Blank Check Rule*, Release No. 33–7024 (Oct. 25, 1993) [58 FR 58099].

[74] Similarly, Form S–8 is not available to shell companies or to former shell companies until 60 days after they have ceased being shell companies and have filed information that would be required in a registration statement on Form 10 or Form 20-F, as applicable, to register a class of securities under Section 12 of the Exchange Act. Release No. 33–8587. Unlike the eligibility rules of Form S–8, however, a company must be reporting for at least 12 calendar months before it is eligible under *any* criteria to use Form S–3. Therefore, instead of the 60-day delay required by Form S–8, it is more appropriate for a shell company to be prohibited from using the new provisions of S–3 and F–3 until at least 12 calendar months after it ceases being a shell company.

[75] This information is collectively described as ''Form 10 information.'' See Instruction 4 to new General Instruction I.B.6(b).

[76] New General Instruction I.B.6(b) of Form S–3 addresses the requirements pertaining to former shell companies.

[77] Items 2.01(f) and 5.01(a)(8) of Form 8–K require a company in a transaction where the company ceases being a shell company to file a current report on Form 8–K containing the information (or identifying the previous filing in which the information is included) that would be required in a registration statement on Form 10 to register a class of securities under Section 12 of the Exchange Act.

[78] See letters from the ABA and Morrison & Foerster (supporting the exclusion of shell companies) and letter from M. Baum (opposing the exclusion).

Form S–3 until at least one year has elapsed since they ceased being shell companies.[79] Because of the limited and less comprehensive public information available regarding shell companies, we are adopting General Instruction I.B.6(b) as proposed to ensure that investors have the benefit of one full year of disclosure once the entity ceases to be a shell company. In this regard, requiring one year of timely reporting puts our treatment of former shell companies on par with the eligibility requirements of any other new company wishing to use Form S–3.[80]

C. Amendments to Form F–3

Form F–3, which was designed to parallel Form S–3,[81] is the equivalent short-form registration form available for use by ''foreign private issuers''[82] to register securities offerings under the Securities Act. Similar to Form S–3, Form F–3 is available to foreign private issuers that satisfy the form's registrant requirements and at least one of the form's transaction requirements.[83] The Form F–3 registrant requirements are similar to Form S–3 and generally relate to a registrant's reporting history under the Exchange Act.[84] In addition, like the Form S–3 registration statement, Form F–3 limits the ability of registrants to conduct primary offerings on the form unless their public float equals or exceeds a particular threshold.[85]

As with Form S–3, the Commission has attempted to limit the availability of Form F–3 for primary offerings to a class of companies believed to provide a steady stream of corporate disclosure that is broadly disseminated to, and digested by, the marketplace. When the Commission adopted Form F–3 in 1982,[86] it set the public float test for foreign issuers at $300 million in response to public comment recommending that the numerical test for foreign issuers be much greater than for domestic registrants.[87] In 1994, however, the Commission reduced this threshold to $75 million in order to extend to foreign issuers the benefits of short-form registration ''to the same extent available to domestic companies.'' [88] In explaining its rationale, the Commission stated:

> [Our] experience with foreign issuers, as well as the internationalization of securities markets, indicates that foreign issuers with a public float of $75 million or more have a degree of analyst following in their world-wide markets comparable to similarly-sized domestic companies.[89]

As a result, the Commission believed that expanding Form F–3 eligibility by lowering the float standard to $75 million would give foreign issuers the same capital raising advantages enjoyed by domestic issuers on Form S–3 consistent with investor protection.[90]

In order to maintain the rough equivalency between Form S–3 and Form F–3, which have had the same public float criteria for primary offering eligibility since 1994,[91] we are adopting amendments to Form F–3 that are comparable to our changes to Form S–3. Specifically, new General Instruction I.B.5. to Form F–3 will allow foreign private issuers with less than $75 million in worldwide public float to register primary offerings of their securities on Form F–3, provided:

- They meet the other registrant eligibility conditions for the use of Form F–3;
- The class of securities to be offered is listed and registered on a national securities exchange;
- They do not sell more than the equivalent of one-third of their public float in primary offerings under General Instruction I.B.5. on Form F–3 over any period of 12 calendar months; and
- They are not shell companies and have not been shell companies for at least 12 calendar months before filing the registration statement.

II. Paperwork Reduction Act

A. Background

The new rules and amendments to Forms S–3 and F–3 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[92] We published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.[93] The titles for the collection of information are:

''Form S–3'' (OMB Control No. 3235–0073);

''Form F–3'' (OMB Control No. 3235–0256);

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[79] See letters from the ABA and Morrison & Foerster (supporting the one-year delay) and letters from Feldman Weinstein and Williams Securities (objecting to the one-year delay and contrasting it to the 90-day delay the Commission proposed in Release No. 33–8813 (July 5, 2007) [72 FR 36822] in order for shareholders of former shell companies to resell their securities in reliance on Rule 144). This analogy to Rule 144 is inapposite. A delay of at least 90 days under Rule 144, versus one year under Form S–3, is not unique to shell companies. Form S–3 requires any issuer to have been timely reporting for at least one year, while Rule 144 requires that an issuer be subject to the reporting requirements for at least 90 days before an affiliate of a reporting issuer is able to sell unrestricted securities under the rule.

[80] See General Instruction I.A.3. of Form S–3.

[81] *Integrated Disclosure System for Foreign Private Issuers*, Release No. 33–6360 (Nov. 20, 1981) [46 FR 58511], at 7:

> The three forms proposed under the Securities Act roughly parallel proposed Forms S–1, S–2 and S–3 in the domestic integration system, but the foreign system is based on the Form 20–F instead of the Form 10–K and annual report to shareholders as the uniform disclosure package.

[82] The term ''foreign private issuer'' is defined in Rule 405 of the Securities Act to mean any foreign issuer other than a foreign government except an issuer meeting the following conditions:

> (1) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and
>
> (2) Any of the following:
>
> (i) The majority of the executive officers or directors are United States citizens or residents;
>
> (ii) More than 50 percent of the assets of the issuer are located in the United States; or
>
> (iii) The business of the issuer is administered principally in the United States.

[83] General Instruction I. of Form F–3: ''Eligibility Requirements for Use of Form F–3.''

[84] One difference is that, unlike Form S–3, General Instruction I.A.1. of Form F–3 requires that registrants have previously filed at least one annual report on Form 20–F, Form 10–K or, in certain cases, Form 40–F under the Exchange Act. For an explanation of this difference, see *Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports*, Release No. 33–7029 (Nov. 3, 1993) [58 FR 60307], at 3; and *Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports*, Release No. 33–7053 (Apr. 19, 1994) [59 FR 21644], at 2 (explaining that the requirement was adopted ''in order to ensure that information regarding the issuer is available to the market'').

[85] General Instruction I.B.1. of Form F–3. Note that, unlike Form S–3, the Instruction makes reference to the registrant's ''worldwide'' public float.

[86] *Adoption of Foreign Issuer Integrated Disclosure System*, Release No. 33–6437 (Nov. 19, 1982) [47 FR 54764].

[87] Release No. 33–7029, at 2.

[88] Release No. 33–7053, at 2. In the same rulemaking, the Commission also reduced the reporting history requirement in Form F–3 from 36 to 12 months to match the eligibility criteria applicable to domestic companies using Form S–3.

[89] Release No. 33–7029, at 2.

[90] The Commission stated:

> These provisions are part of the ongoing efforts of the Commission to ease the transition of foreign companies into the U.S. disclosure system, enhance the efficiencies of the registration and reporting processes and lower costs of compliance, where consistent with investor protection.
>
> Release No. 33–7053, at 2.

[91] The Commission's adoption of the ''Securities Offering Reform'' amendments in July 2005 is a recent instance where parallel changes were made to Form S–3 and Form F–3. See Release No. 33–8591. For example, the 2005 amendments provided that the ability to conduct an automatic shelf offering under both Form S–3 and Form F–3 is limited to registrants that qualify as ''well-known seasoned issuers'' under Rule 405 of the Securities Act. We note the minimum public float threshold required to be a well-known seasoned issuer is the same for both Form S–3 and Form F–3.

[92] 44 U.S.C. 3501 *et seq.*

[93] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

''Form S–1'' [94] (OMB Control No. 3235–0065); and

''Form F–1'' [95] (OMB Control No. 3235–0258).

We adopted existing Forms S–3, S–1, F–3 and F–1 pursuant to the Securities Act. These forms set forth the disclosure requirements for registration statements that are prepared by eligible issuers to provide investors with the information they need to make informed investment decisions in registered offerings.

Our amendments to Forms S–3 and F–3 are intended to allow issuers that are ineligible to use Forms S–3 and F–3 for primary offerings because they do not meet the forms' public float requirements to nevertheless register a limited amount of securities in primary offerings on Form S–3 or Form F–3, as applicable, so long as they are not shell companies, they meet the other eligibility requirements of the forms, and they have at least one class of common equity securities listed and registered on a national securities exchange.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. 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 control number.

The information collection requirements related to registration statements on Forms S–3, S–1, F–3 and F–1 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

Because the amendments that we are adopting in this release pertain principally to Forms S–3 and F–3 eligibility, rather than to the disclosure required by these forms, we do not believe that the amendments will impose any new recordkeeping or information collection requirements, other than those that will be de minimis in nature.[96] On a per-response basis, therefore, the amendments should not increase or decrease existing disclosure burdens for Form S–3 or Form F–3. However, because we expect that many companies newly eligible for primary offerings on Forms S–3 and F–3 as a result of these amendments will choose to file short-form Form S–3 and Form F–3 registration statements in lieu of Forms S–1 or F–1, as applicable, we believe there will be an aggregate decrease in the disclosure burdens associated with Forms S–1 and F–1 and an increase in the disclosure burdens associated with Forms S–3 and F–3. The shift in aggregate disclosure burden among these forms will be due entirely to the change in the number of annual responses expected with respect to each form, as companies previously ineligible to use Form S–3 and Form F–3 switch to these forms for their public offerings and away from Forms S–1 and F–1.

In addition, because of the anticipated benefits to issuers associated with Forms S–3 and F–3, in particular the lower costs of preparing and filing the registration statements and the ability to make delayed and continuous offerings in response to changing market conditions, we think that this will increase the demand for, and lead to more, company filings on Forms S–3 and F–3 than would otherwise have been made on Forms S–1 and F–1. That is, we think that the opportunity for capital raising will be more robust for many companies because of the availability of shelf registration on Forms S–3 and F–3. We also anticipate that many companies newly eligible to use Forms S–3 or F–3 will choose to offer their securities directly to the public through registration on these registration forms instead of through private placements and, therefore, we expect comparatively more Forms S–3 and F–3 registration statements to be filed as companies forego private offerings in favor of the public markets.

In order to provide an estimate of the change in the collection of information burden for purposes of the Paperwork Reduction Act, our assumption is that the amendments to Forms S–3 and F–3 will result in an overall increase in the number of such forms filed annually by eligible companies and an overall decrease in the number of Forms S–1 and Forms F–1 filed annually by these companies. As discussed, however, we do not expect that the incremental increase in the number of all Forms S–3 and F–3 filed will be roughly equal to the incremental decrease in the number of Forms S–1 and Forms F–1 filed, because our assumption is that the advantages of shelf registration on Form S–3 and Form F–3 will encourage financings on these forms that would otherwise have been carried out through exempt offerings or perhaps not at all. Therefore, we believe the amendments will result in a net increase in the annual aggregate number of filings on all Forms S–3, S–1, F–3 and F–1 taken together, since the increased number of Form S–3 and F–3 filings should exceed the decreased number of Form S–1 and F–1 filings. Accordingly, we believe the overall net decrease in disclosure burden that should result from companies changing to the more streamlined Forms S–3 and F–3 will be offset to some extent by newly eligible companies filing Forms S–3 and F–3 more frequently than they did Forms S–1 or F–1. However, this offset could be lessened in part by the one-third cap on the amount of securities that eligible companies may sell on Form S–3 and Form F–3 in any period of 12 calendar months pursuant to the new form eligibility rules.[97] Companies that require more capital but are prohibited by this one-third cap from using Form S–3 and Form F–3 for primary offerings may, as a result, continue to conduct some offerings on Forms S–1 or F–1 or through the private markets even though Forms S–3 and F–3 are preferable.

C. Summary of Comments and Revisions to Amendments

None of the commenters addressed our request for comment on the Paperwork Reduction Act analysis contained in the Proposing Release. We

[94] Because our amendments to Form S–3 and Form F–3 are anticipated to affect the annual number of Forms S–1 and Forms F–1 filed, we are including them in the titles of information collections even though we are not amending the substance of the collection in this release. Note that the Proposing Release also included our estimates with respect to Form SB–2 (OMB Control No. 3235–0418), in addition to Forms S–3, F–3, S–1 and F–1. However, Release No. 33–8876, which was adopted by the Commission on November 15, 2007, will eliminate Form SB–2 when it becomes effective. Therefore, our revised Paperwork Reduction Act estimates do not include new estimates for Form SB–2. As discussed in greater detail below, we have taken the elimination of Form SB–2 into consideration for purposes of revising our estimates of the burden associated with Forms S–3, S–1 and F–1.

[95] *Id.*

[96] Instruction 7 to new General Instruction I.B.6. of Form S–3 and Instruction 7 to new General Instruction I.B.5. of Form F–3 require registrants to disclose in each prospectus filed with the Commission their updated calculation of public float and the amount of securities offered on Form S–3 or F–3, as applicable, pursuant to this instruction during the prior 12 calendar months. Although this is a new disclosure requirement for Forms S–3 and F–3, we think that the registrant's determination of its public float and the amount of securities offered in the prior twelve-month period should be readily accessible and easily calculable. In addition, we note that registrants are already required to ascertain their public float at the time they file a registration statement for a primary offering on Form S–3 or Form F–3. See General Instruction I.B.1. of Form S–3 and General Instruction I.B.1. of Form F–3. As such, we anticipate that the total time, effort and financial resources to generate and maintain this information will be insignificant for each registrant.

[97] As previously discussed, new General Instructions I.B.6. of Form S–3 and I.B.5. of Form F–3 prohibit registrants from selling more than the equivalent of one-third of their public float in any period of 12-calendar months.

are nevertheless revising our Paperwork Reduction Act estimates in light of certain modifications we have made to the final rules as opposed to the proposal.

As proposed, new General Instruction I.B.6. of Form S–3 and new General Instruction I.B.5. of Form F–3 would have limited the amount of securities eligible companies could sell in accordance with these provisions to no more than the equivalent of 20% of their public float over any period of 12 calendar months. In consideration of commenters who were concerned that capping issuers at 20% of the value of their public float every twelve months would limit the usefulness of these new rules, we have decided to increase the twelve-month offering threshold to one-third of an issuer's public float. In light of this increase, however, we are adopting a further condition to eligibility under new General Instruction I.B.6. of Form S–3 and new General Instruction I.B.5. of Form F–3 that the issuer must have at least one class of common equity securities listed and registered on a national securities exchange. This additional restriction should help to minimize the potential abuses arising from expanded shelf registration because the securities exchanges, through their listing rules and procedures, as well as other requirements, provide an additional measure of protection for investors.

D. Revised Paperwork Reduction Act Burden Estimates

As discussed in Section II.C. above, we are revising our Paperwork Reduction Act burden estimates that were originally submitted to the Office of Management and Budget. Our revised estimates reflect the changes that we have made to the final rules as compared to the proposal.

For purposes of the Paperwork Reduction Act, we now estimate the annual decrease in the paperwork burden for companies to comply with our collection of information requirements to be approximately 10,375 hours of in-house company personnel time and to be approximately $12,450,000 for the services of outside professionals.[98] These estimates include the time and the cost of preparing and reviewing disclosure, filing documents and retaining records. Our methodologies for deriving the above estimates are discussed below.

Our estimates represent the burden for all issuers, both large and small. As mentioned, however, the estimated decreases are wholly attributable to our assumptions, discussed in Section II.B. above, about how the amendments will influence the behavior of certain issuers who were formerly ineligible to conduct primary offerings on Forms S–3 and F–3. These issuers are non-shell companies who satisfy the registrant eligibility requirements of Form S–3 [99] or Form F–3,[100] as applicable, have at least one class of common equity securities listed and registered on a national securities exchange, and had a public float of less than $75 million at the end of their last fiscal year. In all, we estimate that there were approximately 1,400 such companies at the end of calendar year 2006 and that they filed a total of 66 registration statements on Forms S–1, SB–2 [101] and F–1 during the twelve months ending December 31, 2006.[102] To determine the effect of our amendments on the overall paperwork burden, we have assumed that these filings on Forms S–1, SB–2 [103] and F–1 would be made instead on Form S–3 or Form F–3, as applicable, to the extent that the issuers would not be limited by the one-third cap on the amount of securities they may sell in any period of 12 calendar months under the new rules. Therefore, we assume that the Forms S–1 and F–1 filed by the subject companies will decrease from the number filed in 2006, but because of the one-third cap on sales, will not decrease to 0.[104] Instead, we believe that some Forms S–1 and F–1 will continue to be filed annually by these companies. To reflect this, we have taken the number of Forms S–1 and F–1 that were filed by these companies in calendar year 2006 and decreased this number by 90% [105] for each form, for a total decrease of 60 filings.[106] Therefore, we assume that approximately 60 fewer Forms S–1 and F–1 will be filed by all issuers annually as a result of the new amendments. The actual number could be more or less depending on various factors, including future market conditions.

Furthermore, we believe that the 1,400 companies that we estimate will be affected by the rule change would have conducted more registered securities offerings had they been able to use Forms S–3 and F–3, because of the benefits of forward incorporation and the ability to utilize shelf registration to maximize market opportunities. We assume that the inability of these companies to utilize Forms S–3 and F–3 limited their capacity to access the public securities markets and, because of the cost and lack of flexibility associated with Forms S–1, SB–2 and F–1, they either did not file registration statements on Forms S–1 SB–2 or F–1, or were limited in the number that they filed. We therefore believe that the annual number of responses on Forms S–3 and F–3 for purposes of the Paperwork Reduction Act will increase by an increment greater than simply the total of 60 fewer registration statements on Forms S–1 and F–1 that we estimate will be filed in future years by the 1,400 companies who would qualify for primary offerings on Forms S–3 and F–3 as a result of our amendments. We further assume that this increase in Forms S–3 and F–3 will be mitigated to some degree by the one-third cap on securities sold in any period of 12 calendar months under the new rules, which may limit the

[98] For administrative convenience, the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest thousand.

[99] See n. 37.

[100] See n. 83.

[101] As mentioned, the Commission voted to eliminate Form SB–2 on November 15, 2007. Release No. 33–8876. However, because some of the companies who filed on Form SB–2 in 2006 will become eligible to use Form S–3 under the new amendments to the form, we factor these Form SB–2 filings into our estimate of the number of additional Forms S–3 that will be filed in 2008 as a result of the rule change.

[102] The total of 66 filings is comprised of 37 Forms S–1; 26 Forms SB–2; and 3 Forms F–1.

[103] See n. 101.

[104] Because it has been eliminated, the number of new Forms SB–2 will, in fact, decrease to 0 after Release No. 33–8876 goes into effect. Therefore, companies that previously filed Forms SB–2, but who are now eligible to use Form S–3 under new General Instruction I.B.6. of the form, would not be able to fall back to Form SB–2 in the event that they exceed the one-third cap on Form S–3. Instead, to the extent they wanted to conduct an additional registered public offering, they would likely have to file on Form S–1. To reflect this, we have taken the number of 2006 Form SB–2 filings by companies that we estimate will become eligible on Form S–3 under the new rules and added this to the number of Forms S–1 filed in 2006 by companies who qualify to use Form S–3 for primary offerings under the new rules. This allows us to estimate how many total Forms S–1 will be filed by domestic companies that exceed the one-third cap but still wish to conduct registered public offerings. So, for purposes of our baseline assumptions, the number of Forms S–1 filed in 2006 by companies who will become eligible to use Form S–3 under the new rules will include the number of Forms SB–2 filed in 2006 by qualifying companies (26) and will therefore total 63 filings (37 Forms S–1 plus 26 Forms SB–2).

[105] In the Proposing Release, this decrease was 85% for each form but has been raised to 90% in light of the 12-month offering restriction on sales being raised from 20% to one-third of a company's public float. In other words, because the ceiling has been raised, eligible companies will be able to expand the size and/or frequency of their offerings on Forms S–3 and F–3 and, consequently, will have less need to file alternate registration forms. Therefore, the number of filings on these forms should decrease even more than was predicted in the Proposing Release.

[106] This number deducts 90% from the totals for each of the registration forms, as follows: Form S–1 (90% of 63, rounded up, equals 57) and Form F–1 (90% of 3, rounded up, equals 3). Adding these together, the combined reduction totals 60 filings.

frequency and volume of additional securities offerings on Form S–3 and Form F–3. To reflect this, we have taken the total of 60 fewer Forms S–1 and F–1 that we think will be filed by these companies in future years as a result of the amendments (because of the availability of Forms S–3 and F–3) and increased this number by 15% [107] for each form, for a total increase of 70 filings.[108] Therefore, we assume that approximately 70 additional Forms S–3 and F–3 will be filed annually over and above the number of total Forms S–3 and F–3 filed by all issuers, large and small, as a result of the new amendments. The actual number could be more or less depending on various factors, including future market conditions.

To calculate the total effect of the amendments on the overall compliance burden for all issuers, large and small, we subtracted the burden associated with the 60 fewer Forms S–1 and F–1 registration statements that we expect will be filed annually in the future and added the burden associated with our estimate of 70 additional Forms S–3 and F–3 filed annually as a result of the amendments. We used current Office of Management and Budget estimates in our calculation of the hours and cost burden associated with preparing, reviewing and filing each of these forms.

Consistent with current Office of Management and Budget estimates and recent Commission rulemaking,[109] we estimate that 25% of the burden of preparation of Forms S–3, S–1, F–3 and F–1 is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[110] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

The table below illustrates our estimates concerning the incremental annual compliance burden in the collection of information in hours and cost for Forms S–3, S–1, F–3 and F–1 as a result of these amendments.

Form	Estimated change in annual responses (A)	Hours/form [111] (B)	Incremental burden (C)=(A)*(B)	25% Issuer (D)=(C)*0.25	75% Professional (E)=(C)*0.75	$400/hr Professional cost (F)=(E)*$400
S–3	66	459	30,294	7,573.50	22,720.50	$9,088,200
S–1	(57)	1,176	(67,032)	(16,758)	(50,274)	(20,109,600)
F–3	4	166	664	166	498	199,200
F–1	(3)	1,809	(5,427)	(1,356.75)	(4,070.25)	(1,628,100)
Total	.....	.....	(41,501)	(10,375.25)	(31,125.75)	($12,450,300)

III. Cost-Benefit Analysis

A. Summary of Amendments

We are adopting revisions to the transaction eligibility requirements of Forms S–3 and F–3 that will allow companies to take advantage of these forms for primary offerings regardless of the size of their public float. Whereas secondary offerings may be registered on Forms S–3 and F–3 irrespective of float, the instructions to Forms S–3 and F–3 have, before now, restricted the use of these forms for primary securities offerings to companies that have a minimum of $75 million in public float calculated within 60 days prior to the date the registration statement is filed. To expand the availability of Forms S–3 and F–3 for primary offerings to more companies, we are adopting revisions to these forms that allow companies with less than $75 million in public float to register primary offerings of their securities on Forms S–3 and F–3, provided:

- They meet the other registrant eligibility conditions for the use of Form S–3 or Form F–3, as applicable;
- They have at least one class of common equity securities listed and registered on a national securities exchange;
- They do not sell more than the equivalent of one-third of their public float in primary offerings under General Instruction I.B.6. of Form S–3 or under General Instruction I.B.5. of Form F–3, as applicable, over the previous period of 12 calendar months; and
- They are not shell companies and have not been shell companies for at least 12 calendar months before filing the registration statement.

B. Benefits

The ability to conduct primary offerings on Forms S–3 and F–3 confers significant advantages on eligible companies in terms of cost savings and capital formation. The time required to prepare Form S–3 or Form F–3 is significantly lower than that required for Forms S–1 and F–1.[112] This difference is magnified by the fact that Form S–3 and Form F–3, unlike Forms S–1 and F–1, permit registrants to forward incorporate required information by reference to disclosure in their Exchange Act filings. Therefore, Form S–3 and Form F–3 registration statements can be automatically updated. This allows such companies to avoid additional delays and interruptions in the offering process and can reduce the costs associated with preparing and filing post-effective

[107] In the Proposing Release, this increase was 10% for each form but has been raised to 15% in light of the 12-month offering restriction on sales being raised from 20% to one-third of a company's public float. That is, because the ceiling has been raised, eligible companies will be able to conduct somewhat larger and/or more frequent offerings on Form S–3 and F–3.

[108] This number adds a 15% premium to the individual totals for each of the registration forms, as follows: Form S–1 (15% of 57, rounded up, equals 9) and Form F–1 (15% of 3, rounded up, equals 1). The sum of these increases, which is equal to 10, is then added to the total of 60 Forms S–1 and F–1 filed by the subject companies in 2006 that we believe will be filed on Forms S–3 and F–3 by these companies in future years. The total is an estimated increase of 70 Forms S–3 and F–3 (comprised of 66 additional Forms S–3 and four additional Forms F–3).

[109] For discussions of the relative burden of preparation of registration statements under the Securities Act allocated between issuers internally and their outside advisers, see *Executive Compensation and Related Person Disclosure*, Release No. 33–8732A (Aug. 29, 2006) [71 FR 56225] and Release No. 33–8591.

[110] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the average cost of outside professionals that assist issuers in preparing disclosures and conducting registered offerings.

[111] This reflects current Office of Management and Budget estimates.

[112] The Office of Management and Budget currently estimates the time required to prepare Form S–3 and Form F–3 as 459 hours and 166 hours, respectively. This is contrasted with current estimates for Form S–1 and F–1 as 1,176 hours and 638 hours, respectively.

amendments to the registration statement.

Overall, we anticipate that the expansion of Form S–3 and Form F–3 eligibility will decrease the aggregate costs of complying with the Commission's rules by allowing companies previously eligible to use only Form S–1 or Form F–1 the use of short-form registration on Form S–3 or Form F–3, as applicable. Using our estimates prepared for purposes of the Paperwork Reduction Act, we estimate that under the amendments the annual decrease in the compliance burden for companies to comply with our collection of information requirements to be approximately 10,375 hours of in-house company personnel time (valued at $1,816,000 [113]) and to be approximately $12,450,000 for the services of outside professionals.

In addition to the benefits associated with the estimated reduction in the time required to prepare Forms S–3 and F–3 in lieu of Forms S–1 and F–1, and a company's ability to forward incorporate prospectus disclosure by reference, Forms S–3 and F–3 provide substantial flexibility to companies raising money in the capital markets, which ultimately may reduce the cost of capital for such companies and facilitate their access to additional sources of investment. Companies that are eligible to use Form S–3 or Form F–3 for primary offerings are able to conduct delayed and continuous registered offerings under Rule 415 of the Securities Act, which provides considerable flexibility in accessing the public securities markets from time to time in response to changes in the market and other factors. Eligible companies are permitted to register securities prior to planning any offering and, once the registration statement is effective, offer these securities in one or more tranches without waiting for further Commission action. By having more control over the timing of their offerings, these companies can take advantage of desired market conditions, thus allowing them to raise capital on more favorable terms (such as pricing) or to obtain lower interest rates on debt. In addition, they can vary certain terms of the securities being offered upon short notice, enabling them to more efficiently meet the competitive requirements of the public securities markets. We believe that extending shelf registration benefits to more companies, in the manner we have chosen, will facilitate the capital-raising efforts of smaller public companies who currently have fewer financing options than their larger counterparts.[114] Consequently, we anticipate that the amendments will result in smaller issuers raising more capital through the public markets rather than through exempt offerings conducted in the domestic and offshore markets. Investors in these companies will benefit by such companies' improved access to capital on more favorable terms. In particular, investors in smaller public companies may be less subject to the risk of dilution in the value of their shares if the companies in which they invest are able to meet more of their capital needs in the public markets. By selling into the public markets, these companies may be able to avoid the substantial pricing discounts that private investors often demand to compensate them for the relative illiquidity of the restricted shares they are purchasing.[115]

The public registration of securities also provides additional benefits to investors over alternative forms of capital raising. To the extent that the amendments lead to an increase in the use of registered offerings through the use of Form S–3 and Form F–3 as a source of financing and a resulting decrease in private market alternatives, investors in those offerings will benefit from the additional investor protections associated with public registration.

Notwithstanding our belief regarding the beneficial effects of the amendments, however, any resulting benefits that accrue to companies and their investors as a result of these amendments will depend on future market conditions and circumstances unique to each company.

C. Costs

As discussed in Section B. above, we do not expect that the amendments to Forms S–3 and F–3 will materially increase companies' overall compliance costs associated with preparing, reviewing and filing these registration statements, although there may be some additional costs incurred by companies to monitor their ongoing compliance with the one-third sales cap imposed by the amendments. At the same time, the amendments could result in certain additional market costs that are difficult to quantify. For example, it has been suggested that there are risks inherent in allowing smaller public companies to take advantage of shelf primary offerings on Forms S–3 and F–3. Because this would permit such companies to avail themselves of periodic takedowns without further Commission action or prior staff review, concerns have been raised about the increased potential for fraud and market manipulation.[116] Although the Commission would retain the authority to review registration statements before declaring them effective, individual takedowns are not subject to prior staff review. Under the current rules, if issuers are instead using Forms S–1 or F–1, they would be required to file separate registration statements for each new offering, which would be subject to selective staff review before going effective. If these issuers can instead conduct shelf offerings on Form S–3 and Form F–3, there may be some loss of the deterrent effect on the companies' disclosures in connection with each takedown off the shelf because of the lack of prior staff review. In addition, the short time horizon of shelf offerings may also reduce the time that participating underwriters have to apply their independent scrutiny and judgment to an issuer's prospectus disclosure. We have also considered the effect the amendments may have on market demand for the securities of smaller public companies offered on Form S–3 and Form F–3. If there is a perception that smaller public company securities offered through shelf registration statements are more prone to abuse because of the lack of involvement by the Commission staff, this may erode investor confidence in these offerings generally. This could, in turn, make it more difficult for these companies to raise capital and significantly negate some of the benefits of the rule.

While we recognize that extending the benefits of shelf registration to an expanded group of companies will limit the staff's direct involvement in takedowns of securities off the shelf and could therefore pose some risk to investors, we believe that the risks are justified by the benefits that we anticipate will accrue by facilitating the capital formation efforts of smaller public companies. As we have discussed elsewhere in this release, we believe these risks have been mitigated by the emergence of the Internet which, in combination with the Commission's EDGAR database, has greatly enhanced the ability of the market to readily digest and assimilate public company information.

However, in order minimize risks to investors, the amendments include certain restrictions intended to moderate the impact of expanding

[113] Consistent with recent rulemaking releases, we estimate the value of work performed by the company internally at a cost of $175 per hour.

[114] See generally, Chaplinsky and Haushalter, *Financing Under Extreme Uncertainty: Contract Terms and Returns to Private Investments in Public Equity.*

[115] *Id.*

[116] See n. 34.

Forms S–3 and F–3 eligibility. These are:

- Excluding shell companies from eligibility;
- Requiring that companies have at least one class of common equity securities listed and registered on a national securities exchange; and
- Imposing a cap of one-third of a company's public float on the amount of securities that can be sold into the market in any period of 12 calendar months by eligible issuers on Forms S–3 and F–3.

We note, however, that monitoring compliance with the one-third cap may be difficult given the lack of staff review before a shelf offering.

IV. Consideration of Promotion of Efficiency, Competition and Capital Formation

Securities Act Section 2(b)[117] requires us, when engaging in rulemaking where we are required 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 expect the amendments will increase efficiency and enhance capital formation by facilitating the ability of smaller public companies to access the capital markets consistent with investor protection. Prior to these amendments, many companies have been ineligible to use Forms S–3 and F–3 to register primary offerings of their securities because the size of their public float did not satisfy the $75 million threshold required by these forms. Consequently, they have been unable to take advantage of the important benefits enjoyed by eligible companies, the most significant of which is the ability to conduct primary offerings on a delayed and continuous basis. The ability to register securities that may be taken off the shelf as needed, without prior staff review, provides a powerful tool for capital formation because it allows companies the flexibility to take advantage of desired market conditions efficiently and upon short notice. Companies may be able to raise capital more cheaply, quickly, and on more favorable terms than would otherwise be the case. By selling into the public markets, these companies may be able to avoid the substantial pricing discounts that private investors often demand to compensate them, in part, for the relative illiquidity of the restricted shares they are purchasing.[118]

We therefore believe that extending shelf registration benefits to more companies in the manner that we have chosen will facilitate the capital-raising efforts of smaller public companies who currently have fewer financing options than their larger counterparts.[119] Consequently, we anticipate that the amendments will lead to efficiencies in capital formation, as smaller issuers will be able to raise more capital through the public markets rather than through exempt offerings conducted in the domestic and offshore markets.

At the same time, we have also considered the potential that the amendments might result in certain additional market costs that could limit any efficiencies realized. For example, it has been suggested that extending the benefits of shelf registration to an expanded group of companies will limit the staff's direct involvement in takedowns of securities off the shelf and could therefore pose some risk to investors. In addition, the short time horizon of shelf offerings also may reduce the time that participating underwriters have to apply their independent scrutiny and judgment to an issuer's prospectus disclosure. By reducing this staff and underwriter oversight, there is a risk that these securities offerings may be more vulnerable to abuses. Moreover, because companies with a smaller market capitalization, as a group, have a comparatively smaller market following than larger, well-seasoned issuers and are more thinly traded, smaller companies' securities may be more vulnerable to potential manipulative practices. We also have considered the effect the amendments may have on market demand for the securities of smaller public companies offered on Form S–3 and Form F–3. If there is a perception that smaller public company securities offered through shelf registration statements are more prone to abuse because of the lack of prior involvement by the Commission staff, this may erode investor confidence in these offerings generally. This could, in turn, make it more difficult for these companies to raise capital and significantly negate the benefits of the rule.

The effects of the amendments on competition are difficult to predict, but it is possible that making it easier for smaller public issuers to access the domestic public securities markets will lead to a reallocation of capital, as companies that previously had little choice but to offer their securities in private offerings or in offshore markets because of their Form S–3 and Form F–3 ineligibility will now find it cost-effective to offer their securities domestically in primary offerings on Form S–3 and Form F–3. If such a reallocation occurs, it may also impact securities market professionals, such as finders, brokers and agents, who specialize in facilitating private securities offerings. The demand for these services may shift to the public markets, where other professionals, such as investment banks that underwrite public offerings, have a comparative advantage.

V. Final Regulatory Flexibility Act Analysis

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to revisions to the eligibility requirements for the use of registration statements on Forms S–3 and F–3 to register primary offerings of securities.

A. Need for the Amendments

Prior to these amendments, many smaller public companies have been ineligible to use Forms S–3 and F–3 to register primary offerings of their securities because the size of their public float did not satisfy the $75 million threshold required by these forms. Consequently, they have been unable to take advantage of the important benefits enjoyed by eligible companies, the most significant of which is the ability to conduct primary offerings on a delayed and continuous basis. The ability to register securities that may be taken off the shelf as needed, without prior staff review, provides a powerful tool for capital formation because it allows companies the flexibility to take advantage of desired market conditions efficiently and on short notice. As such, eligible companies may be able to raise capital more cheaply, quickly, and on more favorable terms than would otherwise be the case. Without this source of financing, smaller public companies that are not eligible to register primary offerings on Form S–3 or Form F–3 currently have fewer, and less favorable, financing options than their larger Form S–3 and F–3-eligible counterparts.

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. Several commenters supported the

[117] 15 U.S.C. 77b(b).

[118] See n. 115.

[119] See n. 114.

proposal because they believed it would benefit smaller public companies, but did not provide any specific comments on the Initial Regulatory Flexibility Act Analysis.

C. Small Entities Subject to the Amendments

The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[120] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[121] Roughly speaking, a ''small business'' and ''small organization,'' when used with reference to an issuer other than an investment company, means an issuer with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than investment companies, that may be considered reporting small entities.[122]

The amendments will affect small entities that:

- Are not shell companies;
- Have at least one class of common equity securities listed and registered on a national securities exchange; and
- Satisfy the registrant eligibility requirements for the use of Form S–3 or Form F–3, which generally pertain to a company's reporting history under the Exchange Act.[123]

Based on these registrant eligibility requirements, we estimate that there are approximately 115 to 350 small entities that will be affected by the amendments and therefore will become eligible to use Form S–3 or Form F–3 for primary securities offerings.[124]

D. Reporting, Recordkeeping and Other Compliance Requirements

Because Forms S–3 and F–3 are abbreviated registration forms that can be updated automatically through incorporation by reference of a registrant's Exchange Act filings, we believe use of the forms by eligible small entities will decrease their existing compliance burden. Because the amendments have little effect on the information disclosure requirements of Form S–3 or Form F–3,[125] we do not believe that the costs of complying with the amendments for small entities will be disproportionate to that of large entities.[126] We recognize, however, that there will be some additional costs associated with an issuer's need to continually monitor its compliance with the one-third cap on sales in any period of 12 calendar months, but we believe that any such costs will be insignificant.

For purposes of the Paperwork Reduction Act, we estimate the annual decrease in the paperwork burden for small entities to comply with our collection of information requirements to be approximately between 3,843 and 14,168 hours of in-house company personnel time (valued between $673,000 to 2,480,000[127]) and to be approximately between $4,612,000 and $17,001,000 for the services of outside professionals.

E. Agency Action to Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, the Regulatory Flexibility Act requires that we consider the following alternatives:

1. Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;

2. The clarification, consolidation or simplification of disclosure for small entities;

3. Use of performance standards rather than design standards; and

4. Exempting smaller entities from coverage of the disclosure requirements, or any part thereof.

Of these alternatives, only the last appears germane to these amendments. Alternative 3 is not applicable, as the distinction between performance standards and design standards has no bearing on the amendments. Alternatives 1 and 2, because they pertain to establishing different or simplified reporting requirements for smaller entities, also would not seem helpful in this instance because our amendments are already expected to reduce the compliance burden on eligible smaller entities. Regarding Alternatives 1, 2 and 4, we considered relaxing the transaction eligibility requirements for Forms S–3 and F–3 to a greater degree than we are adopting, which would have the effect of further reducing the compliance burden among smaller entities by making more entities eligible for short-form disclosure. As we stated, however, we decline at this time to adopt a less restrictive eligibility requirement. We believe at this time that imposing the one-third cap on the amount of securities that smaller public companies listed on exchanges may sell pursuant to primary offerings on Forms S–3 and F–3, as described, will help to facilitate capital formation through the securities markets consistent with our primary objective of investor protection.

VI. Statutory Authority and Text of the Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

List of Subjects in 17 CFR Parts 230 and 239

Reporting and recordkeeping requirements, Securities.

■ For the reasons set out in the preamble, the Commission amends title 17, chapter II, of the Code of Federal Regulations as follows:

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[120] 5 U.S.C. 601(6).

[121] Rules 157 under the Securities Act [17 CFR 230.157], 0–10 under the Exchange Act [17 CFR 240.0–10] and 0–10 under the Investment Company Act [17 CFR 270.0–10] contain the applicable definitions.

[122] The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database. See also Revisions to *Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates,* Release No. 33–8813 (June 20, 2007) [72 FR 36822, 36841–36842]. This represents an update from the number of reporting small entities estimated in prior rulemakings. See, for example, *Executive Compensation and Related Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] (in which the Commission's estimated a total of 2,500 small entities, other than investment companies).

[123] See n. 37 and n. 83.

[124] The burden estimates for small entities are presented as a range representing the minimum and maximum number of small entities that we estimate would currently qualify for eligibility under either General Instruction I.B.6. of Form S–3 or General Instruction I.B.5. of Form F–3, as applicable, based on data available to us.

[125] See n. 96. Instruction 7 to new General Instruction I.B.6. of Form S–3 and Instruction 7 to new General Instruction I.B.5. of Form F–3 require disclosure of the registrant's updated calculation of public float and the amount of securities offered on Form S–3 or F–3, as applicable, pursuant to this instruction during the prior 12 calendar months, but we believe any burden associated with this requirement will be minimal.

[126] It should be noted, however, that General Instruction II.C. of Form S–3 currently requires:

* * * smaller reporting compan[ies] (as defined in Rule 405 of the Securities Act [17 CFR 230.405]) that [are] eligible to use Form S–3 shall use the disclosure items in Regulation S–K [17 CFR 229.10 *et seq.*] with specific attention to the subparagraph describing scaled disclosure, if any. Smaller reporting companies may provide the financial information called for by Item 310 of Regulation S–K in lieu of the financial information called for by Item 11 in this form.

Release No. 33–8876. Because such scaled disclosure requirements generally allow scaled disclosure for smaller reporting companies, small entities that file on Form S–3 may have a comparatively lesser compliance burden overall than larger issuers.

[127] See n. 113.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Amend § 230.401 by:

■ a. in paragraph (g)(1), revising the cite ''paragraph (g)(2)'' to read ''paragraphs (g)(2) and (g)(3)''; and

■ b. adding paragraph (g)(3).

The addition reads as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) * * *

(3) Violations of General Instruction I.B.6. of Form S–3 or General Instruction I.B.5. of Form F–3 will also violate the requirements as to proper form under this section notwithstanding that the registration statement may have been declared effective previously.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 3. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*, 77mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 4. Amend Form S–3 (referenced in § 239.13) by adding General Instruction I.B.6. to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM S–3—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form S–3 * * *

*B. Transaction Requirements. * * **

6. *Limited Primary Offerings by Certain Other Registrants.* Securities to be offered for cash by or on behalf of a registrant; *provided that:*

(a) the aggregate market value of securities sold by or on behalf of the registrant pursuant to this Instruction I.B.6. during the period of 12 calendar months immediately prior to, and including, the sale is no more than one-third of the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant;

(b) the registrant is not a shell company (as defined in § 230.405 of this chapter) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company; and

(c) the registrant has at least one class of common equity securities listed and registered on a national securities exchange.

Instructions.

1. ''Common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). For purposes of computing the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to General Instruction I.B.6., registrants shall use the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of sale. See the definition of ''affiliate'' in Securities Act Rule 405 (§ 230.405 of this chapter).

2. For purposes of computing the aggregate market value of all securities sold by or on behalf of the registrant in offerings pursuant to General Instruction I.B.6. during any period of 12 calendar months, registrants shall aggregate the gross proceeds of such sales; *provided,* that, in the case of derivative securities convertible into or exercisable for shares of the registrant's common equity, registrants shall calculate the aggregate market value of any underlying equity shares in lieu of the market value of the derivative securities. The aggregate market value of the underlying equity shall be calculated by multiplying the maximum number of common equity shares into which the derivative securities are convertible or for which they are exercisable as of a date within 60 days prior to the date of sale, by the same per share market price of the registrant's equity used for purposes of calculating the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to Instruction 1 to General Instruction I.B.6. If the derivative securities have been converted or exercised, the aggregate market value of the underlying equity shall be calculated by multiplying the actual number of shares into which the securities were converted or received upon exercise, by the market price of such shares on the date of conversion or exercise.

3. If the aggregate market value of the registrant's outstanding voting and non-voting common equity computed pursuant to General Instruction I.B.6. equals or exceeds $75 million subsequent to the effective date of this registration statement, then the one-third limitation on sales specified in General Instruction I.B.6(a) shall not apply to additional sales made pursuant to this registration statement on or subsequent to such date and instead the registration statement shall be considered filed pursuant to General Instruction I.B.1.

4. The term ''Form 10 information'' means the information that is required by Form 10 or Form 20–F (§ 249.210 or § 249.220f of this chapter), as applicable to the registrant, to register under the Securities Exchange Act of 1934 each class of securities being registered using this form. A registrant may provide the Form 10 information in another Commission filing with respect to the registrant.

5. The date used in Instruction 2 to General Instruction I.B.6. shall be the same date used in Instruction 1 to General Instruction I.B.6.

6. A registrant's eligibility to register a primary offering on Form S–3 pursuant to General Instruction I.B.6. does not mean that the registrant meets the requirements of Form S–3 for purposes of any other rule or regulation of the Commission apart from Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter).

7. Registrants must set forth on the outside front cover of the prospectus the calculation of the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to General Instruction I.B.6. and the amount of all securities offered pursuant to General Instruction I.B.6. during the prior 12 calendar month period that ends on, and includes, the date of the prospectus.

8. For purposes of General Instruction I.B.6(c), a ''national securities exchange'' shall mean an exchange registered as such under Section 6(a) of the Securities Exchange Act of 1934.

* * * * *

■ 5. Amend Form F–3 (referenced in § 239.33) by adding General Instruction I.B.5. to read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

FORM F–3—REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3 * * *

*B. Transaction Requirements * * **

5. *Limited Primary Offerings by Certain Other Registrants.* Securities to be offered for cash by or on behalf of a registrant; *provided that:*

(a) the aggregate market value of securities sold by or on behalf of the registrant pursuant to this Instruction I.B.5. during the period of 12 calendar months immediately prior to, and including, the sale is no more than one-third of the aggregate market value worldwide of the voting and non-voting common equity held by non-affiliates of the registrant;

(b) the registrant is not a shell company (as defined in § 230.405 of this chapter) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company; and

(c) the registrant has at least one class of common equity securities listed and registered on a national securities exchange.

Instructions.

1. ''Common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). For purposes of computing the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to General Instruction I.B.5., registrants shall use the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of sale. See the definition of ''affiliate'' in Securities Act Rule 405 (§ 230.405 of this chapter).

2. For purposes of computing the aggregate market value of all securities sold by or on behalf of the registrant in offerings pursuant to General Instruction I.B.5. during any period of 12 calendar months, registrants shall aggregate the gross proceeds of such sales; *provided,* that, in the case of derivative securities convertible into or exercisable for shares of the registrant's common equity, registrants shall calculate the aggregate market value of any underlying equity shares in lieu of the market value of the derivative securities. The aggregate market value of the underlying equity shall be calculated by multiplying the maximum number of common equity shares into which the derivative securities are convertible or for which they are exercisable as of a date within 60 days prior to the date of sale, by the same per share market price of the registrant's equity used for purposes of calculating the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to Instruction 1 to General Instruction I.B.5. If the derivative securities have been converted or exercised, the aggregate market value of the underlying equity shall be calculated by multiplying the actual number of shares into which the securities were converted or received upon exercise, by the market price of such shares on the date of conversion or exercise.

3. If the aggregate market value of the registrant's outstanding voting and non-voting common equity computed pursuant to General Instruction I.B.5. equals or exceeds $75 million subsequent to the effective date of this registration statement, then the one-third limitation on sales specified in General Instruction I.B.5(a) shall not apply to additional sales made pursuant to this registration statement on or subsequent to such date and instead the registration statement shall be considered filed pursuant to General Instruction I.B.1.

4. The term ''Form 10 information'' means the information that is required by Form 10 or Form 20–F (§ 249.210 or § 249.220f of this chapter), as applicable to the registrant, to register under the Securities Exchange Act of 1934 each class of securities being registered using this form. A registrant may provide the Form 10 information in another Commission filing with respect to the registrant.

5. The date used in Instruction 2 to General Instruction I.B.5. shall be the same date used in Instruction 1 to General Instruction I.B.5.

6. A registrant's eligibility to register a primary offering on Form F–3 pursuant to General Instruction I.B.5. does not mean that the registrant meets the requirements of Form F–3 for purposes of any other rule or regulation of the Commission apart from Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter).

7. Registrants must set forth on the outside front cover of the prospectus the calculation of the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to General Instruction I.B.5. and the amount of all securities offered pursuant to General Instruction I.B.5. during the prior 12 calendar month period that ends on, and includes, the date of the prospectus.

8. For purposes of General Instruction I.B.5(c), a ''national securities exchange'' shall mean an exchange registered as such under Section 6(a) of the Securities Exchange Act of 1934.

* * * * *

By the Commission.

Dated: December 19, 2007.

Nancy M. Morris,

Secretary.

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Federal Register

Thursday,
December 27, 2007

Part VI

The President

Proclamation 8213—To Implement an Amendment to the Dominican Republic-Central America-United States Free Trade Agreement

Federal Register
Vol. 72, No. 247
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Presidential Documents

Title 3—

The President

Proclamation 8213 of December 20, 2007

To Implement an Amendment to the Dominican Republic-Central America-United States Free Trade Agreement

By the President of the United States of America

A Proclamation

1. On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement (the ''Agreement'') with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (the ''Agreement countries''). The Congress approved the Agreement in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''CAFTA–DR Act'') (19 U.S.C. 4011).

2. The Parties to the Agreement entered into an amendment to the Agreement on July 27, August 6, and August 14, 2007 (the ''Amendment''). The terms of the Amendment are contained in letters of understanding between the United States and the Agreement countries described in sections 1634(a)(2) and 1634(b)(2) of the Pension Protection Act of 2006 (Public Law 109–280, 120 Stat. 780).

3. Section 1634 of the Pension Protection Act authorizes the President to proclaim modifications to the Harmonized Tariff Schedule of the United States (HTS) as necessary to carry out the understandings described therein subject, in the case of certain provisions of the Amendment, to the consultation and layover requirements in section 104 of the CAFTA–DR Act (19 U.S.C. 4014).

4. Section 203(o) of the CAFTA–DR Act (19 U.S.C. 4033) authorizes the President to proclaim, as part of the HTS, the provisions set out in Annex 4.1 of the Agreement.

5. Executive Order 11651 of March 3, 1972, as amended, established the Committee for the Implementation of Textile Agreements (CITA), consisting of representatives of the Departments of State, the Treasury, Commerce, and Labor, and the Office of the United States Trade Representative, with the representative of the Department of Commerce as Chairman, to supervise the implementation of textile trade agreements. Consistent with 3 U.S.C. 301, when carrying out functions vested in the President by statute and assigned by the President to CITA, the officials collectively exercising those functions are all to be officers required to be appointed by the President with the advice and consent of the Senate.

6. Section 604 of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 203 of the CAFTA–DR Act, section 1634 of the Pension Protection Act, section 301 of title 3, United States Code, and section 604 of the 1974 Act, do proclaim that:

(1) In order to provide generally for the modifications in the rules for determining whether goods imported into the customs territory of the United States are eligible for preferential tariff treatment under the Agreement, to provide preferential tariff treatment for certain other goods under the Agreement, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in:

(a) Sections A, B, and C of the Annex to this proclamation; and

(b) Section D of that Annex.

(2) The modifications to the HTS made by paragraph (1)(a) of this proclamation shall enter into effect on the date, as announced by the United States Trade Representative in the **Federal Register**, that the Amendment enters into force and shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after that date.

(3) The modifications to the HTS made by paragraph (1)(b) of this proclamation shall enter into effect on the date, as announced by the United States Trade Representative in the **Federal Register**, that the Amendment has entered into force and the conditions set forth in paragraph (a), paragraph (b), or both, of footnote 1 to Appendix 4.1–B of the Agreement have been fulfilled, and shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after that date.

(4) The CITA is authorized to exercise my authority under section 203(o) of the CAFTA–DR Act to implement Appendix 4.1–B of the Agreement by determining whether and, if so, by what amount, to increase in accordance with paragraph 3 or footnote 2 of that Appendix the quantitative limits in the provisions of the HTS set out in section D of the Annex to this proclamation.

(5)The United States Trade Representative shall modify U.S. note 21 to subchapter XXII of chapter 98 of the HTS in a notice published in the **Federal Register** to reflect determinations pursuant to paragraph (4) of this proclamation by the CITA.

(6) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of December, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

Billing code 3195–01–P

ANNEX

TO IMPLEMENT AN AMENDMENT TO THE DOMINICAN REPUBLIC-CENTRAL AMERICA-UNITED STATES FREE TRADE AGREEMENT

Effective with respect to goods that are entered, or withdrawn from warehouse for consumption, on or after the dates announced by the United States Trade Representative and published in the *Federal Register* for each annex section below, the Harmonized Tariff Schedule of the United States (HTS) is hereby modified as follows:

Section A. General note 29(n) to the HTS is modified as set forth below:

1. Chapter rules 3 and 4 for chapter 61 are deleted and the following new chapter rules are inserted in lieu thereof:

"**Chapter rule 3.** Notwithstanding chapter rule 2 to this chapter, a good of this chapter, other than a good of subheading 6102.20, tariff item 6102.90.90 (for goods subject to cotton restraints), 6104.12.00 (for jackets imported as parts of suits), 6104.13.20, 6104.19.15, 6104.19.80 (for jackets imported as parts of suits and subject to cotton restraints), 6104.19.80 (for goods subject to man-made fiber restraints), 6104.22.00 (for garments described in heading 6102 or jackets and blazers described in heading 6104), 6104.29.20 (for garments described in heading 6102 or jackets and blazers described in heading 6104, the foregoing subject to cotton restraints), subheading 6104.32, tariff item 6104.39.20 (for goods subject to cotton restraints), 6112.11.00 (for women's or girls' garments described in headings 6101 or 6102), 6113.00.90 (for coats and jackets of cotton, for women or girls) or 6117.90.90 (for coats and jackets of cotton), containing fabrics of subheading 5806.20 or heading 6002 shall be considered originating only if such fabrics are both formed from yarn and finished in the territory of one or more of the parties to the Agreement.

Chapter rule 4. Notwithstanding chapter rule 2 to this chapter, a good of this chapter, other than a good of subheading 6102.20, tariff item 6102.90.90 (for goods subject to cotton restraints), 6104.12.00 (for jackets imported as parts of suits), 6104.13.20, 6104.19.15, 6104.19.80 (for jackets imported as parts of suits and subject to cotton restraints or for goods subject to man-made fiber restraints), 6104.22.00 (for garments described in heading 6102 or jackets and blazers described in heading 6104), 6104.29.20 (for garments described in heading 6102 or jackets and blazers described in heading 6104, the foregoing subject to cotton restraints), subheading 6104.32, tariff item 6104.39.20 (for goods subject to cotton restraints), 6112.11.00 (for women's or girls' garments described in headings 6101 or 6102), 6113.00.90 (for coats and jackets of cotton, for women or girls) or 6117.90.90 (for coats and jackets of cotton), containing sewing thread of heading 5204, 5401 or 5508 shall be considered originating only if such sewing thread is both formed and finished in the territory of one or more of the parties to the Agreement.

Chapter rule 5. Notwithstanding chapter rule 2, a good of this chapter, other than a good of subheading 6102.20, tariff item 6102.90.90 (for goods subject to cotton restraints), 6104.12.00 (for jackets imported as parts of suits), 6104.13.20, 6104.19.15, 6104.19.80 (for jackets imported as parts of suits and subject to cotton restraints or for goods subject to man-made fiber restraints), 6104.22.00 (for garments described in heading 6102 or jackets and blazers described in heading 6104), 6104.29.20 (for garments described in heading 6102 or jackets and blazers described in heading 6104, the foregoing subject to cotton restraints), subheading 6104.32, tariff item 6104.39.20 (for goods subject to cotton restraints), 6112.11.00 (for women's or girls' garments described in headings 6101 or 6102), 6113.00.90 (for coats and jackets of cotton, for women or girls) or 6117.90.90 (for coats and jackets of cotton), that contains a pocket or pockets shall be considered originating only if the pocket bag fabric has been formed and finished in the territory of one or more of the parties to the Agreement from yarn wholly formed in the territory of one or more of the parties to the Agreement."

2. Tariff classification rules (TCRs) 3 and 4 for chapter 61 are deleted and the following new TCRs are inserted in lieu thereof:

"3. A change to subheading 6102.10 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

3A. A change to subheading 6102.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

3B. A change to subheading 6102.30 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

4. A change to goods subject to cotton restraints of tariff item 6102.90.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

4A. A change to any other good of subheading 6102.90 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

3. TCRs 13 and 14 for chapter 61 are deleted and the following new TCRs are inserted in lieu thereof:

"13. A change to subheading 6104.11 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

13A. A change to jackets imported as parts of suits of subheading 6104.12 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

13B. A change to any other good of subheading 6104.12 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

13C. A change to tariff item 6104.13.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

13D. A change to any other tariff item of subheading 6104.13 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

14. A change to tariff item 6104.19.40 or 6104.19.80 (except jackets imported as parts of suits and subject to cotton restraints and except goods subject to man-made fiber restraints) from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

14A. A change to tariff items 6104.19.15 or 6104.19.80 (for jackets imported as parts of suits and subject to cotton restraints or for goods subject to man-made fiber restraints) from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

4. TCRs 16 and 17 for chapter 61 are deleted and the following new TCRs are inserted in lieu thereof:

"16. A change to subheading 6104.21 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) with respect to a garment described in heading 6102, a jacket or a blazer described in heading 6104 or a skirt described in heading 6104, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

16A. A change to garments described in heading 6102 or to jackets and blazers described in heading 6104 and subject to cotton restraints, imported as parts of ensembles of subheading 6104.22 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

16B. A change to any other good of subheading 6104.22 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) with respect to a garment described in heading 6102, a jacket or a blazer described in heading 6104, or a skirt described in heading 6104, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

16C. A change to subheading 6104.23 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) with respect to a garment described in heading 6102, a jacket or a blazer described in heading 6104, or a skirt described in heading 6104, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

16D. A change to garments described in heading 6102 or to jackets and blazers described in heading 6104 and subject to cotton restraints, imported as parts of ensembles of subheading 6104.29 from any other

chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

16E. A change to any other good of subheading 6104.29 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) with respect to a garment described in heading 6102, a jacket or a blazer described in heading 6104, or a skirt described in heading 6104, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

17. A change to subheading 6104.31 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61.

17A. A change to subheading 6104.32 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

17B. A change to subheading 6104.33 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 61."

5. The following new TCR 18A for chapter 61 is inserted immediately below TCR 18 for such chapter:

"18A. A change to garments described in heading 6102 or to jackets and blazers described in heading 6104 and subject to cotton restraints, imported as parts of ensembles of tariff item 6104.39.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

6. TCR 19 for chapter 61 is modified by deleting "tariff item" and by inserting in lieu thereof "good".

7. TCRs 25 through 33 for chapter 61 are deleted and the following new TCRs are inserted in lieu thereof:

"25. A change to headings 6105 through 6111 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

33. A change to women's or girls' garments described in heading 6102 imported as parts of track suits of tariff item 6112.11.00 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

33A. A change to any other good of tariff item 6112.11.00 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516

or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

33B. A change to subheadings 6112.12 through 6112.19 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

8. TCR 36 for chapter 61 is deleted and the following new TCRs are inserted in lieu thereof:

"36. A change to coats or jackets of cotton, for women or girls, of tariff item 6113.00.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

37. A change to any other good of heading 6113 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

38. A change to headings 6114 through 6116 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

39. A change to subheadings 6117.10 through 6117.80 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

40. A change to coats or jackets of cotton of tariff item 6117.90.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

41. A change to any other good of subheading 6117.90 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

9. Chapter rules 1, 3 and 4 for chapter 62 are deleted, and the following new chapter rules 1, 3, 4 and 5 are inserted in numerical sequence:

"**Chapter rule 1.** Except for fabrics classified in tariff item 5408.22.10, 5408.23.11, 5408.23.21 or 5408.24.10, the fabrics identified in the following headings and subheadings, when used as visible lining material in certain men's and women's suits, suit-type jackets, skirts, overcoats, carcoats, anoraks, windbreakers and similar articles, other than men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers, vests and women's and girls' skirts of wool fabric, of subheadings 6203.11, 6203.31, 6203.41, 6204.11, 6204.31, 6204.51, 6204.61, 6211.39 or 6211.41, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of less than or equal to 18.5 microns, must be both formed from yarn and finished in the territory of one or more of the parties to the Agreement:

5111 through 5112, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.61, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24, 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6005.31 through 6005.44 or 6006.10 through 6006.44.

Chapter rule 3. Notwithstanding chapter rule 2 to this chapter, a good of this chapter, other than--

(a) a good of headings 6207 through 6208 (for boxers, pajamas, and nightwear only), subheading 6204.23, 6204.29, 6204.32, 6212.10, tariff item 6202.12.20, 6202.19.90 (for goods subject to cotton restraints), 6202.91.20 (for goods for women), 6202.92.15, 6202.92.20 (other than padded, sleeveless jackets without attachments for sleeves), 6202.93.45, 6202.99.90 (for goods subject to cotton restraints), 6203.39.90 (for goods subject to wool restraints), 6204.12.00 (for jackets imported as parts of suits), 6204.13.20, 6204.19.20, 6204.19.80 (for jackets imported as parts of suits and subject to cotton restraints, or for goods subject to man-made fiber restraints), 6204.22.30 (for garments described in heading 6202, or for jackets and blazers described in heading 6204), 6204.33.20, 6204.39.80, 6204.42.30 (for garments for girls, other than of corduroy), 6204.43.40 (for garments for girls), 6204.44.40 (for garments for girls), 6205.20.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6205.30.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6209.20.10, 6210.30.90 (for garments other than of linen), 6210.50.90 (for anoraks), 6211.20.15 (for anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), for women or girls, of cotton, imported as parts of ski suits), 6211.20.58 (for goods of cotton), 6211.41.00 (for jackets and jacket-type garments excluded from heading 6202), 6211.42.00 (for track suits, other than trousers, or for jackets and jacket-type garments excluded from heading 6202) or 6217.90.90 (for coats and jackets, of cotton); or

(b) men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers, vests, and women's and girls' skirts of wool fabric, of subheadings 6203.11, 6203.31, 6203.41, 6204.11, 6204.31, 6204.51, 6204.61, 6211.39, or 6211.41, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of less than or equal to 18.5 microns,

containing fabrics of heading 6002 or subheading 5806.20 shall be considered originating only if such fabrics are both formed from yarn and finished in the territory of one or more of the parties to the Agreement.

Chapter rule 4. Notwithstanding chapter rule 2, a good of this chapter, other than--

(a) a good of headings 6207 through 6208 (for boxers, pajamas, and nightwear only), subheading 6204.23, 6204.29, 6204.32, 6212.10, tariff item 6202.12.20, 6202.19.90 (for goods subject to cotton restraints), 6202.91.20 (for goods for women), 6202.92.15, 6202.92.20 (other than padded, sleeveless jackets without attachments for sleeves), 6202.93.45, 6202.99.90 (for goods subject to cotton restraints), 6203.39.90 (for goods subject to wool restraints), 6204.12.00 (for jackets imported as parts of suits), 6204.13.20, 6204.19.20, 6204.19.80 (for jackets imported as parts of suits and subject to cotton restraints, or for goods subject to man-made fiber restraints), 6204.22.30 (for garments described in heading 6202, or for jackets and blazers described in heading 6204), 6204.33.20, 6204.39.80, 6204.42.30 (for garments for girls, other than of corduroy), 6204.43.40 (for garments for girls), 6204.44.40 (for garments for girls), 6205.20.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6205.30.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags each for retail sale), 6209.20.10, 6210.30.90 (for garments other than of linen), 6210.50.90 (for anoraks), 6211.20.15 (for anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), for women or girls, of cotton, imported as parts of ski suits), 6211.20.58 (for goods of cotton), 6211.41.00 (for jackets and jacket-type garments excluded from heading 6202), 6211.42.00 (for track suits, other than trousers, or for jackets and jacket-type garments excluded from heading 6202) or 6217.90.90 (for coats and jackets, of cotton); or

(b) men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers, vests and women's and girls' skirts of wool fabric, of subheadings 6203.11, 6203.31, 6203.41, 6204.11, 6204.31, 6204.51, 6204.61, 6211.39 or 6211.41, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of less than or equal to 18.5 microns,

containing sewing thread of heading 5204, 5401 or 5508 shall be considered originating only if such sewing thread is both formed and finished in the territory of one or more of the parties to the Agreement.

Chapter Rule 5. Notwithstanding chapter rule 2, a good of this chapter, other than--

(a) a good of headings 6207 through 6208 (for boxers, pajamas, and nightwear only), subheading 6204.23, 6204.29, 6204.32, 6212.10, tariff item 6202.12.20, 6202.19.90 (for goods subject to cotton restraints), 6202.91.20 (for goods for women), 6202.92.15, 6202.92.20 (other than padded, sleeveless jackets without attachments for sleeves), 6202.93.45, 6202.99.90 (for goods subject to cotton restraints), 6203.39.90 (for goods subject to wool restraints), 6204.12.00 (for jackets imported as parts of suits), 6204.13.20, 6204.19.20, 6204.19.80 (for jackets imported as parts of suits and subject to cotton restraints, or for goods subject to man-made fiber restraints), 6204.22.30 (for garments described in heading 6202, or for jackets and blazers described in heading 6204), 6204.33.20, 6204.39.80, 6204.42.30 (for garments for girls, other than of corduroy), 6204.43.40 (for garments for girls), 6204.44.40 (for garments for girls), 6205.20.20 (for dress shirts for men, with two or more colors in the warp and/or the filling with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6205.30.20 (for dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale), 6209.20.10, 6210.30.90 (for garments other than of linen), 6210.50.90 (for anoraks), 6211.20.15 (for anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), for women or girls, of cotton, imported as parts of ski suits), 6211.20.58 (for goods of cotton), 6211.41.00 (for jackets and jacket-type garments excluded from heading 6202), 6211.42.00 (for track suits, other than trousers, or for jackets and jacket-type garments excluded from heading 6202) or 6217.90.90 (for coats and jackets, of cotton); or

(b) men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers, vests and women's and girls' skirts of wool fabric, of subheadings 6203.11, 6203.31, 6203.41, 6204.11, 6204.31, 6204.51, 6204.61, 6211.39 or 6211.41, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of less than or equal to 18.5 microns,

that contains a pocket or pockets shall be considered originating only if the pocket bag fabric has been formed and finished in the territory of one or more of the parties to the Agreement from yarn wholly formed in the territory of one or more of the parties to the Agreement."

10. TCRs 5 through 8, inclusive, for chapter 62 are deleted and the following new TCRs are inserted in lieu thereof:

"5. A change to subheading 6202.11 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

5A. A change to tariff item 6202.12.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

5B. A change to any other tariff item of subheading 6202.12 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

5C. A change to subheading 6202.13 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

6. A change to goods subject to cotton restraints of tariff item 6202.19.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

6A. A change to any other good of subheading 6202.19 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

7. A change to goods for women of tariff item 6202.91.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

7A. A change to any other good of subheading 6202.91 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

7B. A change to tariff items 6202.92.15 or 6202.92.20 (other than padded, sleeveless jackets without attachments for sleeves) from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

7C. A change to any other good of subheading 6202.92 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

7D. A change to tariff item 6202.93.45 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

7E. A change to any other good of subheading 6202.93 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

8. A change to goods subject to cotton restraints of tariff item 6202.99.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

8A. A change to any other good of subheading 6202.99 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

11. The following new TCR for chapter 62 is inserted immediately below TCR 13 for such chapter, and TCR 14 for such chapter is modified by deleting "tariff item" and by inserting in lieu thereof "good":

"13A. A change to goods subject to wool restraints of tariff item 6203.39.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

12. TCR 16 for chapter 62 is deleted and the following new TCRs are inserted in lieu thereof:

"16. A change to subheading 6204.11 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 58.01 through 58.02,or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

16A. A change to jackets imported as parts of suits of subheading 6204.12 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

16B. A change to any other good of subheading 6204.12 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 58.01 through 58.02,or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

16C. A change to tariff item 6204.13.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

16D. A change to any other tariff item of subheading 6204.13 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 58.01 through 58.02,or 60.01 through 60.06, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62."

13. The following new TCR for chapter 62 is inserted immediately below TCR 17 for such chapter:

"17A. A change to tariff item 6204.19.20 or to jackets imported as parts of suits and subject to cotton restraints or to goods subject to man-made fiber restraints of tariff item 6204.19.80 from any other

chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

14. TCRs 19, 20 and 21 for chapter 62 are deleted and the following new TCRs are inserted in lieu thereof:

"19. A change to subheading 6204.21 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) with respect to a garment described in heading 6202, a jacket or a blazer described in heading 6204 or a skirt described in heading 6204, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

19A. A change to garments described in heading 6202 or to jackets or blazers described in heading 6204 of tariff item 6204.22.30 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

19B. A change to any other good of subheading 6204.22 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) with respect to a garment described in heading 6202, a jacket or a blazer described in heading 6204 or a skirt described in heading 6204, of wool, fine animal hair, cotton or man-made fibers, imported as part of an ensemble of these subheadings, any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

19C. A change to subheadings 6204.23 through 6204.29 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

20. A change to subheading 6204.31 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

20A. A change to subheading 6204.32 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

20B. A change to tariff item 6204.33.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

20C. A change to any other tariff item in subheading 6204.33 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

21. A change to tariff item 6204.39.60 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

21A. A change to tariff item 6204.39.80 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

15. TCRs 24 and 25 for chapter 62 are deleted and the following new TCRs are inserted in lieu thereof:

"24. A change to goods for girls, other than of corduroy, of tariff item 6204.42.30 or to goods for girls of tariff items 6204.43.40 or 6204.44.40 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

25. A change to any other good of subheadings 6204.42 through 6204.49 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

16. TCR 30 for chapter 62 is deleted and the following new TCRs are inserted in lieu thereof:

"30. A change to subheading 6205.10 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

30A. A change to dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale, of tariff item 6205.20.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

30B. A change to any other good of subheading 6205.20 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

30C. A change to dress shirts for men, with two or more colors in the warp and/or the filling, each with collar and sleeve size stated in inches, without dual collar sizing, the foregoing individually packaged with chipboards, pins, jett clips, individual polybags and hang tags ready for retail sale, of tariff item 6205.30.20 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

30D. A change to any other good of subheading 6205.30 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

30E. A change to subheading 6205.90 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

17. TCR 32 for chapter 62 is deleted and the following new TCR is inserted in lieu thereof, and TCR 34 for chapter 62 is modified by deleting "tariff item" and by inserting in lieu thereof "good":

"32. A change to boxer shorts of subheading 6207.11, tariff items 6207.19.90 or 6208.91.30 or subheading 6208.92 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

18. TCR 35 for chapter 62 is deleted and the following new TCRs are inserted in lieu thereof:

"35. A change to tariff item 6209.20.10 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

35A. A change to any other tariff item of heading 6209 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

35B. A change to goods other than of linen tariff item 6210.30.90 or to anoraks (including ski-jackets), windbreakers and similar articles of tariff item 6210.50.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

35C. A change to any other good of heading 6210 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

19. TCRs 37 and 38 for chapter 62 are deleted and the following new TCRs are inserted in lieu thereof:

"37. A change to anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), imported as parts of ski-suits, of cotton, for women or girls, of tariff items 6211.20.15 or 6211.20.58 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

37A. A change to any other good of subheading 6211.20 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that:

(a) the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement, and

(b) with respect to a garment described in heading 61.01, 6102, 62.01, or 62.02, of wool, fine animal hair, cotton, or man-made fibers, imported as part of a ski-suit of this subheading, any visible lining material contained in the apparel article must satisfy the requirements of chapter rule 1 for chapter 62.

38. A change to subheadings 6211.31 through 6211.39 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

38A. A change to jackets and jacket-type garments excluded from heading 6202 of subheading 6211.41 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

38B. A change to any other good of subheading 6211.41 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

38C. A change to track suits (other than trousers) or to jackets and jacket-type garments excluded from heading 6202 of subheading 6211.42 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

38D. A change to any other good of subheading 6211.42 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

38E. A change to subheadings 6211.43 through 6211.49 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

20. TCR 41 for chapter 62 is deleted and the following new TCRs are inserted in lieu thereof:

"41. A change to headings 6213 through 6216 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut and knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

42. A change to coats or jackets of cotton of tariff item 6217.90.90 from any other chapter, provided that the good is cut or knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement.

43. A change to any other good of heading 6217 from any other chapter, except from headings 5111 through 5113, 5204 through 5212, 5310 through 5311, chapter 54, headings 5508 through 5516, 5801 through 5802 or 6001 through 6006, provided that the good is cut and knit to shape, or both, and sewn or otherwise assembled in the territory of one or more of the parties to the Agreement."

Section B. U.S. note 15 to subchapter XV of chapter 99 of the HTS is modified--

(1). by inserting at the end of the tabulation in subdivision (b) of such note the following new material:

"The tariff treatment provided for in subheading 9915.61.01 shall also apply to men's sport coats, containing 23 percent or more by weight of wool or fine animal hair, of subheadings 6103.23.00, 6103.29.05, 6103.31.00, 6103.33.10, 6103.39.80, 6203.23.00, 6203.29.10, 6203.29.15, 6203.31.50, 6203.31.90, 6203.33.10 or 6203.39.10, provided that the component that determines the tariff classification of the good is of carded wool fabric of subheading 5111.11.70, 5111.19.60 or 5111.90.90, and provided that the good satisfies all other applicable requirements of this note."

(2). by deleting from the tabulation in subdivision (c) of such note the quantities enumerated for the years 2011, 2012, 2013 and 2014 followed by the abbreviation "SME" and by inserting in lieu thereof for each such year the quantity "100,000,000 SME"; and by adding immediately below the tabulation and before the sentence beginning "For purposes..." the following new sentence:

"Of the quantity specified above for any such year, not more than 1,500,000 SME may be men's sport coats, containing 23 percent or more by weight of wool or fine animal hair, that are described in the final sentence of subdivision (b) of this note."

Section C. The following new HTS provisions are inserted in numerical sequence in subchapter XXII of chapter 98, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 General":

: "Goods of a party to the Agreement as defined in	:	:	:
: general note 29(a) to the tariff schedule that do not	:	:	:
: qualify for the tariff treatment provided for in such	:	:	:
: general note 29, the foregoing goods cut or knit to	:	:	:

	: shape, and sewn or otherwise assembled, in the : territory of a party, provided that such goods meet the : conditions for an originating good set forth in chapter : rules 1 (subject to the limitation in the second sentence : of chapter rule 2), 3, 4 and 5 for chapter 62, as set : forth in general note 29(n) to the tariff schedule:	:	:	:
9822.05.30	: Goods classifiable in subheading 6202.11.00.....	: The duty rate provided : in such subheading : minus 0.5%	:	:
9822.05.35	: Goods classifiable in subheading 6203.31.90.....	: The duty rate provided : in such subheading : minus 0.5%	:	:
9822.05.40	: Goods classifiable in subheading 6203.33.10.....	: The duty rate provided : in such subheading : minus 0.5%	:	:
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Section D. In order to provide for measures relating to certain apparel goods of chapter 62, the HTS is modified as follows:

1. General note 29(d) to the HTS is modified by inserting in numerical sequence the following new subdivision:

"(vii) Notwithstanding other provisions of this note, for purposes of determining whether a good of chapter 62 of the tariff schedule is an originating good, materials used in the production of such a good that are produced in the territory of Canada or of Mexico and that would be originating under this note if produced in the territory of a party to the Agreement shall be considered as having been produced in the territory of a party to the Agreement, provided that the United States Trade Representative has determined in a notice published in the Federal Register that the requirements of Appendix 4.1-B of the Agreement specified in subdivision (a) of this note have been met with respect to Canada or Mexico, as the case may be, and has announced the effective date of U.S. note 21 to subchapter XXII of chapter 98 of the tariff schedule. Such goods shall be entered under subheading 9822.05.05 of the tariff schedule, subject to the terms of such U.S. note 21, on or after the effective date specified in such notice."

2. The following new U.S. note 21 is inserted in numerical sequence in subchapter XXII of chapter 98:

"21. (a) For purposes of heading 9822.05.05, the treatment provided for in general note 29(d)(vii) to the tariff schedule shall be limited to goods imported into the territory of the United States from a party to the Agreement as defined in general note 29(a) in aggregate quantities not to exceed the overall limit set forth in subdivision (b) of this note, except as provided in subdivision (c) of this note. For purposes of determining the quantity of square meter equivalents (SME) to be charged against the overall limit, the conversion factors listed in *Correlation: U.S. Textile and*

Apparel Category System with the Harmonized Tariff Schedule of the United States of America 2003, U.S. Department of Commerce, Office of Textiles and Apparel, or successor publication, shall apply.

(b) Subject to the sublimits set out below and the exclusion provided in subdivision (c) of this note, the overall limit in the first calendar year that goods qualify for entry under this provision shall not exceed 100,000,000 SME. If this provision enters into force after January 1 of that year, the overall limit and sublimits shall be reduced in proportion to the number of full months of that year that have expired. Subject to the sublimits set out below, the overall limit for each successive calendar year that the Agreement as specified in general note 29(a) is in effect may increase up to a maximum of 200,000,000 SME in any calendar year, and the sublimits may increase so that they represent the same proportion of the overall limit as in the first calendar year that goods qualify for entry under this provision. Each percentage increase of the limits shall correspond to the percentage increase in imports into the territory of the United States from the other parties to the Agreement as defined in general note 29(a) of originating goods of chapter 62 of the tariff schedule.

(i) Not more than 45,000,000 SME may be trousers and skirts and parts thereof, of cotton or man-made fibers, or subject to cotton or manmade fiber restraints, within subheadings 6203.19.10, 6203.19.90, 6203.22.30, 6203.23.00, 6203.29.20, 6203.42.40, 6203.43.25, 6203.43.35, 6203.43.40, 6203.49.15, 6203.49.20, 6203.49.80, 6204.12.00, 6204.19.80, 6204.22.30, 6204.23.00, 6204.29.20, 6204.29.40, 6204.52.10, 6204.52.20, 6204.53.10, 6204.53.30, 6204.59.10, 6204.59.30, 6204.59.40, 6204.62.30, 6204.62.40, 6204.63.20, 6204.63.30, 6204.63.35, 6204.69.25, 6204.69.60, 6204.69.90, 6210.40.50, 6210.40.90, 6210.50.50, 6210.50.90, 6211.20.15, 6211.20.38, 6211.20.68, 6211.32.00, 6211.33.00, 6211.42.00, 6211.43.00 and 6217.90.90, excluding goods identified in subdivision (b)(ii) of this note.

(ii) Not more than 20,000,000 SME may be cotton blue denim trousers within subheadings 6203.42.40 or 6204.62.40 and blue denim skirts within subheading 6204.52.20.

(iii) Not more than 1,000,000 SME may be the following apparel goods, not knitted or crocheted, containing 36 percent or more by weight of wool or subject to wool restraints:

(A) suits for men or boys described in subheading 6203.11.15, 6203.11.30, 6203.11.60, 6203.11.90, 6203.12.10, 6203.19.20, 6203.19.90 or 6203.21.30;

(B) suit-type jackets and blazers for men or boys described in subheading 6203.21.30, 6203.21.90, 6203.23.00, 6203.31.50, 6203.31.90, 6203.33.10, 6203.39.10 or 6203.39.90;

(C) trousers, breeches and shorts for men or boys described in subheading 6203.21.30, 6203.21.90, 6203.23.00, 6203.41.05, 6203.41.12, 6203.41.18, 6203.43.30, 6203.49.20 or 6203.49.80;

(D) suits for women or girls described in subheading 6204.11.00, 6204.13.10, 6204.19.10 or 6204.19.80;

(E) suit-type jackets and blazers for women or girls described in subheading 6204.31.10, 6204.31.20, 6204.33.40, 6204.39.20 or 6204.39.80;

(F) skirts for women or girls described in subheading 6204.21.00, 6204.23.00, 6204.29.40, 6204.51.00, 6204.53.20, 6204.59.20 or 6204.59.40; or

(G) trousers, breeches or shorts for women or girls described in subheading 6204.21.00, 6402.23.00, 6204.29.40, 6204.61.10, 6204.61.90, 6204.63.25, 6204.69.20, 6204.69.60 or 6204.69.90.

(c) The limit in subdivision (b) of this note shall not apply to the following goods made from wool fabric: men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers and vests and women's and girls' skirts, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of not over 18.5 microns.

(d) The United States Trade Representative (USTR) may modify, in a notice published in the Federal Register, the overall limit and sublimits set forth in subdivision (b) of this note, to reflect CITA

determinations, subject to the maximum limitation and percentages set forth in such subdivision (b). The USTR may likewise modify, in a notice published in the Federal Register, such overall limit and sublimits to reflect a CITA determination to implement a decision of the parties to the Agreement, as defined in general note 29(a) to the tariff schedule, to take into account the ability of the Dominican Republic to participate in such limits."

3. The following new HTS provision is inserted in numerical sequence in subchapter XXII of chapter 98, with the material inserted in the columns entitled "Heading/Subheading", "Article Description", and "Rates of Duty 1 General":

"9822.05.05	: Apparel goods of chapter 62 for which the treatment : provided in U.S. note 21 to this subchapter is appro- : appropriate, if entered into the customs territory of the : United States in aggregate quantities not to exceed the : limits set forth in U.S. note 21 to this subchapter.....	: : : : : : :	: : : : : : : Free (P)":

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Hawaiian picture-wing flies; comments due by 1-2-08; published 11-28-07 [FR 07-05706]

Mexican gray wolf; comments due by 12-31-07; published 8-7-07 [FR E7-14626]

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McCauley Propeller Systems; comments due by 12-31-07; published 11-1-07 [FR E7-21493]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3648/P.L. 110–142

Mortgage Forgiveness Debt Relief Act of 2007 (Dec. 20, 2007; 121 Stat. 1803)

H.R. 365/P.L. 110–143

Methamphetamine Remediation Research Act of 2007 (Dec. 21, 2007; 121 Stat. 1809)

H.R. 710/P.L. 110–144

Charlie W. Norwood Living Organ Donation Act (Dec. 21, 2007; 121 Stat. 1813)

H.R. 2408/P.L. 110–145

To designate the Department of Veterans Affairs outpatient clinic in Green Bay, Wisconsin, as the ''Milo C. Huempfner Department of Veterans Affairs Outpatient Clinic''. (Dec. 21, 2007; 121 Stat. 1815)

H.R. 2671/P.L. 110–146

To designate the United States courthouse located at 301 North Miami Avenue, Miami, Florida, as the ''C. Clyde Atkins United States Courthouse''. (Dec. 21, 2007; 121 Stat. 1816)

H.R. 3703/P.L. 110–147

To amend section 5112(p)(1)(A) of title 31, United States Code, to allow an exception from the $1 coin dispensing capability requirement for certain vending machines. (Dec. 21, 2007; 121 Stat. 1817)

H.R. 3739/P.L. 110–148

To amend the Arizona Water Settlements Act to modify the requirements for the statement of findings. (Dec. 21, 2007; 121 Stat. 1818)

H.J. Res. 72/P.L. 110–149

Making further continuing appropriations for the fiscal year 2008, and for other purposes. (Dec. 21, 2007; 121 Stat. 1819)

S. 597/P.L. 110–150

To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 21, 2007; 121 Stat. 1820)

S. 888/P.L. 110–151

Genocide Accountability Act of 2007 (Dec. 21, 2007; 121 Stat. 1821)

S. 2174/P.L. 110–152

To designate the facility of the United States Postal Service located at 175 South Monroe Street in Tiffin, Ohio, as the ''Paul E. Gillmor Post Office Building''. (Dec. 21, 2007; 121 Stat. 1823)

S. 2371/P.L. 110–153

To amend the Higher Education Act of 1965 to make technical corrections. (Dec. 21, 2007; 121 Stat. 1824)

S. 2484/P.L. 110–154

To rename the National Institute of Child Health and Human Development as the Eunice Kennedy Shriver National Institute of Child Health and Human Development. (Dec. 21, 2007; 121 Stat. 1826)

S.J. Res. 8/P.L. 110–155

Providing for the reappointment of Patricia Q. Stonesifer as a citizen regent of the Board of Regents of the Smithsonian Institution. (Dec. 21, 2007; 121 Stat. 1829)

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