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# Presidential Documents

Title 3—

The President

**Proclamation 7799 of June 26, 2004**

## National HIV Testing Day, 2004

**By the President of the United States of America**

**A Proclamation**

Every day, 8,000 lives are lost in the global AIDS pandemic. In our country, nearly 1 million people are infected with HIV, and approximately 40,000 more contract it each year. National HIV Testing Day is an opportunity for Americans to increase their awareness of this terrible disease and to get tested for HIV/AIDS. By working together to end this pandemic, our Nation's citizens contribute to a brighter future for themselves and for people around the world.

New drugs and new treatments are bringing hope and enhancing the quality of life for those who are affected by HIV/AIDS. However, these advances can only help individuals if they know their HIV status. The National HIV Testing Day theme, ''It's better to know,'' highlights the importance of education in helping people make healthy decisions about preventing and treating HIV/AIDS. Approximately one-quarter of people who are HIV positive do not know that they are carriers. Without knowing their status, they cannot get the treatment they need and may unknowingly spread new infections. Today, testing is easier than ever. It is imperative that those at risk for HIV/AIDS get tested.

To reach out to HIV/AIDS sufferers in need, I recently announced $20 million in immediate new funding to deliver lifesaving drugs to Americans who are awaiting them. I have proposed in my 2005 budget to spend more than $17 billion here at home to expand prevention efforts such as regular testing and abstinence education, care and treatment, and research efforts to combat HIV/AIDS. In addition, this budget proposal doubles funding for abstinence-only programs, because abstinence is the only sure way to avoid sexually transmitted diseases. My Administration is working through the Centers for Disease Control and Prevention's Advancing HIV Prevention initiative to encourage routine testing as a normal part of health care. At-risk individuals who make the decision to get tested are taking a step toward saving their own lives and the lives of others.

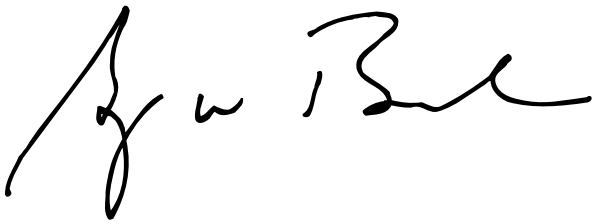
My Administration is also fully engaged in the global fight against HIV/AIDS. I have proposed a record $15 billion over 5 years to combat the spread of HIV/AIDS around the world, with a focus on some of the hardest-hit countries of Africa, the Caribbean, and Asia. This money will be used to prevent 7 million new infections, treat 2 million HIV-infected people with life-extending drugs, and care for 10 million individuals impacted by this disease, including orphans.

And, working with international partners, we will support intensified research to create a vaccine and find a cure. While AIDS remains a source of great suffering for many individuals, worldwide efforts are bringing us closer to the day when AIDS will be defeated.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 27, 2004, as National HIV Testing Day. I encourage the American people to support the battle against HIV/AIDS. I also urge those at risk to get tested for the disease

and to learn more about how to end this health threat in America and around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of June, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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# Rules and Regulations

Federal Register

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Wednesday, June 30, 2004

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.

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Parts 1254 and 1284

**RIN 3095–AB10**

### Revision of NARA Research Room Procedures

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** NARA has revised its regulations on research room procedures to incorporate several changes, and also to clarify it using plain language. In addition, information about the loan of archival materials for exhibits has been moved to 36 CFR part 1284. This rule affects the public.

**DATES:** Effective Date: July 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis Heaps at 301–837–1801.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the March 31, 2004, **Federal Register** (69 FR 16863) for a 60-day public comment period. NARA notified several researcher organizations about the proposed rule. A copy of the proposed rule was also posted on the NARA Web site and in onsite research rooms in NARA facilities. NARA received two responses to the proposed rule from the public.

The majority of the proposed rule was dedicated to NARA's research room rules nationwide in part 1254. The proposed rule also included in part 1254 NARA's policy about private microfilming of archival materials. The proposed rule further proposed to change our regulations by moving our policy on loaning archival materials for exhibits to part 1284.

One member of the public suggested that NARA issue identification cards with fingerprints and photographs to researchers using original materials. NARA already issues photo identification cards in locations containing the largest volume and most heavily consulted historical materials. We may be able to implement photo identification cards in other NARA facilities and may do so when practicable. We do not have legal authority to take fingerprints from the public, however, and did not adopt that recommendation.

One member of the public commented that NARA should not have detailed regulations but rather provide discretion to NARA managers in how to operate research rooms under their jurisdiction. We did not adopt this comment. While managers may have some latitude in making decisions based on local circumstances, NARA believes that having research room rules codified in regulations is a public service to help provide a common understanding among our users.

One member of the public suggested that NARA encourage the use of digital cameras and discourage personal copiers. Our foremost concern about the creation of any copies of historical materials is with the preservation of the originals. As long as the equipment and the conditions of its use complies with NARA's need to preserve the original materials, researchers may use the equipment that meets their needs.

One public commenter urged NARA to have private microfilmers create microfilm publications or copies by digitally scanning original historical materials, rather than filming materials with conventional microfilm methods. The commenter argued that scanning first produces superior quality microfilm than conventional filming. The commenter also believed that the regulations ought to indicate when documents should be scanned first and include technical requirements for scanning equipment and the microfilm produced from the scanners. In addition, the commenter said that NARA should require that vendors produce copies of all digital files for NARA use, including posting on its Web site.

In the proposed rule, we indicated our intention to retain the subpart outlining our policies for private microfilming of records and donated historical materials in our custody without substantive change. We intend to address private scanning and digitizing project requests in a future rulemaking.

One public commenter pointed out that some of the information about microfilm and copyright needed clarification. In § 1254.98, the publisher does not need to do anything to have its work protected by copyright law because any new information added to the filmed documents is automatically protected. The publisher can only claim copyright to its own material added to the film; NARA documents in the public domain remain in the public domain, as indicated in § 1254.96. The commenter also said that NARA needs to claim a royalty-free worldwide license to not only sell copies of the publication, but also to reproduce, distribute, display images, print from, digitize, and prepare derivative works from the copyright-protected portions after 7 years.

We agreed that the language in § 1254.98 needed some clarification for better reader understanding and made some necessary changes. We removed language implying that a microfilm publisher must apply for copyright protection. We also clarified NARA's rights to subsequent use of any publication in § 1254.98 and related text in §§ 1254.100(g)(1) and 1254.100(g)(2).

We proposed moving the existing § 1254.1(f) on the loan of NARA archival materials to other institutions for exhibit purposes to part 1284 of this chapter. One commenter said that NARA should lend documents to other archival institutions for research use. We did not adopt this comment. While NARA has recognized the benefits of making historical materials available through loan to other institutions temporarily for exhibit purposes, we do not generally make temporary loans for research purposes—even to Federal agencies for reference purposes as indicated at § 1228.280.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This final rule contains two information collections previously approved by OMB. This final rule does not have any federalism implications.

This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

**List of Subjects**

*36 CFR Part 1254*

Archives and records, Micrographics.

*36 CFR Part 1284*

Archives and records, Federal buildings and facilities.

■ For the reasons set forth in the preamble, NARA amends chapter XII of title 36 of the Code of Federal Regulations as follows:

■ 1. Revise Part 1254 to read as follows:

## PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS


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**Authority:** 44 U.S.C. 2101–2118.

### Subpart A—General Information

#### § 1254.1 What kinds of archival materials may I use for research?

(a) The National Archives and Records Administration (NARA) preserves records of all three branches (Executive, Legislative, and Judicial) of the Federal Government in record groups that reflect how government agencies created and maintained them. Most of these records are of Executive Branch agencies. We also have individual documents and collections of donated historical materials that significantly supplement existing records in our custody or provide information not available elsewhere in our holdings. Descriptions of many of our records are available through our Web site, *http://www.archives.gov.*

(b) We provide information about records and we make them available to the public for research unless they have access restrictions. Some records may be exempt from release by law. Donors may apply restrictions on access to historical materials that they donate to NARA. Access restrictions are further explained in part 1256 of this chapter. We explain procedures for obtaining information about records in § 1254.2.

(c) In addition to traditional paper (textual) materials, our holdings also include special media materials such as microfilm, still pictures, motion pictures, sound and video recordings, cartographic and architectural records, and electronic records. The majority of these materials are housed at the National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. Many of these types of materials also are represented in the holdings of our Presidential libraries and our regional archives facilities listed in part 1253 of this chapter.

(d) The majority of our archival materials are 30 years old or older.

(e) Records creating agencies hold the legal title and control access to records housed in NARA records centers. Our procedures to obtain access to these records are in § 1256.2.

#### § 1254.2 Does NARA provide information about documents?

(a) Upon request, we provide overall information about our holdings or about specific documents, if the time required to furnish the information is not excessive and if the information is not restricted (see part 1256 of this chapter). For anyone unable to visit, we may provide information contained in specific documents by offering copies of the documents for a fee (see § 1254.60).

(b) Requests must be on designated forms when we require them. The Office

of Management and Budget (OMB) approves these forms as information collections and the forms bear the approved control number.

(c) If requests that we receive in the normal course of reference service do not specifically cite the Freedom of Information Act (5 U.S.C. 552, as amended), we do not consider those requests made under the Act. To make a request under the Act, follow the procedures in part 1250 of this chapter.

**§ 1254.4 Where and when are documents available to me for research?**

(a) You may obtain general information about the location of records by visiting the NARA Web site at *www.archives.gov;* writing to the National Archives and Records Administration (NWCC2), 8601 Adelphi Road, College Park, MD 20740–6001; completing our Inquire form at *http://www.archives.gov/global_pages/inquire_form.html;* sending a fax request to (301) 837–0483; or calling (202) 501–5400, (301) 837–2000, or toll free (866) 272–6272.

(b) The locations and hours of operation (expressed in local time) of NARA's research rooms are shown in part 1253 of this chapter. Contact our facilities directly for information about their particular holdings. A facility or unit director may authorize that documents be made available at times other than the times specified in part 1253.

(c) Before planning a visit, contact the facility holding materials of potential interest to determine whether the documents are available, whether there are enough documents to warrant a visit, or whether ordering copies would be more practical.

(d) In addition to the procedures in this part, researchers who wish to use archival materials that contain national security classified information must follow procedures in part 1256 of this chapter.

**§ 1254.6 Do I need a researcher identification card to use archival materials at a NARA facility?**

(a) Yes, you need a researcher identification card to use original archival materials at a NARA facility. See §§ 1254.8 and 1254.10 for information on obtaining a card.

(b) You also need a researcher identification card if you wish to use only microfilm copies of documents in a NARA facility where the microfilm research room is not separate from textual research rooms.

(c) If you are using only microfilm copies of records in the National Archives Building and some regional archives where the microfilm research room is separate from textual research rooms, you do not need an identification card but you must register as described in § 1254.22.

**§ 1254.8 What information do I need to provide when applying for a researcher identification card?**

(a) You must apply in person and show identification containing your picture or physical description, such as a driver's license or school identification card. You also must provide proof of your current address, such as a bank statement, utility bill, or department of motor vehicles change of address card, if the address on your driver's license or other identification is not current. Students who consider the home of their parents as their permanent address, but who do not live there during the academic session, must provide their current student address. If you travel long distance to conduct research in original archival materials at a NARA facility, we may ask you how we can contact you locally. In special circumstances, the director of a facility or unit has the authority to grant exceptions to these requirements.

(b) If you apply for access to large quantities of documents or to documents that are especially fragile or valuable, we may require you to furnish additional information about reasons why you require access. Some materials are too fragile or valuable for direct handling or viewing. Preservation concerns (*see* §§ 1254.20(b) and 1254.36(e)) and availability of resources (*see* § 1254.20(c)) may limit our ability to accommodate certain requests.

(c) If you are younger than 14, you must follow the procedures in § 1254.24 to seek permission to conduct research.

(d) We do not issue you a researcher identification card if the appropriate supervisor or director of the NARA facility determines that the documents that you wish to use are not in the legal custody of NARA and you do not present appropriate written authorization from the legal title holder to examine the documents.

(e) The collection of information contained in this section has been approved by the Office of Management and Budget with the control number 3095–0016.

**§ 1254.10 For how long and where is my researcher identification card valid?**

(a) Your card is valid for 1 year and may be renewed. Cards we issue at one NARA facility are valid at each facility, except as described in paragraph (b) of this section. Cards are not transferable and you must present your card if a guard or research room attendant requests to see it.

(b) At NARA facilities in the Washington, DC, area and other NARA facilities that issue and use plastic researcher identification cards as part of their security systems, NARA issues a plastic card to replace the paper card issued at some NARA facilities at no charge. The plastic card is acceptable at all NARA facilities.

**§ 1254.12 Will NARA log or inspect my computer, other equipment, and notes?**

(a) If you bring personal computers, scanners, tape recorders, cameras, and other equipment into our facilities, we will inspect the equipment.

(1) In the Washington, DC, area, you must complete the Equipment Log at the guard's desk. The guard checks the log for proof of your personal ownership before you remove your equipment from the building.

(2) In the regional archives and Presidential libraries, we may tag your equipment after inspection and approval.

(b) Not all NARA facilities permit you to take your personal notes into the research room. In research rooms that permit taking in your notes, a NARA or contractor employee may stamp, initial, and date notes and other research materials we approve for admission to indicate that they are your personal property.

(c) We inspect your personal property, including notes, electrostatic copies, equipment cases, tape recorders, cameras, personal computers, and other property, before you may remove them from our research rooms or facilities.

**§ 1254.14 Are some procedures in regional archives and Presidential libraries different from those in the Washington, DC, area?**

Yes, the variety of facilities, locations of research rooms, room sizes, and other factors contribute to differences in some, but not all, practices from the Washington, DC, area. When the appropriate regional director of archival operations or Presidential library director indicates, you must follow the procedures in regional archives and Presidential library archival research rooms where researchers use original documents. These procedures are in addition to the procedures we specify elsewhere in this part. The procedures are either posted in the facility or the staff gives copies of them to researchers.

## Subpart B—Research Room Rules

### General Procedures

#### § 1254.20 What general policies apply in all NARA facilities where archival materials are available for research?

(a) Researchers may use original documents only in the designated research room at the facility where they are stored.

(b) Researchers must use microfilm copies or other alternative copies of documents when available, rather than the original documents. Some of our microfilm publications are available in more than one NARA facility.

(c) We may limit the quantity of documents that we deliver to you at one time. In some research rooms, we furnish records according to a specific time schedule.

#### § 1254.22 Do I need to register when I visit a NARA facility for research?

(a) Yes, you must register each day you enter a NARA research facility by furnishing the information on the registration sheet or scanning a bar-coded researcher identification card. We may ask you to provide additional personal identification.

(b) NARA facilities in the Washington, DC, area contain several research rooms; you must register in each research room you visit on a daily basis.

(c) In regional archives, you also sign out when leaving the research room for the day. In some Presidential libraries, where we instruct you to do so, you sign out when you leave the building.

#### § 1254.24 Whom does NARA allow in research rooms?

(a) We limit admission to research rooms in our facilities to individuals examining or copying documents and other materials.

(b) We do not admit children under the age of 14 to these research rooms unless we grant them research privileges (*see* paragraph (d) of this section).

(c) The appropriate supervisor may make exceptions for a child who is able to read and who will be closely supervised by an adult while in the research room. The adult must agree in writing to be present when the child uses documents and to be responsible for compliance with the research room and copying rules in subparts B and C of this part.

(d) Students under the age of 14 who wish to perform research on original documents must apply in person at the facility where the documents are located. At the National Archives Building, apply to the chief of the Research Support Branch (NWCC1). At the National Archives at College Park, apply to the chief of the Research Support Branch (NWCC2). For regional archives and Presidential libraries, apply to the appropriate supervisor or archivist in charge. We may require either that the student must present a letter of reference from a teacher or that an adult accompany the student while doing research. Students may contact NARA by phone, e-mail, fax, or letter in advance of their visit to discuss their eligibility for research privileges. Current contact information for our facilities is available on our Web site, *http://www.archives.gov.*

(e) We may permit adults and children participating in scheduled tours or workshops in our research rooms when they do not handle any documents that we show to them. These visitors do not need a researcher identification card.

#### § 1254.26 What can I take into a research room with me?

(a) *Personal belongings.* You may take a hand-held wallet and coin purse for the carrying of currency, coins, credit cards, keys, driver's license, and other identification cards into research rooms, but these are subject to inspection when you enter or leave the room. The guard or research room attendant determines whether your wallet or purse is sufficiently small for purposes of this section. You may take cell phones, pagers, and similar telecommunications devices into a research room only under the circumstances cited in § 1254.46(b) and, for cell phone cameras, in § 1254.70(g).

(b) *Notes and reference materials.* You may take notes, references, lists of documents to be consulted, and other materials into a research room if the supervisor administering the research room or the senior staff member on duty in the research room determines that they are essential to your work requirements. Not all facilities permit you to take notes into the research room. In facilities that allow you to bring notes, staff may stamp your items to indicate that they are your property.

(c) You may bring back into the research room on subsequent visits your research notes made on notepaper and notecards we provide and electrostatic copies you make on copying machines in NARA research rooms which are marked with the statement ''Reproduced at the National Archives.'' You must show any notes and copies to the research room attendant for inspection when you enter the research room.

(d) Personal equipment. The research room attendant, with approval from the supervisor, archivist, or lead archives technician in charge of the room, may admit personal computers, tape recorders, scanners, cameras, and similar equipment if the equipment meets NARA's approved standards for preservation. We do not approve the use of any equipment that could potentially damage documents. If demand to use equipment exceeds the space available for equipment use, we may impose time limits. If you wish to use computers, sound recording devices, or other equipment, you must work in areas the research room attendant designates, when required.

#### § 1254.28 What items are not allowed in research rooms?

(a) You may not bring into the research rooms overcoats, raincoats, jackets, hats, or other outerwear; personal paper-to-paper copiers, unless permitted in accordance with § 1254.86 of this part; briefcases, satchels, valises, suitcases, day packs, purses, boxes, or similar containers of personal property. We may make exceptions for headwear worn for religious or health reasons. In facilities where we provide notepaper and notecards, you also may not bring into the research room notebooks, notepaper, notecards, folders or other containers for papers.

(b) You may store personal items at no cost in lockers or other storage facilities in the NARA facility. These lockers or other storage facilities are available on a first-come-first-served basis.

(c) You must remove your personal belongings each night from the lockers or other storage facilities we provide to hold them. If you do not remove your personal belongings, NARA personnel will remove them. We post directions for reclaiming confiscated items near the lockers or other storage facilities.

(d) NARA is not responsible for the loss or theft of articles you store in the lockers.

(e) We may charge a replacement fee for lost locker keys.

(f) Knives and other sharp objects such as box cutters, razors, or wire are not permitted in our research rooms.

#### § 1254.30 Does NARA provide any supplies?

Yes, in most facilities NARA furnishes you, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. NARA also provides diskettes and paper for our public access computers. Return unused pencils and notepaper, notecards, diskettes, and printer paper to the research room attendant at the end of the day.

### § 1254.32 What rules apply to public access use of the Internet on NARA-supplied computers?

(a) Public access computers (workstations) are available for Internet use in all NARA research rooms. The number of workstations varies per location. We provide these workstations for research purposes on a first-come-first-served basis. When others are waiting to use the workstation, we may impose a 30-minute time limit on the use of the equipment.

(b) You should not expect privacy while using these workstations. These workstations are operated and maintained on a United States Government system, and activity may be monitored to protect the system from unauthorized use. By using this system, you expressly consent to such monitoring and the reporting of unauthorized use to the proper authorities.

(c) You may not use these workstations to gain access to entertainment or other inappropriate Web sites in our research rooms. You also may not use these workstations to conduct private business not related to your research or NARA holdings.

(d) NARA provides at least one Internet access workstation in each facility that complies with the Workforce Investment Act of 1998, ensuring comparable accessibility to individuals with disabilities.

(e) You may download information to a diskette and print materials, but the research room staff will furnish the diskettes and paper. You may not use personally owned diskettes on NARA personal computers. You may not load files or any type of software on these workstations.

## Rules Relating to Using Original Documents

### § 1254.34 What are my responsibilities when using documents?

(a) You must sign for the documents you receive and we may require you to show your researcher identification card.

(b) You are responsible for the proper handling of and prevention of damage to all documents delivered to you until you return them. Specific handling instructions are given in §§ 1254.36 and 1254.38.

(c) When you finish using the documents, you must return them to the research room attendant.

(d) You must not remove the reference service slip that accompanies the documents to the research room.

(e) If we ask, you must return documents up to 15 minutes before closing time.

(f) Before leaving a research room, even for a short time, you must notify the research room attendant and place all documents in their proper containers.

### § 1254.36 What care must I take when handling documents?

To prevent damage to documents, we have rules relating to the physical handling of documents.

(a) You must use only pencils in research rooms where original documents are used.

(b) You must not lean on, write on, refold, trace, or otherwise handle documents in any way likely to cause damage.

(c) You must follow any additional rules that apply to the use of special media records at our facilities, such as wearing cotton gloves we provide you for handling still pictures and any original film-based materials.

(d) You must identify documents for reproduction only with a paper tab that we provide you. You must not use paper clips, rubber bands, self-stick notes or similar devices to identify documents.

(e) You must use exceptionally valuable or fragile documents only under conditions the research room attendant specifies.

(f) You must request that research room personnel unstaple or remove other fasteners from documents that cannot otherwise be read.

(g) If you notice damage to any document(s), notify the research room attendant immediately.

### § 1254.38 How do I keep documents in order?

(a) You must keep unbound documents in the order in which we deliver them to you.

(b) You must not attempt to rearrange documents that appear to be in disorder. Instead, you must refer any suspected problems with the records to the research room attendant.

(c) You may use only one folder at a time.

(d) Remove documents from only one container at a time.

### § 1254.40 How does NARA prevent removal of documents?

(a) You must not remove documents from a research room. Removing, mutilating, or revising or otherwise altering documents is forbidden by law and is punishable by fine or imprisonment or both (18 U.S.C. 2071).

(b) Upon leaving the research room or facility, you must present for examination any article that could contain documents or microfilm, as well as presenting copies or notes to ensure that no original records are mixed in with them.

(c) To ensure that no one unlawfully removes or mutilates documents, NARA may post at the entrance to research rooms instructions supplementing the rules in this part. These instructions are specific to the kinds of records you use or to the facility where the records are stored.

## Rules Relating to Using Microfilm

### § 1254.42 What are the rules that apply to using self-service microfilm?

NARA makes available microfilm copies of many records on a self-service basis.

(a) When microfilm is available on a self-service basis, research room attendants assist you in identifying research sources on microfilm and provide information concerning how to locate and retrieve the roll(s) of film containing the information of interest. You are responsible for retrieving and examining the roll(s).

(b) Unless you require assistance in learning how to operate microfilm reading equipment or have a disability, we expect you to install the microfilm on the reader, rewind it when finished, remove it from the reader, and return it to the proper microfilm box. You must carefully remove from and return to the proper microfilm boxes rewound microfilm. You must take care when loading and unloading microfilm from microfilm readers. Report damaged microfilm to the research room attendant as soon you discover it.

(c) Unless we make an exception, you may use only one roll of microfilm at a time.

(d) After using each roll, you must return the roll of microfilm to the location from which you removed it, unless we otherwise instruct you.

(e) You should bring to the attention of the research room attendant any microfilm you find in the wrong box or file cabinet.

### § 1254.44 How long may I use a microfilm reader?

(a) Use of the microfilm readers in the National Archives Building is on a first-come-first-served basis. When other researchers are waiting to use a microfilm reader, we may place a 3-hour limit on using a reader. After 3 hours of machine use, you may sign the waiting list for an additional 3-hour period. For fire safety reasons, we may limit the number of researchers in the microfilm research room in the National Archives Building to those researchers assigned a microfilm reader.

(b) Archival operations directors at our regional archives may permit

reservations for use of microfilm readers and set time limits on use to meet local circumstances.

### Other Conduct Rules

#### § 1254.46 Are there other rules of conduct that I must follow?

(a) Part 1280 specifies conduct rules for all NARA facilities. You must also obey any additional rules supplementing Subpart B of part 1254 that are posted or distributed by the facility director.

(b) You may not eat, drink, chew gum, smoke, or use smokeless tobacco products, or use a cell phone, pager, or similar communications device that emits sound signals in a research room. Communications devices must be in vibrate mode. You must make and receive telephone calls outside of research rooms.

(c) We prohibit loud talking and other activities likely to disturb other researchers.

#### § 1254.48 When does NARA revoke research privileges?

(a) Behaviors listed in paragraphs (a)(1) through (a)(4) of this section may result in NARA denying or revoking research privileges.

(1) Refusing to follow the rules and regulations of a NARA facility;

(2) Demonstrating by actions or language that you present a danger to documents or NARA property;

(3) Presenting a danger to other researchers, NARA or contractor employees, or volunteers; or

(4) Verbally or physically harassing or annoying other researchers, NARA or contractor employees, or volunteers.

(b) Denying or revoking research privileges means:

(1) We may deny or revoke your research privileges for up to 180 days;

(2) You lose research privileges at all NARA research rooms nationwide; and

(3) You lose your valid researcher identification card if you already have one.

(c) We notify all NARA facilities of the revocation of your research privileges.

(d) If we revoke your research privileges, we send you a written notice of the reasons for the revocation within 3 working days of the action.

#### § 1254.50 Does NARA consider reinstating research privileges?

(a) You have 30 calendar days after the date of revocation to appeal the action in writing and seek reinstatement of research privileges. Mail your appeal to: Archivist of the United States, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) The Archivist has 30 calendar days from receipt of an appeal to decide whether to reinstate your research privileges and to respond to you in writing.

(c) If the Archivist upholds the revocation of privileges or if you do not appeal, you may request in writing reinstatement of research privileges no earlier than 180 calendar days from the date we revoked privileges. This request may include application for a new researcher identification card.

(d) Our reinstatement of research privileges applies to all research rooms.

(e) If we reinstate your research privileges, we issue you a card for a probationary period of 60 days. At the end of the probationary period, you may apply for a new, unrestricted identification card, which we issue to you if your conduct during the probationary period follows the rules of conduct in this part and in part 1280 of this chapter.

#### § 1254.52 Can NARA extend the period of revoked research privileges?

(a) If the reinstatement of research privileges would pose a threat to the safety of persons, property, or NARA holdings, or if, in the case of a probationary identification card, you fail to comply with the rules of conduct for NARA facilities, we may extend the revocation of privileges for additional 180-day periods. We send you a written notice of an extension within 3 workdays of our decision to continue the revocation of research privileges.

(b) You have 30 calendar days after the decision to extend the revocation of research privileges to appeal the action in writing. Mail your appeal to the Archivist at the address given in § 1254.50(a). The Archivist has 30 calendar days from receipt of your appeal to decide whether to reinstate your research privileges and to respond to you in writing.

## Subpart C—Copying Archival Materials

### General Information

#### § 1254.60 What are NARA's copying services?

(a) You may order copies of many of our documents for a fee. Our fee schedule for copies is located in § 1258.12 of this chapter. Exceptions to the fee schedule are located in § 1258.4. See § 1258.6 about reproductions NARA may provide without charging a fee.

(b) For preservation reasons, we do not make copies from the original documents if the documents are available on microfilm and a clear copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

#### § 1254.62 Does NARA have archival materials protected by copyright?

Yes, although many of our holdings are in the public domain as products of employees or agents of the Federal Government, some records and donated historical materials do have copyright protection. Particularly in the case of some special media records, Federal agencies may have obtained materials from private commercial sources, and these may carry publication restrictions in addition to copyright protection. Presidential records may also contain copyrighted materials. You are responsible for obtaining any necessary permission for use, copying, and publication from copyright holders and for any other applicable provisions of the Copyright Act (Title 17, United States Code).

#### § 1254.64 Will NARA certify copies?

Yes, the responsible director of a unit, or any of his or her superiors, the Director of the Federal Register, and their designees may certify copies of documents as true copies for a fee. The fee is found at § 1258.12(a).

### Rules Relating to Self-Service Copying

#### § 1254.70 How may I make my own copies of documents?

(a) Self-service copiers are available in some of our facilities. Contact the appropriate facility to ask about availability before you visit.

(b) In the Washington, DC, area, self-service card-operated copiers are located in research rooms. Other copiers we set aside for use by reservation are located in designated research areas. Procedures for use are outlined in §§ 1254.80 through 1254.84 of this subpart.

(c) You may use NARA self-service copiers where available after the research room attendant reviews the documents to determine their suitability for copying. The appropriate supervisor or the senior archivist on duty in the research room reviews the determination of suitability if you request.

(d) We may impose time limits on using self-service copiers if others are waiting to use them.

(e) In some of our facilities, you may use your own scanner or personal paper-to-paper copier to copy textual materials if the equipment meets our standards cited in §§ 1254.80 and 1254.86. Contact the appropriate facility for additional details before you visit.

(f) You must follow our document handling instructions in §§ 1254.36 and

1254.72. You also must follow our microfilm handling instructions in § 1254.42.

(g) You may use a hand-held camera with no flash or a cell phone camera to take pictures of documents only if you have the permission of the research room attendant.

(h) You may not use a self-service copier or personal scanner to copy some special media records. If you wish to copy motion pictures, maps and architectural drawings, or aerial photographic film, the appropriate staff can advise you on how to order copies. If you wish to obtain copies of electronic records files, the appropriate staff will assist you.

**§ 1254.72 What procedures do I follow to copy documents?**

(a) You must use paper tabs to designate individual documents you wish to copy. You must show the container including the tabbed documents to the research room attendant who determines whether they can be copied on the self-service copier. The manager of the staff administering the research room reviews the determination of suitability if you ask. After copying is completed, you must return documents removed from files for copying to their original position in the file container, you must refasten any fasteners removed to facilitate copying, and you must remove any tabs placed on the documents to identify items to be copied.

(b) If you are using a reserved copier, you must submit the containers of documents to the attendant for review before your appointment. The review time required is specified in each research room. Research room attendants may inspect documents after copying.

(c) You may copy from only one box and one folder at a time. After copying the documents, you must show the original documents and the copies to a research room attendant.

**§ 1254.74 What documents are unsuitable for copying on a self-service or personal copier or scanner?**

(a) Bound archival volumes (except when specialized copiers are provided).

(b) Documents fastened together by staples, clips, acco fasteners, rivets, or similar fasteners, where folding or bending documents may cause damage.

(c) Documents larger than the glass copy plate of the copier.

(d) Documents with uncancelled security classification markings.

(e) Documents with legal restrictions on copying.

(f) Documents that the research room attendant judges to be in poor physical condition or which may be subject to possible damage if copied.

**§ 1254.76 What procedures do I follow to copy formerly national security-classified documents?**

(a) We must properly cancel security classification markings (Confidential, Secret, Top Secret) and other restricted markings on declassified records before documents are copied. Only a NARA staff member can cancel security markings. Properly declassified documents bear the declassification authority as required by 32 CFR 2001.24.

(b) You may not remove from the research room copies of documents bearing uncancelled classification markings. We confiscate copies of documents with uncancelled markings.

(c) When you copy individual documents, the research room staff cancels the classification markings on each page of the copy and places the declassification authority on the first page of each document. If you copy only selected pages from a document, you must make a copy of the first page bearing the declassification authority and attach that page to any subsequent page(s) you copy from the document. You must show this declassification authority to the guard or research room attendant when you remove copies of documents from the research room or the building.

(d) Before you copy formerly-classified materials, we provide you with a declassification strip, which you attach to the copier. The strip reproduces on each page copied and cancels the security markings. We may also provide a declassification strip to attach to your personal copier or scanner.

(e) Staff at Presidential libraries cancel security markings before documents are provided to researchers in research rooms.

## Rules Relating to Using Copying Equipment

**§ 1254.80 Does NARA allow me to use scanners or other personal copying equipment?**

(a) Subject to §§ 1254.26(d) and 1254.86, you may use scanners and other copying equipment if the equipment meets certain conditions or minimum standards described in paragraphs (b) through (g) of this section. Exceptions are noted in paragraph (h). The supervisor administering the research room or the senior staff member on duty in the research room reviews the research room attendant's determination if you request.

(b) Equipment platens or copy boards must be the same size or larger than the records. No part of a record may overhang the platen or copy board.

(c) No part of the equipment may come in contact with records in a manner that causes friction, abrasion, or that otherwise crushes or damages records.

(d) We prohibit drum scanners.

(e) We prohibit automatic feeder devices on flatbed scanners. When using a slide scanner, we must check slides after scanning to ensure that no damage occurs while the slide is inside the scanner.

(f) Light sources must not raise the surface temperature of the record you copy. You must filter light sources that generate ultraviolet light.

(g) All equipment surfaces must be clean and dry before you use records. You may not clean or maintain equipment, such as replacing toner cartridges, when records are present. We do not permit aerosols or ammonia-containing cleaning solutions. We permit a 50 percent water and 50 percent isopropyl alcohol solution for cleaning.

(h) If you wish to use a scanner or other personal copier in a regional archives or Presidential library, contact the facility first for approval. Not all facilities permit the use of scanners or personal copying equipment because of space, electrical load concerns, and other reasons. Your request must state the space and power consumption requirements and the intended period of use.

(i) In facilities that provide a self-service copier or permit the use of personal paper-to-paper copiers or scanners, you must show documents you wish to copy to the research room attendant for approval.

(j) If you have any question about what is permissible at any given facility, consult with the facility before your visit. Contact information for our facilities is found in part 1253 of this chapter and at the NARA Web site, *http://www.archives.gov.*

**§ 1254.82 What limitations apply to my use of self-service card-operated copiers?**

(a) There is a 5-minute time limit on copiers in research rooms when others are waiting to use the copier. If you use a microfilm reader-printer, we may limit you to three copies when others are waiting to use the machine. If you wish to copy large quantities of documents, you should see a staff member in the research room to reserve a copier for an extended time period.

(b) If we must cancel an appointment due to copier failure, we make every

effort to schedule a new mutually agreed-upon time. However, we do not displace researchers whose appointments are not affected by the copier failure.

### § 1254.84 How may I use a debit card for copiers in the Washington, DC, area?

You may use cash to purchase a debit card from a vending machine during the hours that research rooms are open as cited in part 1253 of this chapter. In addition, you may buy debit cards with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Offices located in the National Archives Building and in the researcher lobby of the National Archives at College Park, during posted hours. Inserting a debit card into the copier enables you to make copies, for the appropriate fee, up to the value on the debit card. You may add value to the debit card by using the available vending machines in our research rooms. We cannot make refunds. The fee for self-service copiers is found in § 1258.12 of this chapter.

### § 1254.86 May I use a personal paper-to-paper copier at the National Archives at College Park?

(a) At the National Archives at College Park facility NARA approves a limited number of researchers to bring in and use personal paper-to-paper copying equipment in the Textual Research Room (Room 2000). Requests must be made in writing to the chief of the Research Support Branch (NWCC2), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001. Requests must identify the records you wish to copy, the expected duration of the project, and the make and model of the equipment.

(b) We evaluate requests using the following criteria:

(1) A minimum of 3,000 pages must be copied;

(2) The project is expected to take at least 4 weeks, with the copier in use a minimum of 6 hours per day or 30 hours per week;

(3) The copying equipment must meet our standards for preservation (*see* §§ 1254.26(d) and 1254.80); and

(4) Space is available for the personal copying project. NARA allows no more than 3 personal copying projects in the research room at one time, with Federal agencies given priority over other users.

(c) You must coordinate with research room management and oversee the installation and removal of copying equipment. You are responsible for the cost and supervision of all service calls and repairs. You must remove copying equipment and supplies within two business days after the personal copying project is completed.

(d) NARA is not responsible for any personal equipment or consumable supplies.

(e) You must be trained by NARA staff on the proper methods for handling and copying archival documents.

(f) You must abide by all regulations on copying stated in this subpart.

(g) We reserve the right to discontinue the privilege of using a personal copier at any time without notice. We discontinue your privilege if you violate one of the conditions in this subpart, we need to provide space for a Federal agency, or we lack staff to supervise the area.

### § 1254.88 What are the rules for the Motion Picture, Sound, and Video Research Room at the National Archives at College Park?

(a) We provide use of NARA viewing and listening equipment in the research room on a first-come-first-served basis. When others are waiting to use the equipment, we may impose a 3-hour limit on your use.

(b) You may use the NARA-furnished recorder or your personal recording device and media to make a copy of unrestricted archival materials in the research room.

(c) We provide you with a copy of the Motion Picture, Sound, and Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. You are responsible for obtaining any needed permission or release from a copyright owner for other than personal use of the copy.

(d) The research room attendant may inspect and tag your personal recording equipment before admitting you into the unrestricted viewing and copying area in the research room. You must place all equipment and accessory devices on the carts we provide, except that you may place a tripod holding a video camera on the floor in front of a film-viewing station. We are not responsible for damage to or loss of personal equipment and accessories.

(e) You must remain in the research room at your audio or film viewing station at all times while your personal equipment is in use. You must remove your personal equipment from the research room when you leave the room for the day. We cannot be responsible for any damage to or loss of your equipment.

(f) We are not responsible for assisting with ''hook-up'' to NARA viewing equipment, for providing compatibility between the personal recording equipment and NARA viewing equipment, or for the quality of the copies you make. We provide you information on the types of NARA equipment that we have in the research room and on the cables necessary for hook-up to our viewing equipment.

(g) When you bring audio or video recording tapes or cassettes into the unrestricted area of the research room, the research room attendant marks the recording media ''NARA-approved personal property'' for identification purposes. We inspect this media before you leave the research room and when you leave the research complex at the National Archives at College Park.

(h) You may reserve a NARA-furnished video copying station and 120-minute blank video cassette, for a fee, on a first-come-first-served basis for 90 minutes. If no one else is waiting to use the station, you may reserve an additional 90 minutes. You may not connect personal recording devices to NARA equipment at the video copying station. You may use only NARA-provided tapes at the video copying station. Fees for use of the station and blank cassette are specified in § 1258.12 of this chapter.

(i) You may not take any personal recording device or media in the restricted viewing area in the research room.

## Subpart D—Microfilming Archival Materials

### § 1254.90 What is the scope of this subpart?

(a) This subpart establishes rules and procedures for the use of privately owned microfilm equipment to film accessioned archival records and donated historical materials in NARA's legal and physical custody by:

(1) Foreign, Federal, state, and local government agencies;

(2) Private commercial firms;

(3) Academic research groups; or

(4) Other entities or individuals that request exemption from obtaining copies through the regular fee schedule reproduction ordering system of NARA.

(b) If you wish to microfilm Federal agency records in the physical custody of the Washington National Records Center (WNRC), contact the director, WNRC, about procedures for obtaining permission from the originating agency to film those records (*see* § 1253.4). For information about procedures for obtaining permission from the originating agency to film records in the records center operation of one of NARA's regional records facilities or in the physical custody of the National Personnel Records Center (NPRC), contact the Regional Administrator of the region in which the records are

located (*see* § 1253.6), or the director, NPRC, for records in NPRC (*see* § 1253.5).

(c) Federal agencies that need to microfilm archival records in support of the agency's mission must contact the appropriate office as specified in § 1254.92(a) as soon as possible after the need is identified for information concerning standards and procedures that apply to their microfilming of archival records.

**§ 1254.92 How do I submit a request to microfilm records and donated historical materials?**

(a) You must submit your request to microfilm materials to the appropriate office.

(1) Submit your written request to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the Washington, DC, area to the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Rd., College Park, MD 20740–6001.

(2) Submit your written request to microfilm archival records or donated historical materials in a NARA regional archives to the Assistant Archivist for Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740–6001.

(3) Submit your written request to microfilm records or donated historical materials in a Presidential library or donated historical materials in the Washington area under the control of the Office of Presidential Libraries to the Assistant Archivist for Presidential Libraries (NL), 8601 Adelphi Rd., College Park, MD 20740–6001.

(4) OMB control number 3095–0017 has been assigned to the information collection contained in this section.

(b) You must submit your request to use privately owned microfilm equipment four months in advance of the proposed starting date of the microfilming project. If you submit your request with less advance notice, we consider it and may approve it if we have available adequate NARA space and staff and if you can complete all training, records preparation, and other NARA requirements in a shorter time frame.

(1) You may include in your request only one project to microfilm a complete body of documents, such as an entire series, a major continuous segment of a very large series which is reasonably divisible, or a limited number of separate series related by provenance or subject.

(2) We do not accept additional requests from an individual or organization to microfilm records in a NARA facility while we evaluate an earlier request from that individual or organization to microfilm records at that facility.

(3) We establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

**§ 1254.94 What must my request include?**

(a) A description of the documents you wish to copy that includes the following elements:

(1) Record group number or agency of origin or, for donated historical materials, title of the collection;

(2) Title of series or file segment;

(3) Date span; and

(4) Estimated volume in number of pages or cubic feet.

(b) The estimated amount of time (work-days) that the microfilm copying project will take; the date that you would like to begin the project; and the number of persons who would require training (*see* § 1254.108(b)).

(c) The number and a description of the equipment that you will use for copying including:

(1) The name of the manufacturer and model number; and

(2) The type of light source to be employed (fluorescent, tungsten, or electronic flash) and if electronic flash (*i.e.*, strobe) or fluorescent, whether the light source is filtered to omit ultraviolet radiation.

(d) A statement of the procedures that you will follow to ensure that you copy all pages, that the images on the microfilm are legible, and that the microfilm is properly processed. At a minimum, the procedures should meet the requirements specified in part 1230 of this chapter regarding the microfilming of permanent records.

**§ 1254.96 What credits must I give NARA?**

(a) You must agree to credit NARA as having custody of the original documents. The credit must appear at the beginning of a microfilm publication and in any publicity material or descriptions of the publication.

(b) If the original documents are Federal records, you must agree to include on the film this statement: ''The documents reproduced in this publication are among the records of the (name of agency) in the custody of the National Archives of the United States. (Name of microfilm publication producer) does not claim any copyright interest in these official U.S. Government records.''

(c) If the original documents are donated historical materials, you must agree to include on the film this statement: ''The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential library or National Archives of the United States). The National Archives and Records Administration administers them in accordance with the requirements of the donor's deed of gift and the U.S. Copyright Law, Title 17, U.S.C. (Name of microfilm publication producer) does not claim any copyright interest in these donated historical materials.''

(d) If the original documents are Presidential or Vice-Presidential records as specified in 44 U.S.C. 2201, you must agree to include on the film this statement: ''The documents reproduced in this publication are Presidential records in the custody of the (name of Presidential library or National Archives of the United States). The National Archives and Records Administration administers them in accordance with the requirements of Title 44, U.S.C. (Name of microfilm publication producer) does not claim any copyright interest in these official Presidential records.''

(e) If the original documents are records of Congress, you must agree to include on the film this statement: ''The documents reproduced in this publication are among the records of the (House of Representatives/Senate) in the physical custody of the National Archives and Records Administration (NARA). NARA administers them in accordance with the requirements of the (House/Senate). (Name of microfilm publication producer) does not claim any copyright interest in these official congressional records.''

**§ 1254.98 May NARA make subsequent use of my publication?**

You must give NARA a royalty-free worldwide license, to take effect seven years after you complete filming at the NARA facility, to publish, display, reproduce, distribute, and sell the publication, and to create derivative works based on the publication, and to use the publication in collective works, all without limitation. The license required by this section must be written to take effect upon publication if there is no commercial distributor, or once commercial distribution ends if less than seven years from the date you complete filming at the NARA facility.

**§ 1254.100 How does NARA evaluate requests?**

(a) NARA evaluates requests by estimating how well completion of a proposed project would further our

efforts to preserve and to make available to the public the historically valuable records of the Government.

(b) In considering multiple requests to film at the same time, we give priority to microfilming records that have research value for a variety of studies or that contain basic information for fields of research in which researchers have demonstrated substantial interest.

(c) The records to be filmed should be reasonably complete and not subject to future additions, especially of appreciable volumes, within the original body of records. Records with pending or future end-of-series additions are appropriate for filming.

(d) The records to be filmed should not have substantial numbers of documents withdrawn because of continuing national security classification, privacy, or other restrictions.

(e) We approve only requests to microfilm a complete body of documents, such as an entire series or a major continuous segment of a very large series that is reasonably divisible. Microfilming a complete body of documents means that you must consecutively copy all documents within the file unit(s), from the first to the last page, not skipping any pages in between except for pages that are exact duplicates or blank pages that are not included in a pagination scheme.

(f) We normally approve only requests that include assurances that the project will adhere to the specifications in part 1230 of this chapter concerning microfilm stock standards, index placement, and microfilm processing for permanent records.

(g) We approve only requests that specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with part 1230 of this chapter.

(1) We may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs immediately upon receipt.

(2) We may also make additional use of the microform, as indicated in § 1254.98, seven years after you complete filming at the NARA facility, or upon delivery of the publication if there is no commercial distributor, or when the commercial distributor is no longer available, whichever occurs first. We may choose to add our own editorial material to the microform copies.

(3) You must deliver detailed roll lists with the microfilm. The lists must give the full range of file titles and a complete list of all file numbers on each roll of microfilm. We prefer that the list be provided in a fielded, electronic format to facilitate its use by staff and researchers. If the electronic format is a data file with defined or delimited fields, you should transfer with the file the records layout identifying the fields, any coded values for fields, and explanations of any delimiters.

(4) Microfilm projects may donate to us additional indexes and finding aids. NARA and the microfilm project execute a deed of gift that specifies restrictions on NARA's use and dissemination of these products under mutually acceptable terms.

### § 1254.102 What requests does NARA not approve?

(a) We do not approve any request that does not include all of the information we require in §§ 1254.94 and 1254.96.

(b) We do not normally approve requests to microfilm documents that:

(1) Have previously been microfilmed and made available to the public;

(2) We have approved for microfilming by another party; or

(3) We plan to film as a NARA microfilm publication or which relate closely to other documents previously microfilmed or approved for microfilming by NARA. We may grant exceptions to this provision at our discretion.

(c) We normally do not approve requests to microfilm documents:

(1) Having restrictions on access that preclude their reproduction;

(2) Known to be protected by copyright;

(3) Having high intrinsic value that only authorized NARA personnel may handle;

(4) In vulnerable physical condition;

(5) Having a high research demand and which we would have to deny to others for an extended period of time during the microfilming process. Where possible, we assist you in developing filming schedules that avoid the need to close documents for a lengthy period of time; and

(6) In formats, such as oversize documents, bound volumes, and others, that would be subject to excessive stress and possible damage from special equipment you plan to use, as well as documents fastened with grommets, heavy duty staples, miscellaneous fasteners, or wafers and other adhesives that cannot be removed without tearing or breaking documents.

(d) We normally do not approve requests from persons or organizations that failed to produce usable microfilm or to honor commitments they made in previous requests, or for whom we have had to rescind previous permission to microfilm documents because of their conduct.

(e) We do not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. We do not permit private microfilming in our records storage (stack) areas.

(1) Federal agencies microfilming records in support of the agency's mission may use the space set aside for private microfilming. Agency microfilming takes priority over private microfilming when there is insufficient space to accommodate both at the same time.

(2) When a NARA facility does not have enough space to accommodate all requests, we may schedule separate projects by limiting the time allowed for each particular project or by requiring projects to alternate their use of the space.

(3) We also do not approve requests where the only space available for filming is in the facility's research room, and such work would disturb researchers. We do not move records from a facility lacking space for private microfilming to another NARA facility for that purpose.

(f) We do not approve requests to microfilm records when there is not enough staff to provide the necessary support services, including document preparation, training of private microfilmers, and monitoring the filming.

(g) We do not approve the start of a project to microfilm records until you have agreed in writing to the amount and schedule of fees for any training, microfilm preparation, and monitoring we must conduct that is necessary to support your project. Our letter of tentative approval for the project includes an agreement detailing the records in the project and the detailed schedule of fees for NARA services for the project. We give final approval when we receive your signed copy of the agreement.

### § 1254.104 How does NARA determine fees to prepare documents for microfilming?

(a) As part of our evaluation of a request to microfilm documents, we determine the amount of microfilm preparation that we must do before you can microfilm the documents and the estimated cost of such preparation. We base fees for microfilm preparation on direct salary costs (including benefits) and supply costs when we perform the work. When a NARA contractor performs the work, the fees are the cost

to NARA. Microfilm preparation includes:

(1) Removing document fasteners from documents when the fasteners can be removed without damage to the documents; and

(2) Taking any document conservation actions that must be accomplished in order to film the documents, such as document flattening or mending.

(b) We provide you detailed information on the fees for microfilm preparation in the letter of approval. You must pay fees in accordance with § 1258.14 of this chapter. When a body of documents requires extensive microfilm preparation, we may establish a different payment schedule at our discretion.

**§ 1254.106 What are NARA's equipment standards?**

(a) Because we have limited space in many NARA facilities, microfilm/fiche equipment should be operable from a table top unless we have given written permission to use free standing/floor model cameras. You may only use planetary type camera equipment. You may not use automatic rotary cameras and other equipment with automatic feed devices. We may approve your use of book cradles or other specialized equipment designed for use with bound volumes, oversized documents, or other formats, as well as other camera types not specified here, on a case-by-case basis.

(b) The power consumption of the equipment normally must not exceed 1.2 kilowatts. Power normally available is 115 volts, 60 hz. You must make requests for electricity exceeding that normally available at least 90 days in advance.

(c) You may not use equipment having clamps or other devices to exert pressure upon or to attach the document to any surface in a way that might damage the document.

(d) The equipment must not use a heat generating light source in close enough proximity to the documents to result in their physical distortion or degradation. All sources of ultraviolet light must be filtered.

**§ 1254.108 What are NARA's requirements for the microfilming process?**

(a) Your equipment must conform to the equipment standards in § 1254.106.

(b) You must handle documents according to the training and instructions provided by our staff so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the documents or supervise microfilming operations. We charge you fees for training services and these fees will be based on direct salary costs (including benefits) and any related supply costs. We specify these fees in the written agreement we require for project approval in § 1254.102(h).

(c) You may microfilm documents from only one file unit at a time. After you complete microfilming, you must return documents you removed from files for microfilming to their original position in the file container, refasten any fasteners you removed to facilitate copying, and remove any tabs you placed on the documents to identify items to copy. We will provide fasteners for replacement as necessary.

(d) You may not leave documents unattended on the copying equipment or elsewhere.

(e) Under normal microfilming conditions, actual copying time per sheet must not exceed 30 seconds.

(f) You must turn off any lights used with the camera when the camera is not in actual operation.

(g) You may operate microfilm equipment only in the presence of the research room attendant or a designated NARA employee. If NARA places microfilm projects in a common research area with other researchers, the project will not be required to pay for monitoring that is ordinarily provided. If the microfilm project is performed in a research room set aside for copying and filming, we charge the project fees for these monitoring services and these fees will be based on direct salary costs (including benefits). When more than one project share the same space, monitoring costs will be divided equally among the projects. We specify the monitoring service fees in the written agreement required for project approval in § 1254.102(h).

(h) The equipment normally should be in use each working day that it is in a NARA facility. The director of the NARA facility (as defined in § 1252.2 of this chapter) decides when you must remove equipment because of lack of regular use. You must promptly remove equipment upon request of the facility director.

(i) We assume no responsibility for loss or damage to microfilm equipment or supplies you leave unattended.

(j) We inspect the microform output at scheduled intervals during the project to verify that the processed film meets the microfilm preparation and filming standards required by part 1230 of this chapter. To enable us to properly inspect the film, we must receive the film within 5 days after it has been processed. You must provide NARA with a silver halide duplicate negative of the filmed records (*see* § 1254.100(g)) according to the schedule shown in paragraph (k). If the processed film does not meet the standards, we may require that you refilm the records.

(k) When you film 10,000 or fewer images, you must provide NARA with a silver halide duplicate negative upon completion of the project. When the project involves more than 10,000 images, you must provide a silver halide duplicate negative of the first completed roll or segment of the project reproducing this image count to NARA for evaluation. You also must provide subsequent completed segments of the project, in quantities approximating 100,000 or fewer images, to NARA within 30 days after filming unless we approve other arrangements.

(l) If the microfilming process is causing visible damage to the documents, such as flaking, ripping, separation, fading, or other damage, filming must stop immediately and until the problems can be addressed.

**§ 1254.110 Does NARA ever rescind permission to microfilm?**

We may, at any time, rescind permission to microfilm records if:

(a) You fail to comply with the microfilming procedures in § 1254.108;

(b) Inspection of the processed microfilm reveals persistent problems with the quality of the filming or processing;

(c) You fail to proceed with the microfilming or project as indicated in the request, or

(d) The microfilming project has an unanticipated adverse effect on the condition of the documents or the space set aside in the NARA facility for microfilming.

(e) You fail to pay NARA fees in the agreed to amount or on the agreed to payment schedule.

■ 2. Revise part 1284 to read as follows:

## PART 1284—EXHIBITS

Sec.
1284.1 Scope of part.
1284.20 Does NARA exhibit privately-owned material?
1284.30 Does NARA lend documents to other institutions for exhibit purposes?

**Authority:** 44 U.S.C. 2104(a), 2109.

**§ 1284.1 Scope of part.**

This part sets forth policies and procedures concerning the exhibition of materials.

**§ 1284.20 Does NARA exhibit privately-owned material?**

(a) NARA does not normally accept for display documents, paintings, or other objects belonging to private

individuals or organizations except as part of a NARA-produced exhibit.

(b) NARA may accept for temporary special exhibit at the National Archives Building privately-owned documents or other objects under the following conditions:

(1) The material to be displayed relates to the institutional history of the National Archives and Records Administration or its predecessor organizations, the National Archives Establishment and the National Archives and Records Service;

(2) Exhibition space is available in the building that NARA judges to be appropriate in terms of security, light level, climate control, and available exhibition cases or other necessary fixtures; and

(3) NARA has resources (such as exhibit and security staff) available to produce the special exhibit.

(c) The Director of Museum Programs (NWE), in conjunction with the NARA General Counsel when appropriate, reviews all offers to display privately-owned material in the Washington, DC, area, and negotiates the terms of exhibition for offers that NARA can accept. Directors of Presidential libraries perform these tasks for their respective libraries. The lender must provide in writing evidence of title to and authenticity of the item(s) to be displayed before NARA makes a loan agreement.

(d) The Director of Museum Programs or director of the pertinent Presidential library will inform the offering private individual or organization of NARA's decision in writing within 60 days.

**§ 1284.30 Does NARA lend documents to other institutions for exhibit purposes?**

Yes, NARA considers lending documents that are in appropriate condition for exhibition and travel. Prospective exhibitors must comply with NARA's requirements for security, fire protection, environmental controls, packing and shipping, exhibit methods, and insurance. For additional information, contact Registrar, Museum Programs (NWE), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Dated: June 24, 2004.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 04–14753 Filed 6–29–04; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1256

**RIN 3095–AB11**

### Restrictions on the Use of Records

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule; request for comments.

**SUMMARY:** NARA is revising its regulations on access to Federal records and donated historical materials containing restricted information. This rule entirely rewrites and reorganizes this portion of NARA's regulations to incorporate several changes, and also to clarify it using plain language. The regulation has been updated to bring the language on access restrictions in better conformance with the exemptions to the Freedom of Information Act (FOIA). In addition, in response to comments received on the proposed rule, we are further modifying the regulations outlining controlled procedures for access to privacy-restricted information for purposes of biomedical research to allow access for social science research. This final rule affects the public and Federal agencies.

**DATES:** This rule is effective July 30, 2004, except § 1256.28, which will be effective September 28, 2004.

Comments on § 1256.28 must be received by August 30, 2004, at the address shown below. NARA intends to publish any changes to § 1256.28 resulting from this comment period before September 28, 2004.

**ADDRESSES:** You may submit comments on § 1256.28, identified by RIN 3095–AB11, by any of the following methods:

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

E-mail: *comments@nara.gov.* Include RIN 3095–AB11 in the subject line of the message.

Fax: (301) 837–0319.

Mail: Regulation Comments Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Hand Delivery/Courier: Regulation Comments Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Davis Heaps at 301–837–1801.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published in the January 5, 2004, **Federal Register** (69 FR 295) for a 60-day public comment period. NARA notified several researcher organizations of the availability of the proposed rule. A copy of the proposed rule was also posted on the NARA Web site.

NARA received nine responses to the proposed rule, all on the proposal to remove from the regulations a provision at § 1256.4 allowing access to privacy-restricted information for biomedical research. Most commenters urged that NARA continue to provide access to certain records for social science research as had been permitted under § 1256.16(b)(3) in the past, using the process outlined in § 1256.4.

We carefully considered the commenters' request on the issue of social science research and concluded that controlled access to privacy-restricted information for this purpose is in the public interest. As a result, we have restored the process for granting access to privacy-restricted information for biomedical research formerly found in 36 CFR 1256.4 and have extended its coverage to certain social science research. With the reorganization of Part 1256, this process is now located at § 1256.28. Social science researchers will be required to request access to specific records that contain privacy-restricted information through NARA's Access Review Committee, just as a biomedical researcher would. We have made some minor modifications to the application review process to further ensure appropriate protection of privacy-restricted information during access.

This provision does not permit access to the privacy-restricted files of individuals for family history or other research on specific persons, such as a biography or political or sociological profile. Researchers interested in obtaining access to the files of individual family members must provide proof that they have the permission of the subject relative or that the relative is no longer living. NARA does not restrict records for privacy reasons where the subject individual is no longer living, as stated in 36 CFR 1256.56.

We are delaying the effective date of § 1256.28 for 90 days to allow public comment. We will evaluate those comments and, if changes in the provision are needed, we will publish a final rule amending this section before the September 28, 2004, effective date.

We have also made minor clarifications in language to General Restrictions in §§ 1256.52, 1256.54, and 1256.56.

We removed the part 1254 changes that were in the proposed rule because

a separate final rule completely revising part 1254 and incorporating those changes is published in the **Federal Register** is also published in this issue.

This rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This rule contains an information collection previously approved by OMB. This rule does not have any federalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

**List of Subjects in 36 CFR Part 1256**

Archives and records, Copyright.

■ For the reasons set forth in the preamble, NARA revises part 1256 of title 36, Code of Federal Regulations to read as follows:

## PART 1256—ACCESS TO RECORDS AND DONATED HISTORICAL MATERIALS

### Subpart A—General Information

Sec.

1256.1 What does this part cover?
1256.2 How do I obtain access to records stored in Federal Records Centers?
1256.4 How does NARA handle subpoenas and other legal demands for records in its custody?
1256.6 How do I obtain access to records of defunct agencies?
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### Subpart B—Access to Federal Archival Records

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1256.22 How do I request access to restricted information in Federal archival records?
1256.24 How long may access to some records be denied?
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1256.28 Does NARA make any exceptions for access to records containing privacy-restricted information?

### Subpart C—Access to Donated Historical Materials

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1256.32 How do I request access to restricted information in donated historical materials?
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1256.56 Information that would invade the privacy of a living individual.
1256.58 Information related to law enforcement investigations.
1256.60 Information relating to financial institutions.
1256.62 Geological and geophysical information relating to wells.

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1256.90 What does this subpart cover?
1256.92 What is the purpose of this subpart?
1256.94 Definition.
1256.96 What provisions apply to the transfer of USIA audiovisual records to the National Archives of the United States?
1256.98 Can I get access to and obtain copies of USIA audiovisual records transferred to the National Archives of the United States?
1256.100 What is the copying policy for USIA audiovisual records that either have copyright protection or contain copyrighted material?
1256.102 What fees does NARA charge?

**Authority:** 44 U.S.C. 2101–2118; 22 U.S.C. 1461(b); 5 U.S.C. 552; E.O. 12958 (60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 13292, 68 FR 15315, 3 CFR, 2003 Comp., p. 196; E.O. 13233, 66 FR 56023, 3 CFR, 2001 Comp., p. 815.

### Subpart A—General Information

#### § 1256.1 What does this part cover?

This part describes NARA's policies on access to archival records of the Executive Branch and donated historical materials in the National Archives of the United States and to records in the physical custody of the Federal records centers. This part applies to records and materials covered by the Federal Records Act (44 U.S.C. 2108 and chs. 29, 31, 33) and donated historical materials. This part does not apply to Presidential, Supreme Court, Senate, House of Representatives, and Architect of the Capitol records except for the purpose of directing mandatory review requests in subpart E.

#### § 1256.2 How do I obtain access to records stored in Federal Records Centers?

Agencies that retire their records to a Federal records center (FRC) set rules for access to those records. Address requests for access to records stored in Federal records centers directly to the appropriate agency or to the appropriate FRC director at the address shown in part 1253. When the agency's rules permit, NARA makes FRC records available to requesters. When the agency's rules and restrictions do not permit access FRCs receive requests that should have been sent to the agency, the FRC director refers the requests and any appeals for access, including those made under the Freedom of Information Act (5 U.S.C. 552, as amended), to the responsible agency.

#### § 1256.4 How does NARA handle subpoenas and other legal demands for records in its custody?

(a) For records stored in a Federal records center, NARA honors a subpoena duces tecum (subpoena) or other legal demand for the production of agency records, to the extent required by law, if the agency that retired the records has not imposed any restrictions. If the agency has imposed restrictions, NARA notifies the authority issuing the subpoena or other legal demand that NARA abides by the agency-imposed restrictions and refers the authority to the agency for further action.

(b) The Archivist of the United States, the General Counsel (NGC) or his or her designee, and the Director of the FRC where the records are stored are the only NARA officials authorized to accept a subpoena or other legal demand for records transferred to an FRC.

(c) The Archivist of the United States, the General Counsel (NGC) or his or her designee, the appropriate Assistant

Archivist, Regional Administrator, or Director of a Presidential library are the only NARA officials who may be served a subpoena duces tecum or other legal demand for the production of documents designated as Federal archival records or donated historical materials administered by NARA.

**§ 1256.6 How do I obtain access to records of defunct agencies?**

NARA handles access to archives and FRC records received from agencies that have ceased to exist without a successor in function as described in Subpart B.

**§ 1256.8 How do I obtain access to Presidential records?**

See 36 CFR part 1270, Presidential Records, for the rules for access to Presidential records transferred to NARA.

**§ 1256.10 How do I obtain access to Nixon Presidential materials?**

See 36 CFR part 1275, Preservation and Protection of and Access to the Presidential Historical Materials of the Nixon Administration, for the rules for access to Nixon Presidential materials.

## Subpart B—Access to Federal Archival Records

**§ 1256.20 May I obtain access to Federal archival records?**

(a) Most Federal archival records are open for research without submitting a Freedom of Information Act (FOIA) request. Part 1254 specifies procedures for using unrestricted records in a NARA research room, submitting reference requests, and ordering copies of records.

(b) Some records are subject to restrictions prescribed by statute, Executive Order, or by restrictions specified in writing in accordance with 44 U.S.C. 2108 by the agency that transferred the records to the National Archives of the United States. All agency-specified restrictions must comply with the FOIA. Even if the records are not national-security classified, we must screen some records for other information exempt from release under the FOIA.

**§ 1256.22 How do I request access to restricted information in Federal archival records?**

(a) You may file a FOIA request. To request access under the provisions of the FOIA, see part 1250 of this chapter, Public Availability and Use of Federal Records.

(b) For classified information in Federal records, you may file a FOIA request or a mandatory review request under Executive Order 12958, as amended, as described in § 1256.74.

**§ 1256.24 How long may access to some records be denied?**

(a) Although many records are open for research, some records are closed for long periods, either under our general restrictions, described in subpart D of this part, or another governing authority. For example, in accordance with 44 U.S.C. 2108(b), we do not grant access to restricted census and survey records of the Bureau of the Census less than 72 years old containing data identifying individuals enumerated in population censuses.

(b) Screening records takes time. We screen records as soon as possible and can often make most of the records in which you are interested available. In the case of electronic structured databases, NARA can make a copy of records with restricted information masked. In response to FOIA requests for records in other media, we make a copy of the record available if we can mask or ''redact'' restricted information.

**§ 1256.26 When can I appeal decisions about access to Federal archival records?**

(a) For information on filing appeals for requests made under the FOIA, see 36 CFR part 1250, subpart D, Appeals.

(b) For information on filing appeals for requests made under mandatory review, see § 1260.54 of this chapter.

**§ 1256.28 Does NARA make any exceptions for access to records containing privacy-restricted information?**

(a) *NARA policy.* Access to archival records containing information access to which would invade the privacy of an individual is restricted by § 1256.56.

(1) NARA may authorize access to such records for the purpose of research to qualified persons doing biomedical or social science research under the conditions outlined in this section as long as the records do not also contain information restricted by statute or national security-classified information.

(2) If NARA is able to make a copy of such records with all personal identifiers masked or deleted, NARA will make such a ''sanitized'' copy of the record available to all researchers in accordance with § 1256.24.

(3) NARA will not grant access to restricted census and survey records of the Bureau of the Census less than 72 years old containing data identifying individuals enumerated in population censuses in accordance with 44 U.S.C. 2108(b).

(b) *Request for access.* Researchers who wish to have access to records restricted by § 1256.56 to conduct biomedical or social science research must submit a written request to the NARA FOIA/Privacy Act Officer (NGC), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. OMB control number 3095–0002 has been assigned to this collection of information requirement. Researchers are encouraged to consult informally with NARA before submitting the formal request. The request must include the following information:

(1) Name and mailing address;

(2) Institutional affiliation and position, if applicable;

(3) List of published research, if applicable;

(4) References from two persons who have first-hand knowledge of the requester's qualifications to perform the research;

(5) A statement of the nature of the research to be conducted and any plans for publication or presentation of the research findings;

(6) A listing of all sources of grant funds supporting the research project or its publication;

(7) A statement of the methodology to be used;

(8) A statement of the administrative, technical, and physical safeguards to be employed by the researcher to prevent unauthorized use or disclosure of the records;

(9) A listing of the record groups and series titles to be used; and

(10) A statement that the researcher will abide by the conditions of access to be prescribed by NARA and that the researcher will assume responsibility for the action of all persons working with the researcher on the project.

(c) *Access Review Committee.* Requests made under paragraph (b) of this section will be reviewed by NARA's Access Review Committee, which is composed of the Deputy Archivist of the United States, the Assistant Archivist for the Office of Records Services—Washington, DC, the Assistant Archivist for the Official of Regional Records Services, and the director(s) of the NARA division(s) that has custody of the requested records. The Committee may consult other persons within and outside the Federal Government who are knowledgeable in the research field for assistance in evaluating a request.

(1) The Committee will examine the request to determine whether:

(i) The requested information is of such a highly sensitive personal nature that disclosure must not be permitted even for biomedical or social science research;

(ii) The methodology proposed by the requester will permit the researcher to obtain the projected research results without revealing personally identifying information;

(iii) The research results are intended to be published or presented at an academic or research conference;

(iv) The requester is a biomedical or social science researcher who has previous research experience and has submitted or intends to submit articles or books on such research for publication;

(v) The safeguards proposed by the requester will adequately protect the personal information; and

(vi) NARA has sufficient staff and space available to safeguard privacy interests necessary to accommodate the research project.

(2) The decision of the Committee will be made in writing to the requester within 15 workdays after receipt of a completed request. At the discretion of the Committee, the researcher may meet with the Committee to discuss the project or to discuss revising the research proposal to meet possible objections of the Committee.

(d) *Conditions of access.* Researchers who are granted access to restricted records, all others associated with the research project who will have access to personally identifiable information from the records, and the manager of any facility handling the records containing personal identifiers must agree in writing to maintain the confidentiality of the information and to adhere to the conditions of access imposed by NARA. NARA will impose the following conditions of access on any project; additional conditions may be imposed on the use of specific records or on specific projects:

(1) The records may be used only for the purpose of the research and for the reporting of research findings as described in the approved research project. The records may not be used for any other purpose;

(2) The records and any authorized copies of records may not be transferred to any person or institution not directly involved with the approved research project and subject to a written agreement to maintain confidentiality specified in § 1256.28(d);

(3) Reasonable administrative, technical, and physical safeguards, as approved by NARA, to prevent unauthorized use or disclosure of the records must be established by the researcher and followed by all persons associated with the project;

(4) When required by NARA, the records must be consulted at the NARA facility where the records are located;

(5) The researcher's notes must not contain any individually identifiable information. The researcher must use an alternate code system to render personally identifiable information as anonymous in all research notes;

(6) Persons who are identified in the records may not be contacted by or on behalf of the researcher;

(7) Before publication or public presentation of the data, the final research product(s) must be provided to the Deputy Archivist of the United States for review. NARA's review is limited to ensuring that there is no possible identification of individuals in the research findings. NARA will not evaluate the validity of the research findings.

(e) *Noncompliance with conditions of access.* If we discover that a researcher has violated any of the conditions of access, we will take steps to revoke the NARA research privileges of that person and will consult with NARA's General Counsel or his or her designee to determine any other steps to be taken to prevent any further disclosure of the personal information concerned. NARA may also inform the following persons and organizations of the researcher's failure to follow the conditions of use:

(1) The institution with which the researcher is affiliated, if applicable;

(2) Persons who served as references in the application for access;

(3) Organizations that provided grant funds for the project;

(4) The sponsor of the publication or public presentation; and

(5) Appropriate professional organizations.

## Subpart C—Access to Donated Historical Materials

### § 1256.30 How do I obtain access to donated historical materials?

NARA encourages researchers to confer about donated historical materials with the appropriate director or reference staff member at the facilities listed in part 1253 of this chapter. Some donated historical materials have restrictions on their use and availability as stated in writing by the donors in the Donor's Deed of Gift. Some may have other restrictions imposed by statute or Executive Order. If warranted, the Archivist may apply general restrictions to donated materials even when not specified in the donor's deed of gift. NARA staff can assist you with questions about restrictions or copyright protection that may apply to donated materials. See § 1256.36 for information on appealing closure of donated materials and subpart D of this part for information about general restrictions.

### § 1256.32 How do I request access to restricted information in donated historical materials?

(a) At Presidential libraries and regional archives, you may write to the appropriate director at the facilities in part 1253 of this chapter. In the Washington, DC, area, you may write to the Director of Access Programs (NWC) for donated textual materials or the Director of Modern Records Programs (NWM) for donated electronic records. The mailing address for NWC and NWM is Office of Records Services—Washington, DC, 8601 Adelphi Road, College Park, MD 20740–6001.

(b) You may request a review of documents restricted under terms of a donor's deed of gift or other legal instrument to determine whether the conditions originally requiring the closure still exist. Your request must describe each document requested so that the staff can locate it with a reasonable amount of effort. For files that NARA previously screened, you may cite the reference to the withheld document as it appears on the withdrawal sheet.

(c) In many instances, the director or his or her designated representative will determine whether entire documents or portions of them can be opened. However, a donor or his or her representative reserves the right to determine whether the donor's materials, a series, or a document or portions of it should remain closed (*see* § 1256.36).

(d) For classified information in donated historical materials, you may file a mandatory review request under Executive Order 12958, as amended, as described in § 1256.74.

### § 1256.34 How long may access to some donated historical materials be denied?

Some donated historical materials are closed for long periods, either under the provisions of the deed of gift, our general restrictions described in subpart D of this part, or another governing authority. We are sometimes able to make a copy of materials with restricted information redacted.

### § 1256.36 When can I appeal decisions about access to donated historical materials?

(a) If you wish to appeal a denial of access from the director or his designated representative in implementing the provisions of a donor's deed of gift, you may write a letter addressed to the Deputy Archivist of the United States, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. The Deputy Archivist, the

Assistant Archivist for Presidential Libraries, and the Assistant Archivist for Records Services—Washington, DC, or their designated representatives, compose the Board of Review for appeals relating to donated historical materials.

(b) The board's decision is final. If the board cannot make a determination on your request within 30 working days of receipt, NARA informs you of the reason for the delay. If the board determines that a document should remain closed, you may not file a new appeal for two years. Similarly, you may not file an appeal on documents in collections that have been open for research for less than 2 years.

(c) In some cases, the donor or his representative may reserve the right to determine whether the donor's materials, a series, or a document or portions of it should remain closed; you cannot appeal such decisions.

(d) For information on filing appeals for requests made under mandatory review of White House originated information, see § 1260.62 of this chapter.

## Subpart D—General Restrictions

### § 1256.40 What are general restrictions?

General restrictions apply to certain kinds of information or classes of records, regardless of the record group to which the records have been allocated. These general restrictions may apply to records and materials not covered by the Freedom of Information Act. The general restrictions are listed and explained in §§ 1256.46 through 1256.62.

### § 1256.42 Who imposes general restrictions?

The Archivist of the United States imposes all general restrictions in accordance with 5 U.S.C. 552, as amended, and 44 U.S.C. 2107(4), 2108, and 2111.

### § 1256.44 Does NARA ever waive general restrictions?

NARA may provide access to records withheld under a general restriction only to:

(a) NARA employees for work purposes;

(b) The creating agency or its authorized agent in the conduct of agency business;

(c) The donor, in the case of donated historical materials; or

(d) The subject of the records in some cases or the subject's authorized agent.

### § 1256.46 National security-classified information.

In accordance with 5 U.S.C. 552(b)(1), NARA cannot disclose records containing information regarding national defense or foreign policy that is properly classified under the provisions of the pertinent Executive Order on Classified National Security Information and its implementing directive (Executive Order 12958, as amended).

### § 1256.48 Information about internal agency rules and practices.

(a) NARA may withhold from disclosure, in accordance with 5 U.S.C. 552(b)(2), the following:

(1) Records that contain information on substantial internal matters of agencies that, if disclosed, could risk circumvention of a legal requirement, such as a statute or an agency regulation.

(2) Records containing information that states or assesses an agency's vulnerability to outside interference or harm. NARA withholds records that identify agency programs, systems, or facilities deemed most sensitive. NARA also withholds records describing specific measures that can be used to counteract such agency vulnerabilities.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that agency statutes or regulations would not be compromised and programs, systems, and facilities would not be harmed.

### § 1256.50 Information exempted from disclosure by statute.

In accordance with 5 U.S.C. 552(b)(3), NARA withholds records containing information that is specifically exempted from disclosure by statute when that statute:

(a) Requires withholding information from the public, leaving no discretion; or

(b) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

### § 1256.52 Trade secrets and commercial or financial information.

In accordance with 5 U.S.C. 552(b)(4), NARA may withhold records that contain trade secrets and commercial or financial information, obtained from a person, that is privileged or confidential. Such records may be disclosed only if:

(a) The person who provided the information agrees to its release; or

(b) In the judgment of the Archivist of the United States, enough time has passed that release of the information would not result in substantial competitive harm to the submitter of the information. See 36 CFR 1250.82 for additional regulatory guidance.

### § 1256.54 Inter- and intra-agency memoranda (subject to privilege).

(a) In accordance with 5 U.S.C. 552(b)(5), NARA may withhold information found in inter-agency or intra-agency records if that information is subject to a legally recognized privilege, including the:

(1) Deliberative process privilege;

(2) Attorney work product privilege; and

(3) Attorney-client privilege.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that release of the information would not result in the harm that the privilege was intended to protect or confidential attorney-client communications.

### § 1256.56 Information that would invade the privacy of a living individual.

(a) In accordance with 5 U.S.C. 552(b)(6), NARA will withhold records in personnel and medical and similar files containing information about a living individual that reveals details of a highly personal nature that, if released, would cause a clearly unwarranted invasion of personal privacy. Privacy information may include, but is not limited to, information about the physical or mental health or the medical or psychiatric care or treatment of the individual, and that:

(1) Contains personal information not known to have been previously made public, and

(2) Relates to events less than 75 years old.

(b) The Archivist of the United States may determine that this general restriction does not apply to:

(1) Specific records because enough time has passed that the privacy of living individuals is not compromised; or

(2) Researchers for the purpose of biomedical and social science research when such researchers have provided NARA with adequate written assurance that the record(s) will be used solely as a research or reporting record and that no individually identifiable information will be disclosed.

### § 1256.58 Information related to law enforcement investigations.

(a) In accordance with 5 U.S.C. 552(b)(7), NARA will withhold records compiled for law enforcement purposes. Unless otherwise determined by the Archivist in accordance with paragraph (b) of this section, records compiled for

law enforcement purposes may be disclosed only if all of the following conditions are met:

(1) The release of the information does not interfere with law enforcement proceedings;

(2) The release of the information would not deprive a person of a right to a fair trial or an impartial adjudication;

(3) The release of the information would not constitute an unwarranted invasion of personal privacy;

(4) Confidential sources and information provided by a confidential source are not revealed;

(5) Confidential investigation techniques are not described; and

(6) Release of the information would not endanger the life or physical safety of any person.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that:

(1) The safety of persons is not endangered, and

(2) The public interest in disclosure outweighs the continued need for confidentiality.

**§ 1256.60 Information relating to financial institutions.**

(a) In accordance with 5 U.S.C. 552(b)(8), NARA may withhold information in records contained in or relating to the examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that current financial information is not compromised.

**§ 1256.62 Geological and geophysical information relating to wells.**

(a) In accordance with 5 U.S.C. 552(b)(9), NARA may withhold information in records that relates to geological and geophysical information and data, including maps, concerning wells.

(b) The Archivist of the United States may determine that this general restriction does not apply to specific records because enough time has passed that current proprietary rights are not compromised.

## Subpart E—Access to Materials Containing National Security-Classified Information

**§ 1256.70 What controls access to national security-classified information?**

(a) The declassification of and public access to national security-classified information, hereinafter referred to as ''classified information'' is governed by Executive Order 12958 of April 17, 1995 (3 CFR, 1995 Comp., p. 333) and as amended by Executive Order 13292 of March 25, 2003 (68 FR 15315, 3 CFR, 2003 Comp. 196), 32 CFR part 2001, and the Freedom of Information Act (5 U.S.C. 552, as amended).

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; §§ 1256.30 through 1256.36 of this part for donated historical materials; 44 U.S.C. 2111, 44 U.S.C. 2201 *et seq.*, and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials.

**§ 1256.72 What are FOIA requests and mandatory review requests?**

(a) You may file a FOIA request for Executive Branch agency records, regardless of whether they contain classified information. The FOIA also applies to Presidential records as cited in § 1256.74(b). The FOIA does not apply to records of the Judicial and Legislative Branches or to donated historical materials.

(b) You may only file a mandatory review request if the records contain classified information. NARA handles mandatory review requests for records we hold for the Executive, Judicial, and Legislative Branches as well as donated historical materials under E.O. 12958, as amended, section 3.5.

**§ 1256.74 How does NARA process Freedom of Information Act (FOIA) requests for classified information?**

(a) NARA processes FOIA requests for access to classified information in Federal records in accordance with the provisions of 36 CFR part 1250. Time limits for responses to FOIA requests for classified information are those provided in the FOIA, rather than the longer time limits provided for responses to mandatory review requests specified by Executive Order 12958, Classified National Security Information (3 CFR, 1995 Comp., p. 333), as amended by Executive Order 13292 (68 FR 15315, 3 CFR, 2003 Comp., p. 196).

(b) NARA processes requests for access to classified information in Presidential records under the FOIA and the Presidential Records Act (PRA) in accordance with the provisions of part 1270 of this chapter. Time limits for responses to FOIA requests for classified information are those provided in the FOIA, the PRA, and Executive Order 13233, Further Implementation of the Presidential Records Act (3 CFR, 2001 Comp., p. 815).

**§ 1256.76 How do I request mandatory review of classified information under Executive Order 12958, as amended?**

(a) You may request mandatory review of classified information that is in the legal custody of NARA, as well as in legislative and judicial records NARA holds. Your mandatory review request must describe the document or material containing the information with sufficient specificity to enable NARA to locate it with a reasonable amount of effort. When possible, a request must include the name of the originator and recipient of the information, as well as its date, subject, and file designation. Information we reviewed within the previous 2 years is not subject to mandatory review. We notify you if this provision applies to your request.

(b) You must address your mandatory review request to the appropriate staff in the following table.

| If the documents are . . . | . . . then address your request to |
|---|---|
| (1) Presidential records and donated historical materials at a Presidential library. | The appropriate library cited in 36 CFR part 1253. |
| (2) Nixon Presidential materials | Director, Nixon Presidential Materials Staff (NLNS), 8601 Adelphi Road, College Park, MD 20740–6001. |
| (3) Presidential materials maintained in the Washington, DC, area | Director, Presidential Materials Staff (NLMS), 700 Pennsylvania Avenue, NW., Washington, DC 20408. |
| (4) Federal records, donated historical materials related to Federal records, judicial records, legislative records maintained in the Washington, DC, area. | Chief, Special Access/FOIA Staff (NWCTF), 8601 Adelphi Road, College Park, MD 20740–6001. |
| (5) Federal records and judicial records maintained at a regional archives. | The appropriate regional archives cited in 36 CFR part 1253. |

**§ 1256.78 How does NARA handle my mandatory review request?**

(a) You may find our procedures for mandatory review and appeals of denials in part 1260 of this chapter, Declassification of National Security Information.

(1) When agencies provide declassification guidance and delegate declassification authority to the Archivist of the United States, NARA reviews for declassification and releases the requested information or those declassified portions of the request that constitute a coherent segment unless withholding is otherwise warranted under applicable law.

(2) When we do not have guidance from agencies, we coordinate the declassification review with the original classifying agency or agencies under the provisions of part 1260, subchapter D of this chapter.

(b) If we cannot identify the information you seek from the description you provide or if the volume of information you seek is so large that processing it would interfere with our capacity to serve all requesters on an equitable basis, we notify you that, unless you provide additional information or narrow the scope of your request, we cannot take further action.

**§ 1256.80 How does NARA provide classified access to historical researchers and former Presidential appointees?**

(a) In accordance with the requirements of section 4.4 of E.O. 12958, as amended, we may grant access to classified information to certain eligible persons. These persons are engaged in historical research projects or previously occupied policy-making positions to which they were appointed by the President. If you seek permission to examine materials under this special historical researcher/Presidential appointees access program, you must contact NARA in advance. We need at least 4 months before you wish to have access to the materials to permit time for the responsible agencies to process your request for access. If you seek access to classified Presidential records under section 4.4 of E.O. 12958, you must first qualify under special access provisions of 44 U.S.C. 2205. NARA informs you of the agencies to which you have to apply for permission to examine classified information, including classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

(b) You may examine records under this program only after the originating or responsible agency:

(1) Determines in writing that access is consistent with the interest of national security; and

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12958, as amended.

(c) The originating or responsible agency limits the access granted to former Presidential and Vice Presidential appointees to items that the person originated, reviewed, signed, or received while serving as an appointee.

(d) To protect against the possibility of unauthorized access to restricted documents, a director may issue instructions supplementing the research room rules provided in 36 CFR part 1254.

## Subpart F—Domestic Distribution of United States Information Agency Audiovisual Materials in the National Archives of the United States

**§ 1256.90 What does this subpart cover?**

This subpart contains procedures governing the public availability of audiovisual records and other materials subject to 22 U.S.C. 1461(b) that have been transferred to the National Archives of the United States by the United States Information Agency (USIA).

**§ 1256.92 What is the purpose of this subpart?**

This subpart implements section 501 of the United States Information and Educational Exchange Act of 1948 (22 U.S.C. 1461), as amended by section 202 of Public Law 101–246 (104 Stat. 49, Feb. 16, 1990). This subpart also outlines procedures that permit the public to inspect and obtain copies of USIA audiovisual records and other materials in the United States that were prepared for dissemination abroad and that have been transferred to NARA for preservation and domestic distribution.

**§ 1256.94 Definition.**

For the purposes of this subpart, ''Audiovisual records'' mean motion picture films, videotapes, and sound recordings, and other materials regardless of physical form or characteristics that were prepared for dissemination abroad.

**§ 1256.96 What provisions apply to the transfer of USIA audiovisual records to the National Archives of the United States?**

The provisions of 44 U.S.C. 2107 and 36 CFR part 1228 apply to the transfer of USIA audiovisual records to NARA, and to their deposit with the National Archives of the United States. At the time the audiovisual records are transferred to NARA, the Director of USIA, in accordance with § 1228.266(e) of this chapter, will also transfer any production or title files bearing on the ownership of rights in the productions in connection with USIA's official overseas programming.

**§ 1256.98 Can I get access to and obtain copies of USIA audiovisual records transferred to the National Archives of the United States?**

NARA provides access to USIA audiovisual records after the appropriate time period of restriction has passed.

(a) No USIA audiovisual records in the National Archives of the United States that were prepared for dissemination abroad are available for copying until at least 12 years after USIA first disseminated these materials abroad, or, in the case of materials prepared for foreign dissemination but not disseminated abroad, until at least 12 years after the preparation of the materials.

(b) If the appropriate time has passed, you may have access to USIA audiovisual records that do not have copyright protection and do not contain copyright material. USIA audiovisual records prepared for dissemination abroad that NARA determines do not have copyright protection nor contain copyrighted material are available for examination and copying as described in the regulations in parts 1252, 1253, 1254, 1256, and 1258 of this chapter. To determine whether materials have copyright protection or contain copyrighted material, NARA relies on information contained within or fastened to individual records (for example, copyright notices); information contained within relevant USIA production, title, or other files that USIA transferred to NARA; information provided by requesters under § 1256.100(b) (for example, evidence from the Copyright Office that copyright has lapsed or expired); and information provided by copyright or license holders.

**§ 1256.100 What is the copying policy for USIA audiovisual records that either have copyright protection or contain copyrighted material?**

If the appropriate time has passed, as stated in § 1256.98(a), USIA audiovisual records that either have copyright protection or contain copyrighted material may be copied as follows:

(a) USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material are made available for

examination in NARA research facilities as described in the regulations in this title.

(b) Copies of USIA audiovisual records prepared for dissemination abroad that NARA determines may have copyright protection or may contain copyrighted material are provided to you if you seek the release of such materials in the United States once NARA has:

(1) Ensured, as described in paragraph (c) of this section, that you have secured and paid for necessary United States rights and licenses;

(2) Been provided with evidence from the Copyright Office demonstrating that copyright protection in the materials sought, or relevant portions in the materials, has lapsed or expired; or

(3) Received your signed certification in accordance with paragraph (d) of this section that you will use the materials sought only for purposes permitted by the Copyright Act of 1976, as amended, including the fair use provisions of 17 U.S.C. 107. No copies of USIA audiovisual records will be provided until the fees authorized under part 1258 of this chapter have been paid.

(c) If NARA determines that a USIA audiovisual record prepared for dissemination abroad may have copyright protection or may contain copyrighted material, you may obtain copies of the material by submitting to NARA written evidence from all copyright and license owner(s) that any necessary fees have been paid or waived and any necessary licenses have been secured.

(d) If NARA has determined that a USIA audiovisual record prepared for dissemination abroad may have copyright protection or may contain copyrighted material, persons seeking the release of such material in the United States may obtain copies of the material by submitting to NARA the following certification statement:

I, (printed name of individual), certify that my use of the copyrighted portions of the (name or title and NARA identifier of work involved) provided to me by the National Archives and Records Administration (NARA), will be limited to private study, scholarship, or research purposes, or for other purposes permitted by the Copyright Act of 1976, as amended. I understand that I am solely responsible for the subsequent use of the copyrighted portions of the work identified above.

(e) In every instance where NARA provides a copy of an audiovisual record under this subpart, and NARA has determined that the work reproduced may have copyright protection or may contain copyrighted material, NARA must provide you with a warning notice of copyright.

(f) Nothing in this section limits NARA's ability to make copies of USIA audiovisual records for preservation, arrangement, repair and rehabilitation, description, exhibition, security, or reference purposes.

**§ 1256.102 What fees does NARA charge?**

Copies of audiovisual records will only be provided under this subpart upon payment of fees in accordance with 44 U.S.C. 2116(c) and 22 U.S.C. 1461(b)(3). *See* § 1258.4(b) for additional information.

Dated: June 24, 2004.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 04–14754 Filed 6–29–04; 8:45 am]

BILLING CODE 7515–01–P

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## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Parts 201, 251, 252, 257 and 259

**[Docket No. 2004–4]**

## Communications With the Copyright Office: Change of Address

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office is amending its regulations to reflect a change and/or correction in the filing address for hand-delivered correspondence, claims and other documents intended for the Office of the Copyright General Counsel. The amendments direct such document deliveries to the appropriate location. The Office is also making minor changes to other addresses found in its regulations and adopting several changes proposed earlier.[1] These amendments facilitate communication with the Office in a timely and effective manner.

**DATES:** *Effective Date:* June 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Associate General Counsel, or Sandra L. Jones, Writer-editor. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** The Copyright Office is amending its regulations regarding communication with the Office. It is changing and/or correcting the address for hand-delivered filings, claims and other documents intended for the Office of the Copyright General Counsel. The amendments change the address for receipt of these documents from Room 403 to Room 401 of the James Madison Memorial Building. They also revise the regulations to distinguish between the delivery of documents hand delivered by private parties and those hand delivered by commercial couriers. These changes to delivery have already been published in the **Federal Register**.[2] The Office is also making technical adjustments to other addresses contained in the regulations and adopting some changes regarding communications with the Office that were proposed at an earlier date. 65 FR 3404 (Jan. 21, 2000).

### List of Subjects

*37 CFR Part 201*

Copyright.

*37 CFR Part 251*

Copyright, Copyright Arbitration Royalty Panel.

*37 CFR Part 252*

Cable television, Claims, Copyright.

*37 CFR Part 257*

Claims, Copyright, Satellite television.

*37 CFR Part 259*

Claims, Copyright, Digital audio recording devices and media.

### Final Regulations

■ For the reasons set forth in the preamble, the Copyright Office amends 37 CFR chapter II as follows:

## PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

■ 2. Section 201.1 is revised to read as follows:

**§ 201.1 Communication with the Copyright Office.**

(a) *General purpose addresses.* Members of the public must use the correct address in order to facilitate timely receipt by the copyright division or section to which an inquiry should be directed. The following addresses may be used for general inquiries made to a

[1] During the last few years there have been a number of delays in receipt of mail addressed to the Office. For this reason, everyone who must communicate with the Office quickly should check the Office's Web site for the most current information or call the Public Information Office.

[2] The Office has already published two policy announcements in the **Federal Register** concerning delivery of materials by either commercial carrier, *see* 68 FR 5371 (Feb. 4, 2004) or a private party, *see* 68 FR 70039 (Dec. 16, 2003).

particular division or section of the Copyright Office. Addresses for special, limited purposes are provided below in paragraph (b) of this section. Anyone who is not certain where a particular inquiry should be directed, should inquire about the proper address through the ''Contact us'' section on the Office's Web site (*http://www.copyright.gov*) or call the Public Information Office at (202) 707–3000.

(1) *In general.* Mail and other communications which do not come under the areas listed in paragraph (a) or (b) of this section shall be addressed to the Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559–6000.

(2) *Inquiries to Licensing Division.* Inquiries about filings related to the compulsory licenses (17 U.S.C. 111, 112, 114, 115, 118, 119, 122 and chapter 10) should be addressed to the Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue, SE., Washington, DC 20557–6400.

(3) *Copies of records or deposits.* Requests for copies of records or deposits for use in litigation or other authorized purposes should be addressed to the Certifications and Documents Section, LM–402, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559–6302.

(4) *Search of records.* Requests for searches of registrations and recordations in the completed catalogs, indexes, and other records of the Copyright Office should be addressed to the Reference and Bibliography Section, LM–450, Library of Congress, Copyright Office, 101 Independence Avenue, SE., Washington, DC 20559–6306. Records dating from January 1, 1978, forward are available for searching on the Copyright Office's Web site at *http://www.copyright.gov:* COHM, which includes information on all registrations except serials; COHD, which includes information on recordations; and COHS, which includes information on serials.

(b) *Limited purpose addresses.* The following addresses may be used only in the special, limited circumstances given for a particular Copyright Office service:

(1) *Time sensitive requests.* Freedom of Information (FOIA) requests; notices of filing of copyright infringement lawsuits; [3] comments for rulemaking proceedings; requests for Copyright Office speakers; requests for approvals of computer generated application forms; requests for expedited service from either the Certifications and Documents Section or Reference and Bibliography Section to meet the needs of pending or prospective litigation, customs matters or contract or publishing deadlines should be addressed to: Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400.

(2) *Copyright Arbitration Royalty Panels (CARPs).* CARP claims, filings, and general CARP correspondence should be mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

■ 3. Section 201.2 is amended as follows:

■ a. By revising paragraph (b)(6);

■ b. In paragraph (b)(7), by adding two sentences after ''Certifications and Documents Section.'';

■ c. By revising paragraph (c)(4).

■ The addition and revisions to § 201.2 read as follows:

**§ 201.2 Information given by the Copyright Office.**

* * * * *

(b) * * *

(6) Direct public access will not be permitted to any financial or accounting records, including records maintained on Deposit Accounts.

(7) * * * As the Office updates and revises certain chapters of Compendium II, it will make the information available on the Copyright Office's Web site. This information is also available for public inspection and copying in the Certifications and Documents Section.

(c) * * *

(4) The Copyright Office will not respond to any abusive or scurrilous correspondence or correspondence where the intent is unknown.

* * * * *

## PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

■ 4. The authority citation for part 251 continues to read as follows:

**Authority:** 17 U.S.C. 801–803.

■ 5. Section 251.1 is revised to read as follows:

**§ 251.1 Official addresses.**

All claims, pleadings, and general correspondence intended for the Copyright Arbitration Royalty Panels (CARPs) must be addressed as follows:

(a) If hand delivered by a private party, use the following address: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. This mail must be delivered to the Public Information Office, located at this address, Monday through Friday between 8:30 a.m. and 5 p.m.

(b) If hand delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar corporate courier services), use the following address: Copyright Office General Counsel/CARP, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. This mail must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC. The CCAS will accept items from couriers with proper identification, *e.g.,* a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m.

(c) If sent through the U.S. Postal Service, use the following address: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

(d) Federal Express, United Parcel Service and similar corporate courier services may not be used for correspondence and filings for the Copyright Arbitration Royalty Panels.

■ 6. Section 251.54(c)(2) is revised to read as follows:

**§ 251.54 Assessment of costs of arbitration panels.**

* * * * *

(c) * * *

(2) In the case of a rate adjustment proceeding, the statements of cost shall be addressed as follows:

(i) If hand delivered by a private party, use the following address: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. This mail must be delivered to the Public Information Office, located at this address, Monday through Friday, between 8:30 a.m. and 5 p.m.

(ii) If hand delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar corporate courier services), use the following address: Copyright Office General Counsel/CARP, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. This mail must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC. The CCAS will accept items from couriers with proper identification, *e.g.,* a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m.

[3] All litigation material is time sensitive and must be addressed to the appropriate section of the Copyright Office; the Office is also publishing new regulations governing legal process.

(iii) If sent through the U.S. Postal Service, use the following address: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

(iv) Federal Express, United Parcel Service and similar corporate courier services may not be used for correspondence and filings for the Copyright Arbitration Royalty Panels.

* * * * *

## PART 252—FILING OF CLAIMS TO CABLE ROYALTY FEES

■ 7. The authority citation for part 252 continues to read as follows:

**Authority:** 17 U.S.C. 111(d)(4), 801, 803.

■ 8. In § 252.4, paragraph (a) is revised to read as follows:

### § 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if addressed as follows:

(1) If hand delivered by a private party, use the following address: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. This mail must be delivered to the Public Information Office, located at this address, Monday through Friday, between 8:30 a.m. and 5 p.m. during the month of July.

(2) If hand delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar corporate courier services), use the following address: Copyright Office General Counsel/CARP, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. This mail must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC, during the month of July. The CCAS will accept items from couriers with proper identification, *e.g.,* a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m.

(3) If sent through the U.S. Postal Service, use the following address: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Claims sent through the U.S. Postal Service must have sufficient postage and bear a July U.S. postmark.

(4) Federal Express, United Parcel Service and similar corporate courier services may not be used for the filing of claims.

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## PART 257—FILING OF CLAIMS TO SATELLITE CARRIER ROYALTY FEES

■ 9. The authority citation for part 257 continues to read as follows:

**Authority:** 17 U.S.C. 119(b)(4).

■ 10. In § 257.4, paragraph (a) is revised to read as follows:

### § 257.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if addressed as follows:

(1) If hand delivered by a private party, use the following address: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. This mail must be delivered to the Public Information Office, located at this address, Monday through Friday, between 8:30 a.m. and 5 p.m. during the month of July.

(2) If hand delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar corporate courier services), use the following address: Copyright Office General Counsel/CARP, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. This mail must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC, during the month of July. The CCAS will accept items from couriers with proper identification, *e.g.,* a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m.

(3) If sent through the U.S. Postal Service, use the following address: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Claims sent through the U.S. Postal Service must have sufficient postage and bear a July U.S. postmark.

(4) Federal Express, United Parcel Service and similar corporate courier services may not be used for the filing of claims.

* * * * *

## PART 259—FILING OF CLAIMS TO DIGITAL AUDIO RECORDING DEVICES AND MEDIA ROYALTY PAYMENTS

■ 11. The authority citation for part 259 continues to read as follows:

**Authority:** 17 U.S.C. 1007(a)(1).

■ 12. In § 259.5, paragraph (a) is revised to read as follows:

### § 259.5 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if addressed as follows:

(1) If hand delivered by a private party, use the following address: Copyright Office General Counsel/CARP, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. This mail must be delivered to the Public Information Office, located at this address, Monday through Friday, between 8:30 a.m. and 5 p.m. during the month of January or February.

(2) If hand delivered by a commercial courier (excluding Federal Express, United Parcel Service and similar corporate courier services), use the address: Copyright Office General Counsel/CARP, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC. This mail must be delivered to the Congressional Courier Acceptance Site (CCAS) located at Second and D Street, NE., Washington, DC, during the month of January or February. The CCAS will accept items from couriers with proper identification, *e.g.,* a valid driver's license, Monday through Friday, between 8:30 a.m. and 4 p.m.

(3) If sent through the U.S. Postal Service, use the following address: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024–0977. Claims sent through the U.S. Postal Service must have sufficient postage and bear a January or February U.S. postmark.

(4) Federal Express, United Parcel Service and similar corporate courier services may not be used for the filing of claims.

* * * * *

Dated: June 24, 2004.

**Marybeth Peters,**

*Register of Copyrights.*

Approved by:

**James H. Billington,**

*Librarian of Congress.*

[FR Doc. 04–14853 Filed 6–29–04; 8:45 am]

BILLING CODE 1410–33–P

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## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Part 205

**[Docket No. RM 2004–2A]**

## Legal Processes

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office is publishing a final rule concerning legal processes. These regulations govern procedures for the service of process on the Copyright Office, the Register of Copyrights or an employee of the Copyright Office acting in his or her official capacity and the production of Office documents and testimony of Office employees in legal proceedings. These regulations will serve as a statement of Office policy and provide comprehensive guidelines for the Office and its employees, outside agencies, and other persons regarding the appropriate procedures in these areas.

**DATES:** *Effective Date:* July 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Associate General Counsel, or Robert Kasunic, Principal Legal Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone (202) 707–8380. Telefax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:** On February 23, 2004, the Copyright Office published a notice of proposed rulemaking seeking comment on its proposed revision of part 205 of subchapter A of chapter II, 37 CFR. Generally, part 205 establishes rules governing service of complaints, summonses, subpoenas and other legal process on the Copyright Office and its employees in their official capacities. Under the proposed revision, subpart A sets forth the definitions for the part, the addresses for legal service, and waiver of the rules. Subpart B establishes the requirements for service of legal process on an employee of the Copyright Office concerning information acquired in the course of performing official duties or because of the employee's official relationship with the Office and clarifies the requirements for service on the Register of Copyrights pursuant to 17 U.S.C. 411(a). Subpart C prescribes policies and procedures of the Copyright Office governing testimony by an Office employee in his or her official capacity and the production of Office documents pursuant to a demand, request, subpoena, or order for use in legal proceedings in which the Office is not a party. The goal of these proposed rules is to ensure that service intended for the Office and its employees will be expeditiously handled and that documents relating to litigation actually reach the responsible Copyright Office personnel. The centralized procedures reflected in these rules are necessary for the Office's timely response to service of legal process. For a thorough summary of the proposed rules, *see* 69 FR 8120 (Feb. 23, 2004).

In response to the publication of the proposed rules, the Copyright Office received one comment from the Chair of the Plain Language Action and Information Network, a group advocating the use of plain language in Government Communications. The commenter begins by questioning the number of copies of individual comments required and the failure to provide an option for electronic submission. Then the commenter proposed stylistic changes to the proposed rules.

The Copyright Office has considered the points raised by the commenter, but finds that the regulatory text, as originally drafted, is preferable in the present context and is consistent with and modeled on comparable regulations by other agencies. These particular rules address legal processes, and thus, are written largely for lawyers who are considering serving legal documents upon the Copyright Office or its employees. In this context, the use of common Latin phrases or a common legal term more succinctly conveys the necessary information. Similarly, given the complex and varied nature of legal processes, the Copyright Office strove to keep related requirements in unified sections so that readers would be alerted to all of the relevant considerations for a particular type of process, *e.g.*, demands for documents and testimony.

Consequently, the Copyright Office is adopting the previously proposed text, as a final rule, without substantive change, as follows:

### List of Subjects in 37 CFR Part 205

Copyright, Service of process, Testimony by employees and production of documents in legal proceedings.

### Final Regulations

■ In consideration of the foregoing, the Copyright Office revises 37 CFR part 205 as follows:

## PART 205—LEGAL PROCESSES

### Subpart A—General Provisions

Sec.
205.1 Definitions.
205.2 Address for mail and service; telephone number.
205.3 Waiver of rules.
205.4 Relationship of this part to the Federal Rules of Civil and Criminal Procedure.
205.5 Scope of this part related to Copyright Office duties under title 17 of the U.S. Code.

### Subpart B—Service of Process

205.11 Scope and purpose.
205.12 Process served on the Register of Copyrights or an employee in his or her official capacity.
205.13 Complaints served on the Register of Copyrights pursuant to 17 U.S.C. 411(a).

### Subpart C—Testimony by Employees and Production of Documents in Legal Proceedings in Which the Office is Not a Party

205.21 Scope and purpose.
205.22 Production of documents and testimony.
205.23 Scope of testimony.

**Authority:** 17 U.S.C. 702.

## Subpart A—General Provisions

### § 205.1 Definitions.

For the purpose of this part:

*Demand* means an order, subpoena or any other request for documents or testimony for use in a legal proceeding.

*Document* means any record or paper held by the Copyright Office, including, without limitation, official letters, deposits, recordations, registrations, publications, or other material submitted in connection with a claim for registration of a copyrighted work.

*Employee* means any current or former officer or employee of the Copyright Office, as well as any individual subject to the jurisdiction, supervision, or control of the Copyright Office.

*General Counsel,* unless otherwise specified, means the General Counsel of the Copyright Office or his or her designee.

*Legal proceeding* means any pretrial, trial, and post trial stages of existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards or other tribunals, foreign or domestic. This phrase includes all phases of discovery as well as responses to formal or informal requests by attorneys or others involved in legal proceedings. This phrase also includes state court proceedings (including grand jury proceedings) and any other state or local legislative and administrative proceedings.

*Office* means the Copyright Office, including any division, section, or operating unit within the Copyright Office.

*Official business* means the authorized business of the Copyright Office.

*Testimony* means a statement in any form, including a personal appearance before a court or other legal tribunal, an interview, a deposition, an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746, a telephonic, televised, or videotaped

statement or any response given during discovery or similar proceeding, which response would involve more than the production of documents, including a declaration under 35 U.S.C. 25 or a declaration under penalty of perjury pursuant to 28 U.S.C. 1746.

*United States* means the Federal Government, its departments and agencies, individuals acting on behalf of the Federal Government, and parties to the extent they are represented by the United States.

**§ 205.2 Address for mail and service; telephone number.**

(a) Mail under this part should be addressed to the General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400.

(b) Service by hand shall be made upon an authorized person from 8:30 a.m. to 5 p.m., Monday through Friday in the Public Information Office, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC. Persons authorized to accept service of process are the General Counsel of the Copyright Office and his or her designees.

(c) The Office of the General Counsel may be reached by telephone during normal business hours specified in paragraph (b) of this section at 202–707–8380.

**§ 205.3 Waiver of rules.**

In extraordinary situations, when the interest of justice requires, the General Counsel may waive or suspend the rules of this part, *sua sponte* or on petition of an interested party, subject to such requirements as the General Counsel may impose on the parties. However, the inclusion of certain legal processes within the scope of these rules, *e.g.*, state legal proceedings, does not represent a waiver of any claim of immunity, privilege, or other defense by the Office in a legal proceeding, including but not limited to, sovereign immunity, preemption, or lack of relevance. This rule does not create any right or benefit, substantive or procedural, enforceable at law by a party against the Copyright Office, the Library of Congress, or the United States.

**§ 205.4 Relationship of this part to the Federal Rules of Civil and Criminal Procedure.**

Nothing in this part waives any requirement under the Federal Rules of Civil or Criminal Procedure.

**§ 205.5 Scope of this part related to Copyright Office duties under title 17 of the U.S. Code.**

This part relates only to legal proceedings, process, requests and demands relating to the Copyright Office's performance of its duties pursuant to title 17 of the United States Code. Legal proceedings, process, requests and demands relating to other matters (*e.g.*, personal injuries, employment matters, etc.) are the responsibility of the General Counsel of the Library of Congress and are governed by 36 CFR part 703.

## Subpart B—Service of Process

**§ 205.11 Scope and purpose.**

(a) This subpart provides the procedures governing service of process on the Copyright Office and its employees in their official capacity. These regulations provide the identity of Copyright Office officials who are authorized to accept service of process. The purpose of this subpart is to provide a centralized location for receipt of service of process to the Office. Such centralization will provide timely notification of legal process and expedite Office response. Litigants also must comply with all requirements pertaining to service of process that are established by statute, court rule and rule of procedure including the applicable provisions of the Federal Rules of Civil Procedure governing service upon the United States.

(b) This subpart does not apply to service of process made on an employee personally for matters not related to official business of the Office. Process served upon a Copyright Office employee in his or her individual capacity must be served in compliance with the applicable requirements for service of process established by statute, court rule, or rule of procedure.

**§ 205.12 Process served on the Register of Copyrights or an employee in his or her official capacity.**

(a) Summonses, complaints and all other process directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity should be served on the General Counsel of the Copyright Office or his or her designee as indicated in § 205.2 of this part. To effect proper service, the requirements of Rule 4(i) of the Federal Rules of Civil Procedure must also be satisfied by effecting service on both the United States Attorney for the district in which the action is brought and the Attorney General, Attn: Director of Intellectual Property Staff, Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530.

(b) If, notwithstanding paragraph (a) of this section, any employee of the Office is served with a summons or complaint in connection with the conduct of official business, that employee shall immediately notify and deliver the summons or complaint to the Office of the General Counsel of the Copyright Office.

(c) Any employee receiving a summons or complaint shall note on the summons or complaint the date, hour, and place of service and mode of service.

(d) The Office will accept service of process for an employee only when the legal proceeding is brought in connection with the conduct of official business carried out in the employee's official capacity.

(e) When a legal proceeding is brought to hold an employee personally liable in connection with an action taken in the conduct of official business, rather than liable in an official capacity, the employee is to be served in accordance with any applicable statute, court rule, or rule of procedure. Service of process in this case is inadequate when made only on the General Counsel. An employee sued personally for an action taken in the conduct of official business shall immediately notify and deliver a copy of the summons or complaint to the General Counsel of the Copyright Office.

**§ 205.13 Complaints served on the Register of Copyrights pursuant to 17 U.S.C. 411(a).**

When an action has been instituted pursuant to 17 U.S.C. 411(a) for infringement of the copyright of a work for which registration has been refused, notice of the institution of the action and a copy of the complaint must be served on the Register of Copyrights by sending such documents by registered or certified mail to the General Counsel of the Copyright Office, GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024–0400, or delivery by hand addressed to the General Counsel of the Copyright Office and delivered to the Public Information Office, U.S. Copyright Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue, SE., Washington, DC. The notice must be in the form of a letter that is clearly identified as a 411(a) notice. Both the letter and the envelope should state: ''Section 411(a) Notice to the Register of Copyrights.'' In compliance with Fed. R. Civ. P. Sec. 4(i), a notice of the institution of the action and a copy of

the complaint must also be served on both the United States Attorney for the district in which the action is brought and the United States Department of Justice, directed to the Attorney General, Attn: Director of Intellectual Property Staff, Civil Division, Department of Justice, Washington, DC 20530.

## Subpart C—Testimony By Employees and Production of Documents in Legal Proceedings in Which the Office Is Not a Party

### § 205.21 Scope and purpose.

(a) This subpart prescribes policies and procedures of the Copyright Office governing testimony, in legal proceedings in which the Office is not a party, by Office employees in their official capacities and the production of Office documents for use in legal proceedings pursuant to a demand, request, subpoena or order.

(b) The purpose of this subpart is:

(1) To conserve the time of Office employees for conducting official business;

(2) To minimize the possibility of involving the Office in the matters of private parties or other issues which are not related to the mission of the Office;

(3) To prevent the public from confusing personal opinions of Office employees with Office policy;

(4) To avoid spending the time and money of the United States for private purposes;

(5) To preserve the integrity of the administrative process, minimize disruption of the decision-making process, and prevent interference with the Office's administrative functions.

(c) An employee of the Office may not voluntarily appear as a witness or voluntarily testify in a legal proceeding relating to his or her official capacity without proper authorization under this subpart.

(d) This subpart does not apply to any legal proceeding in which:

(1) An employee is to testify regarding facts or events that are unrelated to official business; or

(2) A former employee is asked to testify as an expert on a matter in which that employee did not personally participate while at the Office so long as the former employee testifies concerning his or her personal opinion and does not purport to speak for or on behalf of the Copyright Office.

### § 205.22 Production of documents and testimony.

(a) Generally, all documents and material submitted to the Copyright Office as part of an application to register a claim to copyright are available for public inspection and copying. It is possible, therefore, to obtain those materials without use of a legal process. Anyone seeking such documents must contact the Certifications and Documents Section of the Office. 37 CFR 201.2(b)(1). Certified copies of public documents and public records are self-authenticating. FED. R. EVID. 902 and 1005; *see also*, FED. R. CIV. p. 44(a)(1). In certain specified circumstances, information contained in the in-process files may be obtained by complying with the procedures of 37 CFR 201.2(b)(3). Correspondence between a copyright claimant or his or her agent and the Copyright Office in a completed registration, recordation, or refusal to register is also available for public inspection. Section 201.2(d) of this chapter prescribes the method for requesting copies of copyright registration records. An attorney engaged in actual or prospective litigation who submits a court order or a completed Litigation Statement may obtain a copy of the deposit if his or her request is found to comply with the requirements set out in 37 CFR 201.2(d)(2). The fees associated with various document requests, searches, copies, and expedited handling are listed in 37 CFR 201.3. Other publications containing Copyright Office procedures and practices are available to the public without charge from the Copyright Office or its Web site: *http://www.copyright.gov.* The Office website also allows online searching of copyright registration information and information pertaining to documents recorded with the Copyright Office beginning January 1, 1978. Pre-1978 copyright registration information and document recordation information is available to the public in the Copyright Office during regular business hours. If the information sought to be obtained from the Office is not available through these Office services, demands and subpoenas for testimony or documents may be served as follows:

(1) *Demands for testimony or documents.* All demands, requests, subpoenas or orders for production of documents or testimony in a legal proceeding directed to the Copyright Office, the Register of Copyrights or any other Copyright Office employee in his or her official capacity must be in writing and should be served on the General Counsel of the Copyright Office as indicated in § 205.2 of this part and in accordance with the Federal Rules of Civil or Criminal Procedure.

(2) *Affidavits.* Except when the Copyright Office is a party to the legal proceeding, every demand, request or subpoena shall be accompanied by an affidavit or declaration under penalty of perjury pursuant to 28 U.S.C. 1746. Such affidavit or declaration shall contain a written statement setting forth the title of the legal proceeding; the forum; the requesting party's interest in the legal proceeding; the reasons for the demand, request, or subpoena; a showing that the desired testimony or document is not reasonably available from any published or other written source, (*e.g.* 37 CFR, Chapter II; Compendium II, Compendium of Copyright Office Practices; other written practices of the Office; circulars; the Copyright Office website) and is not available by other established procedure, *e.g.* 37 CFR 201.2, 201.3. If testimony is requested in the affidavit or declaration, it shall include the intended use of the testimony, a detailed summary of the testimony desired, and a showing that no document could be provided and used in lieu of the requested testimony. The purpose of these requirements is to permit the Copyright General Counsel to make an informed decision as to whether testimony or production of a document should be authorized. The decision by the General Counsel will be based on consideration of the purposes set forth in § 205.21(b) of this part, on the evaluation of the requesting party's need for the testimony and any other factor warranted by the circumstances. Typically, when the information requested is available through other existing Office procedures or materials, the General Counsel will not authorize production of documents or testimony.

(b) No Copyright Office employee shall give testimony concerning the official business of the Office or produce any document in a legal proceeding other than those made available by the Certifications and Documents Section under existing regulations without the prior authorization of the General Counsel. Without prior approval from the General Counsel, no Office employee shall answer inquiries from a person not employed by the Library of Congress or the Department of Justice regarding testimony or documents in connection with a demand, subpoena or order. All inquiries involving demands, subpoenas, or orders shall be directed to the Copyright General Counsel.

(c) Any Office employee who receives a demand, request, subpoena or order for testimony or the production of documents in a legal proceeding shall immediately notify the Copyright Office General Counsel at the phone number indicated in § 205.2 of this part and

shall immediately forward the demand to the Copyright General Counsel.

(d) The General Counsel may consult or negotiate with an attorney for a party or the party, if not represented by an attorney, to refine or limit a demand, request or subpoena to address interests or concerns of the Office. Failure of the attorney or party to cooperate in good faith under this part may serve as the basis for the General Counsel to deny authorization for the testimony or production of documents sought in the demand.

(e) A determination under this part regarding authorization to respond to a demand is not an assertion or waiver of privilege, lack of relevance, technical deficiency or any other ground for noncompliance. The Copyright Office reserves the right to oppose any demand on any appropriate legal ground independent of any determination under this part, including but not limited to, sovereign immunity, preemption, privilege, lack of relevance, or technical deficiency.

(f) Office procedures when an employee receives a demand or subpoena:

(1) If the General Counsel has not acted by the return date, the employee must appear at the time and place set forth in the subpoena (unless otherwise advised by the General Counsel) and inform the court (or other legal authority) that the demand has been referred for the prompt consideration of the General Counsel and shall request the court (or other legal authority) to stay the demand pending receipt of the requested instructions.

(2) If the General Counsel makes a determination not to authorize testimony or the production of documents, but the subpoena is not withdrawn or modified and Department of Justice representation cannot be arranged, the employee should appear at the time and place set forth in the subpoena unless advised otherwise by the General Counsel. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of these rules and state that the General Counsel has advised the employee not to provide the requested testimony or to produce the requested document. If a court (or other legal authority) rules that the demand in the subpoena must be complied with, the employee shall respectfully decline to comply with the demand, citing *United States* ex rel.*Touhy* v. *Ragen,* 340 U.S. 462 (1951).

**§ 205.23 Scope of testimony.**

(a)(1) If a Copyright Office employee is authorized to give testimony in a legal proceeding, the testimony, if otherwise proper, shall be limited to facts within the personal knowledge of the Office employee. An Office employee is prohibited from giving expert testimony, or opinion, answering hypothetical or speculative questions, or giving testimony with respect to subject matter which is privileged. If an Office employee is authorized to testify in connection with his or her involvement or assistance in a proceeding or matter before the Office, that employee is further prohibited from giving testimony in response to an inquiry about the bases, reasons, mental processes, analyses, or conclusions of that employee in the performance of his or her official functions.

(2) The General Counsel may authorize an employee to appear and give expert testimony or opinion testimony upon the showing, pursuant to § 205.3 of this part, that exceptional circumstances warrant such testimony and that the anticipated testimony will not be adverse to the interest of the Copyright Office or the United States.

(b) If an Office employee is authorized to testify, the employee will generally be prohibited from providing testimony in response to questions which seek, for example:

(1) To elicit information about the employee's:

(i) Qualifications to examine or otherwise consider a particular copyright application.

(ii) Usual practice or whether the employee followed a procedure set out in any Office manual of practice in a particular case.

(iii) Consultation with another Office employee.

(iv) Familiarity with:

(A) Preexisting works that are similar.

(B) Registered works, works sought to be registered, a copyright application, registration, denial of registration, or request for reconsideration.

(C) Copyright law or other law.

(D) The actions of another Office employee.

(v) Reliance on particular facts or arguments.

(2) To inquire into the manner in and extent to which the employee considered or studied material in performing the function.

(3) To inquire into the bases, reasons, mental processes, analyses, or conclusions of that Office employee in performing the function.

(4) In exceptional circumstances, the General Counsel may waive these limitations pursuant to § 205.3 of this part.

Dated: June 24, 2004.

**Marybeth Peters,**

*Register of Copyright.*

Approved by:

**James H. Billington,**

*Librarian of Congress.*

[FR Doc. 04–14852 Filed 6–29–04; 8:45 am]

BILLING CODE 1410–30–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[R07–OAR–2004–MO–0003; FRL–7779–9]**

### Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes, Iron County; Arcadia and Liberty Townships

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is announcing the redesignation of the lead nonattainment area in Iron County, Missouri, to attainment of the National Ambient Air Quality Standard (NAAQS) for lead. We are approving the maintenance plan for this area including a settlement agreement which was submitted with the redesignation request. The effect of the SIP approval is to ensure Federal enforceability of the state air program plan and to maintain consistency between the state-adopted plan and the approved SIP. The effect of the redesignation is to recognize that the area has attained the lead NAAQS and to focus future air quality planning efforts on maintenance of the lead NAAQS in the area.

**DATES:** This direct final rule will be effective August 30, 2004, without further notice, unless EPA receives adverse comment by July 30, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–MO–0003, by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for

receiving comments. Once in the system, select ''quick search;'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *hirtz.james@epa.gov.*

4. Mail: James Hirtz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. Hand Delivery or Courier. Deliver your comments to James Hirtz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

*Instructions:* Direct your comments to RME ID No. R07–OAR–2004–MO–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the Federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding Federal holidays. Interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** James Hirtz at (913) 551–7472, or by e-mail at *hirtz.james@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we'', ''us'', or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is being addressed in this document?

Have the requirements for approval of a SIP revision and redesignation to attainment been met?

What action is EPA taking?

## What Is a SIP?

Section 110 of the Clean Air Act (CAA or Act) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

## What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

## What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

## What Is Being Addressed in This Document?

We are redesignating the nonattainment area in Iron County, Missouri, bounded by Arcadia and Liberty Townships, to attainment for lead and taking final action to approve the submission for the Doe Run Primary Smelting Facility near Glover, Missouri, as an amendment to the SIP.

The basis for our approval of the rule is described in this document and in more detail in the technical support document (TSD) prepared for this action. The TSD is available at the address identified above.

The purpose of the submittal is to meet the criteria under section 107(d)(3) of the Clean Air Act Amendments (CAAA) for redesignation of the nonattainment area in Iron County to attainment for the lead standard.

The area was designated as nonattainment for lead in January 1992. The nonattainment area includes the portion of Iron County, Missouri, bounded by Arcadia and Liberty

Townships. The major source of lead emissions in this nonattainment area is the Doe Run Primary Smelting Facility, near Glover, Missouri.

Primary smelting of lead began at this location in 1968. Currently the facility has ceased production and has been operating on a care and maintenance schedule since December 1, 2003.

Section 107(d)(3) of the CAAA establishes the five requirements to be met before we can designate an area from nonattainment to attainment. These are:

1. The area has attained the NAAQS;
2. The area has a fully approved SIP under section 110(k) of the Act;
3. We have determined that the improvement in air quality is due to permanent and enforceable emissions reductions;
4. We have determined that the maintenance plan for the area has met the requirements of section 175A of the Act and;
5. The state has met all requirements applicable to the area under section 110 and part D.

*Attainment of the NAAQS*

The state submittal provided ambient air monitor data showing that this area has consistently shown compliance with the NAAQS for lead since the first quarter of 1997. Ambient monitoring for lead has shown compliance with the NAAQS for 28 consecutive calendar quarters. The NAAQS for lead is 1.5 micrograms per cubic meter (1.5 $\mu g/m^3$), maximum quarterly average. A quarterly average is considered a violation of the standard if it is at least 1.6 $\mu g/m^3$ when rounded to tenths from the hundredths place when monitored.

EPA guidance provides that, for lead, attainment should be demonstrated by modeling as well as monitoring. Air dispersion modeling using the ISCST Version 3 dated February 4, 2002, was used to evaluate the concentration of lead resulting from operations at the Doe Run Primary Lead Smelting Facility. The maximum concentration predicted by the model was a value of 1.252 $\mu g/m^3$ which is in compliance with the lead standard. This maximum modeled value was obtained by incorporating the dry depletion option in the ISCST model.

*Fully Approved SIP*

Missouri submitted part D nonattainment SIPs for the Doe Run Primary Smelting Facility and its predecessor in 1996 and 1998. The SIPs established emission, operational and work practice standards. These requirements included enforceable throughput and emission point limits, identified emission control projects that the facility would have to complete prior to producing primary lead, and established contingency measures to reduce fugitive emissions for the secondary process. The 1996 part D nonattainment SIP became effective on May 5, 1997, and meets the requirements of section 110. A detailed discussion of the SIP revision can be found in the March 5, 1997, **Federal Register** document (62 FR 9970). The 1998 part D nonattainment SIP became effective on May 16, 2002, and merely reflects a change in ownership of the smelter (67 FR 18497). The SIP for the area has been fully approved under section 110(k) as meeting all applicable requirements of section 110 and part D.

*Permanent and Enforceable Emissions Reductions*

The permanent and enforceable emission reductions at the Doe Run Primary Smelting Facility include implementation of the part D nonattainment SIP, which includes (1) performance criteria and maintenance of emission control systems, (2) stack testing requirements, (3) process throughput limitations, (4) record keeping requirements, and (5) the installation of reasonably available control technology and reasonably available control measures. These provisions were previously approved in the 1997 EPA action previously cited. They have now been incorporated into a single settlement agreement between Doe Run, the Missouri Department of Natural Resources (MDNR), and the Missouri Air Conservation Commission. EPA is approving the settlement agreement containing the requirements as part of this action.

Since 1996 Doe Run has implemented additional engineering projects to meet the maximum achievable control technology standards for primary lead smelting facilities, 40 CFR part 63 subpart TTT, promulgated in 1999.

Rule 10 CSR 10–6.120, Restriction of Emissions of Lead From Specific Lead Smelter-Refinery Installations, previously approved by EPA, further ensures the permanent and enforceable emission reductions by specifying emissions limits for the facility. These limits have also resulted in improved air quality.

Although as discussed previously, the facility is currently in a non-production mode, attainment had been shown for several years prior to the change in operation in December 2003. Therefore, EPA has determined that the improvement in air quality is due to permanent and enforceable SIP controls.

*Fully Approved Maintenance Plan*

The maintenance plan submitted as part of the SIP revision provides for maintenance of the relevant NAAQS in the area for at least ten years after the approval of redesignation to attainment.

The maintenance plan for the Doe Run Primary Smelting Facility addresses the monitoring network, the emission inventory, the maintenance demonstration, and verification of continued attainment, as described in more detail in the TSD. The plan also includes contingency measures: (1) Truck wash; (2) Expand in-plant road sprinkler system; (3) Withdraw unloading building air for Sinter Plant make-up air; (4) New stack emission limits for (a) Main Stack—160.1 lbs of lead/24 hours; (b) Ventilation Baghouse Stack—108.9 lbs of lead/24 hours; (c) Blast Furnace Stack—71.5 lbs of lead/24 hours; (5) Modify refinery skims handling in blast furnace area; and (6) Increase efficiency of Sinter Plant ventilation baghouse. The contingency measures are also specified in the settlement agreement which was approved by MDNR and Doe Run.

Eight years after the redesignation, the state has committed to submit a revised maintenance plan demonstrating attainment for ten years following the initial ten-year period.

*Part D and Section 110*

The state has met these requirements by submitting and implementing the nonattainment plan to bring the area back into attainment. As described previously in this document, EPA has determined that this plan meets all the applicable requirements of section 110 and part D. The reader may refer to the previously cited **Federal Register** documents approving the SIP for additional information describing how the SIP meets the applicable requirements of section 110 and part D.

**Have the Requirements for Approval of a SIP Revision and Redesignation to Attainment Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the TSD which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations. The state submittal also meets the criteria for redesignation to attainment in section 107(d)(3) of the CAA, as explained above and in the TSD.

**What Action Is EPA Taking?**

Our review of the material submitted indicates that the state has adopted a maintenance plan meeting the requirements of the CAA. The state submission also meets the requirements for redesignation. We are taking final action to approve the submission for the Doe Run Primary Smelting Facility near Glover, Missouri, as an amendment to the SIP and redesignate the nonattainment area in Iron County, Missouri, to attainment for lead.

We are processing this action as a final action because the state received no adverse comments on the maintenance SIP and redesignation request during its public comment period, and because the area has been attaining the lead standard since 1997 based on monitored data. Therefore, we do not anticipate any adverse comments.

**Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule approves preexisting requirements under state law. In addition, the redesignation is an action which affects the status of a geographic area but does not impose any new requirements on governmental entities or sources. Therefore because it does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule and redesignation do not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

*40 CFR Part 81*

Environmental protection, Air pollution control, Lead, National parks, Wilderness area.

Dated: June 21, 2004.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart AA—Missouri

■ 2. Section 52.1320 is amended by adding in paragraphs (d) and (e), an entry at the end of each table to read as follows:

**§ 52.1320 Identification of Plan.**

* * * * *

(d) * * *

EPA-APPROVED STATE SOURCE-SPECIFIC PERMITS AND ORDERS

| Name of source | Order/permit No. | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|

EPA-APPROVED STATE SOURCE-SPECIFIC PERMITS AND ORDERS—Continued

| Name of source | Order/permit No. | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * * | * * | | * | * |
| Doe Run Lead Smelter, Glover, MO | Settlement Agreement | 10/31/03 | 6/30/04 [Insert FR page citation] | |

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * * * | * * | | * | * |
| Lead Maintenance Plan | Iron County (part) within boundaries of Liberty and Arcadia Townships. | 1/26/04 | 6/30/04 [Insert FR page citation] | |

## PART 81—[AMENDED]

■ 3. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

■ 4. In § 81.326 the table entitled ''Missouri-Lead'' is amended by revising the entry for ''Iron County (part) Within boundaries of Liberty and Arcadia Townships'' to read as follows:

**§ 81.326 Missouri.**

* * * * *

MISSOURI— LEAD

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| * * * * | * | | * | * |
| Iron County (part) Within boundaries of Liberty and Arcadia Townships | 6/30/04 | Attainment | | |
| * * * * | * | | * | * |

* * * * *

[FR Doc. 04–14701 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[OPP–2004–0164; FRL–7364–2]**

## Aspergillus flavus NRRL 21882; Exemption from the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of the microbial active ingredient *Aspergillus flavus* NRRL 21882 on peanuts when applied/used in accordance with label directions. Circle One, One Arthur Street, PO Box 28, Shellman, GA 39886–0028 submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Aspergillus flavus* NRRL 21882 on peanuts.

**DATES:** This regulation is effective June 30, 2004. Objections and requests for hearings must be received on or before August 30, 2004.

**ADDRESSES:** To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0164. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., 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 either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address: *bacchus.shanaz@epa.gov.*

## I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

## II. Background and Statutory Findings

In the **Federal Register** of March 17, 2004, (69 FR 12659–12664) (FRL–7348–8), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F6815) by Circle One, One Arthur Street, PO Box 28, Shellman, GA 39886–0028. This notice included a summary of the petition prepared by the petitioner, Charlie Rose.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Aspergillus flavus* NRRL 21882 on peanuts.

EPA received seven comments in response to the Notice of Filing. Six of those comments were from farmers who support the use of *Aspergillus flavus* NRRL 21882 to reduce aflatoxin contamination of peanuts. Among their comments in support of the pesticide, these farmers noted the tremendous cost, in excess of $25 million dollars per year, to manage aflatoxin contamination of peanuts. The Agency is working expeditiously to evaluate the data submitted to support registration of the active ingredient *Aspergillus flavus* NRRL 21882 and this Final Rule granting an exemption from the requirement of a tolerance is part of that process.

The seventh comment raised a number of issues and concerns. First, the commentor objected to the publication of the applicant's data summaries submitted with the petition prior to EPA's evaluation of such data and viewed the Notice of Filing as an attempt to obtain approval with insufficient information. This commentor appears to misunderstand the nature and purpose of a Notice of Filing. Under section 408(d)(3) of the FFDCA, EPA is required to publish a notice of the filing of a petition seeking the establishment of a tolerance or an exemption from the requirement of a tolerance. That notice must contain an applicant-prepared ''informative summary'' of the data, information, and arguments provided by the applicant in support of its petition. (See FFDCA sec. 408(d)(2)A)(i)(I)). The Notice of Filing is published in the **Federal Register** prior to the Agency's evaluation of the petition and the data submitted in support of that petition. Once EPA has evaluated the petition and all supporting data, EPA issues a final rule, such as this one, which includes EPA's assessment of the applicant's submissions, as they relate to dietary risk, and EPA's determination vis-a-vis the requested tolerance or tolerance exemption. The Notice of Filing, in and of itself, is not an indication of whether the sought tolerance or tolerance exemption will, in fact, be granted by the Agency.

Second, the commentor objected to the applicant's animal test reports and the number and duration of the studies underlying those reports, and to the applicants' requests to waive data. With respect to the animal tests, the commentor also suggested that human cell testing or testing on humans should be done instead. EPA regulates pesticides according to peer-reviewed and publicly available guidelines that describe endpoints for human health risk assessment. Tests are conducted with the active ingredient or end-use product in surrogate animals, through various routes of administration (i.e., oral, dermal, pulmonary, etc.). Any effects seen are reported to the Agency, peer-reviewed, and evaluated to determine whether the effects of the test material demonstrate infectivity, acute toxicity, or pathogenicity. While tests in some human cell-lines are available, they may not always be applicable, and may not assist the Agency in making as accurate an assessment of the hazards and risks posed by the use of the pesticide as can be done with surrogate animal tests. Both positive and adverse effects are reported by the applicant so that toxicological concerns for human health and environmental risk assessment can be identified and mitigated according to sound scientific practice and taking into account the exposure levels and risks associated with the pesticide. If further testing is required to fully evaluate any hazard and risks posed by the test material under proposed use patterns, the registrant must submit the appropriate additional data to satisfy EPA's published guideline requirements. EPA does not deviate from these guidelines without good reason, and does so for data waiver requests only when sound scientific consensus on the provided data waiver rationale is reached. In this case, and as discussed more thoroughly below (see Unit III.5. and 6.), EPA granted the requested waivers only after determining that the rationales provided in support of those waiver requests were acceptable.

Third, the commentor asserted that dermal sensitivity to this product is already known to exist, and that more of it is not needed. While there is a potential for dermal sensitivity to the *Aspergillus* group of fungi, the specific pesticide at issue here, *Aspergillus flavus* NRRL 21882, is not intended for residential applications. Instead, it is to be applied to commercial agricultural fields in accordance with the requirements of the applicable Worker Protection Standards. Workers are protected from potential dermal and inhalation exposure to the pesticide by appropriate Personal Protective Equipment (PPE) as required on the label (see Unit III.4.). Pesticide drift is not expected from the application of the granular End-use Product which is applied at a very low rate (approximately 1 gram or 0.002 pound of active ingredient per acre). Thus, non-occupational residential exposure is expected to be minimal to non-existent, and occupational exposure is mitigated (see Unit IV.B).

Finally, the commentor objected to the statement by the applicant that this application is not likely to increase the

natural concentration of *Aspergillus* in water, and thus is not considered to be a risk for drinking water. As discussed below, EPA's evaluation of the acute oral studies conducted in rodents indicate no toxicity or pathogenicity via oral exposure to this pesticide, which includes exposure via drinking water (see Unit III.). Furthermore, this pesticide is not applied directly to water, but to the soil in drought ridden regions where accumulation in water is not likely to occur. In addition, *Aspergillus flavus* NRRL 21882 is expected to displace native aflatoxin-producing *Aspergillus* fungi at the sites of application, thus reducing the potential hazards posed by these ubiquitous toxigenic fungi. For a more complete discussion of EPA's findings regarding *Aspergillus flavus* NRRL 21882 and drinking water, see Unit IV.A.2. below.

Having thus addressed the comments received in response to the Notice of Filing and the summary of the petition contained therein seeking an exemption from the requirement of a tolerance for *Aspergillus flavus* NRRL 21882, the remainder of this Final Rule summarizes EPA's review and consideration of that tolerance exemption request. The Biopesticide and Pollution Prevention Division (BPPD) review documents referred to below are discussed in more detail in the Biopesticide Registration Action Document (BRAD) which will be made available in the docket.

Section 408(c)(2)(A)(I) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe '' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

*Aspergillus flavus* NRRL 21882 is a non-aflatoxin-producing fungal active ingredient that will be used to displace the ubiquitous *Aspergillus flavus* group of microbes, many of which can produce aflatoxin, a potent carcinogen. The pesticide is proposed for a single ground application once a year at the pre-pegging stage of peanuts to displace aflatoxin-producing strains of *Aspergillus flavus* from that food commodity. Summaries of eight field trials reported to the Agency support the claim that *Aspergillus flavus* NRRL 21882 reduces aflatoxin contamination in field-grown peanuts. Aflatoxin was measured in shelled and unshelled peanuts by High Pressure Liquid Chromatography (HPLC). Five of the trials used the active ingredient in combination with another *Aspergillus flavus* strain and did not use the product label application rate. The remaining three trials, using *Aspergillus flavus* NRRL 21882 alone at rates as required by the guidelines or Agency, reduced the aflatoxin content of treated peanuts by 71% to 98%, compared to that of untreated controls (Master Record Identification (MRID) Number 46196805, BPPD Data Evaluation Record (DER) dated May 5, 2004, hereinafter referred to as ''BPPD DER 05/05/04;'' also Unit VII.D.). These multiyear efficacy studies of small plot field trials demonstrate that aflatoxin is reduced by 71% to 98% in peanuts treated with *Aspergillus flavus* NRRL 21882 (MRID 46196805; BPPD DER 05/05/2004).

*Aspergillus flavus* NRRL 21882 is not vegetatively compatible with known aflatoxin-producing strains of *Aspergillus flavus*, and thus, may not exchange genetic material with the latter. Other members of the *Aspergillus* group have been domesticated and are used to provide products for human consumption. Examples include *Aspergillus niger* as a source of alpha-galactosidase enzyme found in Beano, and *Aspergillus oryzae* as used for production of soy sauce and miso. *Aspergillus flavus* NRRL 21882 is identified by vegetative compatibility group (VCG) assays and characterized as non-aflatoxin-producing by standard thin layer chromatography (TLC) and HPLC procedures.

Product characterization data submitted in January 2004, for *Aspergillus flavus* NRRL 21882 confirmed the absence of aflatoxin metabolites (B1, B2, G1, and G2), and cyclopiazonic acid (CPA) MRID 46196801, BPPD DER dated 05/06/2004a, hereinafter referred to as ''BPPD DER 05/06/2004a''). In addition, the technical grade active ingredient (TGAI) manufacturer routinely conducts standard microbiological assays on *Aspergillus flavus* NRRL 21882 to monitor for bacterial and fungal human pathogens. Starting materials for End-use Product manufacture are also routinely analysed using appropriate quality assurance and quality control methods. Analytical methods exist for batches of *Aspergillus flavus* NRRL 21882 conidia to assay for potential aflatoxins, metabolites, CPA, bacterial contaminants, and bacterial pathogens, and are acceptable (BPPD DER, 05/06/2004a). The applicant must maintain appropriate quality assurance and quality control measures to ascertain product integrity and quality. Any batch of the pesticide with aflatoxins, unintentional metabolites, human pathogens or other contaminants above regulatory levels must be destroyed, as required for quality control.

EPA analyzes the data submitted by an applicant to determine the risks from aggregate exposure to pesticide residues. The following discussion of the evaluations of the submitted studies and information for *Aspergillus flavus* NRRL 21882 indicates that exposure to the pesticide is not likely to be greater than that which occurs normally to other ubiquitous *Aspergillus flavus* strains. As discussed below, reviews of the data submitted by the applicant indicate no toxicity, infectivity or pathogenicity in mammalian acute oral and pulmonary studies using *Aspergillus flavus* NRRL 21882 as test material. Thus, for the purposes of this tolerance exemption

action, EPA has concluded that there is a reasonable certainty that no harm to human adults, infants or children will result from aggregate exposure to residues of *Aspergillus flavus* NRRL 21882, including all anticipated dietary exposures and all other exposures for which there is reliable information.

1. *Acute oral toxicity/pathogenicity (MRID 45884002; OPPTS 885.3050; Guideline 152–30).* In an acute oral toxicity study conducted in male and female rats for 14 days, the test material contained 50% *Aspergillus flavus* NRRL 21882, and 50% of another Aspergillus strain. The male and female $LD_{50}$ for this test material was greater than 5,000 milligrams per kilogram (mg/per/kg). There were no mortalities, or gross abnormalities, upon necropsy. Anogenital staining, soft feces, and/or colored material around the nose was observed in some animals to Day 2. This study was considered acceptable for the material tested, which contained 50% *Aspergillus flavus* NRRL 21882 (MRID 45884002; BPPD Data Evaluation Record dated July 16, 2003, hereinafter referred to as BPPD DER 07/16/2003). A further test with the TGAI was required to fulfil Agency guideline requirements for the proposed use of products containing *Aspergillus flavus* NRRL 21882 as the active ingredient.

In a subsequent study, 23 male and 23 female rats were treated by gavage with the TGAI, *Aspergillus flavus* NRRL 21882, and observed for 22 days (MRID 46196802; BPPD DER dated May 06, 2004b, hereinafter referred to as BPPD DER 05/06/2004b). Body weights were recorded on days 1 (prior to dosing), 4, 8, 15, and 22. The test animals were observed for clinical signs of toxicity shortly after, and then hourly after dosing and twice on subsequent days. Fecal samples from Group 4 rats were collected on days 4, 8, 15, and 22. The animals were sacrificed and necropsied. Recovery of viable *Aspergillus flavus* NRRL 21882 from blood, organs, intestinal contents, and feces was determined by serial decimal dilution, plating and incubation at 30–35 °C for a minimum of 48 hours.

All animals gained weight during the study. No treatment-related clinical signs were observed. No abnormal findings were noted at any necropsy interval. Low numbers of viable *Aspergillus flavus* NRRL 21882 were recovered from the intestinal contents (stomach, small intestine, or cecum) of Group 1 animals on day 4. There was one male in Group 2 that had low numbers of viable test organism in the small intestine and cecum on day 8. Clearance from feces and cecum was established at day 14. Low numbers of viable *Aspergillus flavus* NRRL 21882 were found in the feces from Group 4 treated rats on day 4. No test organisms were detected in any organ or blood from any group. Under these conditions, insufficient viable test organisms were recovered from the test samples to determine rate of clearance. *Aspergillus flavus* NRRL 21882 does not appear to be toxic, infective, and/or pathogenic in rats, when dosed orally at 2.35–3.80 x $10^8$ CFU/animal. The pesticide was considered Toxicity Category IV. No further study is required for this guideline for the proposed use of the active ingredient (BPPD DER 05 /06/ 2004b) .

2. *Acute pulmonary toxicity/ pathogenicity (MRID 45884003; OPPTS 885.3150).* In a 22–day acute pulmonary toxicity/pathogenicity study (MRID 45884003), young adult rats (17 per sex) were administered a suspension of *Aspergillus flavus* NRRL 21882 in a single dose by intratracheal instillation at 5.77 – 7.20 x $10^7$ CFU per animal. No mortalities or evidence of pathogenicity due to *Aspergillus flavus* NRRL 21882 was seen. Transient respiratory signs (rales and/or irregular respiration) were observed in some treated rats up to 1 hour post-dosing. A single mortality on Day 2 probably was not due to *Aspergillus flavus* NRRL 21882 and may have been caused by the mechanism of dosing. There was no evidence of treatment-related effects on body weight or temperature, or that *Aspergillus flavus* NRRL 21882 proliferated or was infective in treated rats. Viable *Aspergillus flavus* NRRL 21882 was recovered in lung tissue in five of six animals sacrificed 1 hour post-dosing ($10^2$ – $10^6$ CFU per g tissue) and in the lungs of the single rat that died on Day 2 ($10^4$ CFU per gram). No viable organisms were found in any other tissues or organs examined during the remainder of the study. *Aspergillus flavus* NRRL 21882 was reported in feces of two of five males studied (12 and 357 CFU per gram) and 3 of 5 females studied (10, 77, and 64,400 CFU per gram) only on Day 4 and this was thought to occur from active muco-ciliary lung clearance of *Aspergillus flavus* NRRL 21882. The rate of clearance of viable *Aspergillus flavus* NRRL 21882 was not calculated because no viable organisms were recovered in any sample past the day of dosing, except from lungs of a single mortality on day 2. This study was considered acceptable and the pulmonary $LD_{50}$ is greater than 5.77 – 7.20 x $10^7$ CFU per animal (BPPD DER, 07/16/2003). No further study is required for this guideline.

3. *Acute inhalation (MRID 45884003; OPPTS 885.3150; Guideline 152–32).* Based on the low toxicity potential of the acute pulmonary toxicity/ pathogenicity test described above (MRID 45884003; OPPTS 885.3150, BPPD DER, 07/16/2003), an acute inhalation study was not required, per 40 CFR 158.740(c)(i). The granular End-use Product (EP) consists mainly of hulled barley (approximately 96%), which are larger than 10 micron respirable particles. While the *Aspergillus flavus* NRRL 21882 conidia may be less than 10 micron in size, they are formulated into the EP with food-grade inerts which function to adhere the conidia to the hulled barley. The food grade inerts are also not likely to pose an inhalation hazard based on their particle size and adherence to the carrier. Furthermore, this pesticide is to be applied once per season to commercial and agricultural fields, and not in residential settings. The low rates of application to the soil and the granular nature of the pesticide minimize non-occupational (as well as occupational) inhalation exposure, as discussed below. Nevertheless, a dust/ mist filtering respirator with NIOSH prefix N-95, R-95 or P-95 is required to mitigate against occupational exposure because of the microbial nature of the pesticide.

4. *Intravenous, intracerebral, intraperitoneal injection (OPPTS Harmonized Guideline 885.3200; MRIDs 45884004, 46223901; Guideline 152–33).* In an injection toxicity/pathogenicity study, young adult rats (three per sex) were given an intraperitoneal injection with a single dose-suspension of *Aspergillus flavus* NRRL 21882, suspended in a solution containing Tween, at approximately $10^7$ CFU per animal. All animals treated with the active substance died or were sacrificed for humane reasons on Day 5 – 6 when treated animals showed severe clinical signs (i.e. piloerection, hunched posture, abnormal gait or reduced body tone and underactive behavior) with lack of pyrogenic response. Similar post-mortem findings were observed in animals treated with either heat-inactivated or live *Aspergillus flavus* NRRL 21882 (i.e., white nodules and adhesions on a number of organs). High levels (greater than 10,000 CFU per g) of *Aspergillus flavus* NRRL 21882 were found in the spleen or liver of animals that died naturally and from the sole animal sacrificed on day 5. The $LD_{50}$ for the test material was considered less than $10^7$ CFU per animal (MRID 45884004; BPPD DER 07/16/2003). This study was considered supplemental,

with some effects probably due to the presence of Tween in the test dose. The claimed lack of infectivity in moribund or deceased rats is inconclusive due to an unknown etiology.

A second study, submitted in January 2004 (MRID 46223901), was conducted with 22 male and 22 female rats. Treated groups received 1.13 – 1.47 x $10^7$ CFU/rat *Aspergillus flavus* NRRL 21882 without Tween 80, by intraperitoneal injection (i.e. directly into the abdominal cavity of the animal to demonstrate the worst case scenario under which exposure may occur). One of the control groups received a sterile culture filtrate and other controls received either autoclaved test material, or no treatment. Animals were observed over a 22 day period. No test organisms were detected in any samples from the controls. Viable *Aspergillus flavus* NRRL 21882 was below detection (<10 CFU/mL) in blood at all sample times. At 1 hour after dosing, the test organism was detected in the kidneys, spleen, liver, heart, lungs, mesenteric lymph nodes and intestinal contents of treated rats, but was below detection (<10 CFU/mL) in the brain. By day 4, viable counts were still high in the spleen but decreased in other organs, while low levels of viable *Aspergillus flavus* NRRL 21882 were found in the brain of 3 out of 6 rats. By day 8, clearance was observed from all tissues in the males, and from most tissues except the spleen and mesenteric lymph nodes of females, which cleared by day 22. Clearance from intestinal contents and feces occurred in males prior to day 8, and in females by day 22. After the 22 day period, clearance had occurred from all tissues and samples (MRID 46223901).

One female treated with viable *Aspergillus flavus* NRRL 21882 was sacrificed on day 7 because of severe clinical effects. No unscheduled deaths were observed in any other group. Lower overall mean body weight gains in one group were not considered due to the viable test organism, but may have been attributable to experimental fecal sampling procedures only performed on this group (BPPD Review dated May 6, 2004a). The treated female who was euthanized on day 7 showed head tilting and leaning with an abnormal gait and circling. Other clinical signs included head tilting/leaning in two animals, repetitive head turning in one animal and limited use of rear limbs in one animal. The study director concluded that head tilting and circling in one male, and head tilting in one female, were probably related to the viable test organism (BPPD Review dated May 6, 2004a). Clinical signs did not clear from 3 of 6 remaining animals at study termination on day 22. Based on this study, which was considered acceptable by the Agency, *Aspergillus flavus* NRRL 21882 was considered infective and pathogenic to rats by intraperitoneal administration with an IP $LD_{50}$ > 1.13 – 1.51 x $10^7$ CFU/rat.

While the results of this IP test suggest potential infectivity via serious injury as reflected by an intraperitoneal route of exposure, it is important to note that clearance was observed from all tissues of surviving animals in this IP study, a finding consistent with all the other toxicology studies reported above. More importantly, the results of this IP test, while relevant to issues of occupational exposure, are not relevant to this tolerance exemption determination, which focuses on non-occupational exposure. Indeed, the acute oral studies reported above, which are directly relevant to an analysis of dietary, non-occupational exposure, indicate no infectivity or pathogenicity. In addition, if the pesticide is used as labeled (approximately 1 gram active ingredient per acre), much lower levels of non-occupational exposure are expected when peanuts are consumed than can be extrapolated from the IP test, in which the test substance was administered directly into the abdominal cavity at a rate of $10^7$ CFU/animal. Moreover, the pesticide is not to be applied to residential areas, but rather only to commercial peanut fields, and any potential pesticide residues on treated peanuts are further mitigated by processing as described in Unit IV. Furthermore, the inerts are food grade and cause the active ingredient to adhere to the carrier (hulled barley), thus minimizing pesticide drift or transfer of residues. Finally, and as mentioned previously, *Aspergillus flavus* species occur naturally in the environment and non-occupational or residential exposures are expected to be no greater than that expected from background *Aspergillus flavus* levels. All of these factors and considerations minimize non-occupational exposure and allow the Agency to conclude that the dietary risks posed by the use of this pesticide are likely to be minimal and that there is a reasonable certainty that no harm will result from use of this microbial agent.

It should be clarified, however, that in connection with the Agency's consideration of *Aspergillus flavus* NRRL 21882 for purposes of registration, as distinct from this tolerance exemption action, the Agency has considered the worst case scenario in which similar types of IP occupational exposures may occur. The relevance of this IP test is to seriously injured workers or to those who may come in contact with the pesticide through a similar route of exposure intraperitoneally. As previously stated, the granular pesticide is applied at a very low rate to the soil with little or no pesticide drift. Worker exposure is minimized by the use of PPE that includes long sleeve shirt, long pants, shoes, socks, waterproof gloves, eye protection and an appropriate dust/mist filtering respirator with the NIOSH prefix N-95, P-95, or R-95. Early-entry workers, engaged in post-application activities, must wear this PPE when entering treated fields during the 4 hour Restricted-Entry Interval (REI).

5. *Hypersensitivity incidents (MRID 46196804; OPPTS Harmonized Guideline 870.3400; Guideline 152–37).* Personnel at the USDA Agricultural Research Service National Peanut Research Laboratory have been working with different strains of *Aspergillus flavus* since 1987 and have performed numerous studies in laboratory and field settings with the active ingredient, *Aspergillus flavus* NRRL 21882, with no reported adverse effects. In addition, there are no data that suggest this strain is more or less likely to induce hypersensitivity than other naturally occurring strains of *Aspergillus flavus* (MRID 46196804; BPPD DER 05/06/2004c). However, in the future and in order to comply with FIFRA section 6(a)(2) requirements (see also 40 CFR 159.152), any incident of hypersensitivity associated with the use of this pesticide must be reported to the Agency.

6. *Data waivers.* i. A request was submitted to waive data for the acute oral toxicity/pathogenicity study for the EP, afla-guardT (OPPTS 885.3050; Guideline 152–30). The waiver request was based on the acceptable results of the acute oral toxicity/pathogenicity studies conducted with the TGAI (summarized above) and the nature of the inerts, which are exempt from the requirement of a tolerance according to 40 CFR 180.950(a) and 40 CFR 180.1001 (redesignated as 40 CFR 180.900, 180.905, 180.910, 180.920, and 180.930, April 28, 2004, 69 FR 23113). Since the EP contains 0.01% of the TGAI, this rationale was acceptable to the Agency and the data requirement for the acute oral toxicity/pathogenicity study for the EP was waived (BPPD Memorandum, May 28, 2004). In addition, as discussed above, an acute oral study conducted with test material containing 50% *Aspergillus flavus* NRRL 21882 (MRID 45884002; BPPD DER 07/16/2003) and the same inerts as the test material was considered acceptable. No further data

are required for this guideline for the proposed use of the EP.

ii. Data waivers were also requested for the following studies for both the TGAI and the EP:

a. Acute dermal toxicity/pathogenicity (OPPTS Harmonized Guideline 885.3100; Guideline 152–31).

b. Primary dermal irritation (OPPTS Harmonized Guideline 870.2500; Guideline 152–34).

c. Primary eye irritation (OPPTS Harmonized Guideline 870.2400; Guideline 152–35).

d. Hypersensitivity Study (OPPTS Harmonized Guideline 870.3400; Guideline 152–37).

e. Immune Response (OPPTS Harmonized Guideline 880.3800; Guideline 152–38).

Application of the EP, hulled barley inoculated with *Aspergillus flavus* NRRL 21882, for the guideline tests to study primary dermal irritation for the EP is impractical. Furthermore, non-occupational dermal or inhalation exposure, or exposures via any of the routes covered by the guideline studies listed directly above, are expected to be no greater than that which occurs naturally for the following reasons. In mixing/loading and application experiments, spores of the pesticide are not released from the carrier and did not increase in the air space (MRID 46196804; BPPD DER dated May 06, 2004c, hereinafter referred to as BPPD DER 06/06/2004c). In addition, data from an unpublished study showed that the total level of *Aspergillus* strains in the soil increases after product application, but then declines and stabilizes, and that the total amount of *Aspergillus* strains in the crop is unaffected (MRID 46196804; BPPD DER 06/06/2004c. Thus, levels of *Aspergillus* strains are not expected to be greater than those which normally and naturally exist as a result of treatment of peanut fields with this pesticide.

Data from the toxicology tests reported above indicate no toxicity or pathogenicity when the active ingredient is administered orally or via the pulmonary route. And while there is the potential for infectivity or pathogenicity after intraperitoneal injection, that study also demonstrates clearance of the test organism from all tissue samples by the end of the study. Results from these supporting toxicology tests indicate that test mammalian immune systems can clear the organism (see Unit III.1. and 2.). In addition, no adverse effects were reported by workers or researchers who handled the active ingredient during the experimental phase. Moreover, the pesticide is applied at a low rate of approximately 0.9 gram to 1 gram active ingredient per acre once during the growing season, and the use of PPE will protect workers from exposure to the pesticide (see Unit III.3.). Based on these considerations, the justifications in support of the request to waive data for acute dermal toxicity/pathogenicity, primary dermal irritation, the hypersensitivity study, and immune response were acceptable (BPPD DER 05/06/2004c).

The rationale for the request to waive data for the primary eye irritation study was supplemental but upgradeable. The EP is applied once during the season at approximately 1 gram of active ingredient per acre, and drift is expected to be minimal because of the adherence of the pesticide to the carrier. Provided eye protective equipment to mitigate eye exposure is on the label for the proposed use, this data waiver request is granted. Additional data or justification must be submitted to meet Agency guideline requirements, should the applicant wish to amend the registration to remove PPE for eye protection from the label.

7. *Subchronic, chronic toxicity and oncogenicity, and residue data.* Based on the data generated in accordance with the Tier I data requirements set forth in 40 CFR 158.740(c), the Tier II and Tier III data requirements were not triggered and, therefore, not required in connection with this action. In addition, because the Tier II and Tier III data requirements were not required, the residue data requirements set forth in 40 CFR 158.740(b) also were not required.

## IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

### *A. Dietary Exposure*

1. *Food.* As discussed above, *Aspergillus flavus* NRRL 21882 is neither toxic nor infective as determined by studies in rats, when dosed orally at 2.35 – 3.80 x $10^8$ CFU/animal (MRID 46196802; BPPD DER 05/06/2004). All known uses of peanuts for food use require roasting, shelling, or blanching. Residues of the active ingredient, *Aspergillus flavus* NRRL 21882, are not likely to survive these methods. In addition, the fungal active ingredient and potential metabolites are not likely to separate into peanut oil due to the high heat and solvents used in processing. Thus, transfer of viable residues of *Aspergillus flavus* NRRL 21882 via treated peanuts is not expected.

Aflatoxins, potential metabolites associated with some strains of *Aspergillus flavus*, are not produced by this active ingredient. Indeed, as discussed above (Unit III.), field studies demonstrate that *Aspergillus flavus* NRRL 21882 actually reduced the aflatoxin content of treated peanuts by 71% to 98%, compared to that of untreated controls (MRID 46196805; BPPD DER 05/06/2004). Should any potential contamination by aflatoxin occur through use of this pesticide, a safety net already exists in that treated commodities for human and animal consumption must meet aflatoxin regulatory levels set by the USDA and the Food and Drug Administration (FDA). The processing methods mentioned above are also measures used in the industry to mitigate against the potential for aflatoxin contamination.

As mentioned above, neither the active ingredient nor its potential metabolites are expected to separate out in peanut oil during production. The residues of the active ingredient and its potential metabolites on peanut hay are not expected to be different in the treated fields than in untreated fields. These data support the claim that dietary exposure to treated peanuts is not likely to increase the levels of aflatoxins in treated commodities, but rather to reduce exposure to those potent liver carcinogens. Finally, as previously described, an acute oral study demonstrates no toxic or pathogenic effects when rats are treated with the fungal active ingredient by oral gavage (Unit III.1.).

2. *Drinking water exposure.* Exposure to *Aspergillus flavus* NRRL 21882 in drinking water is not likely to be greater than current/existing exposures to *Aspergillus flavus* strains generally. Potential risks via exposure to drinking water or runoff are adequately mitigated by, among other things, percolation through soil. The pesticide is to be applied to drought ridden areas to decrease the proliferation of the aflatoxin-producing strains which they displace. It is not to be directly applied to crops grown in water, and is not likely to accumulate in drinking water, if used as labeled. Thus, exposure via drinking water from the proposed use of this non-aflatoxin-producing strain of *Aspergillus flavus* is not likely to pose any incremental risk to adult humans, infants and children. In fact, displacement of the toxigenic strains of

*Aspergillus flavus* by this non-aflatoxin-producing strain may decrease exposure and risk to aflatoxin, a potent liver carcinogen.

*B. Other Non-Occupational Exposure*

Non-occupational exposure is not likely to be greater than that which normally exists to the naturally occurring *Aspergillus flavus* species as discussed below.

1. *Dermal exposure*. Potential non-occupational dermal exposure to *Aspergillus flavus* NRRL 21882 is unlikely because the use sites are commercial and agricultural, not residential, and because of the granular nature of the pesticide, which minimizes pesticide drift. As discussed earlier (see Unit III.), lack of hypersensitivity incidents, low application rates, and the return of levels of *Aspergillus flavus* to background levels shortly after germination, leads EPA to conclude that this pesticide poses minimal risk to human populations via non-occupational dermal exposure, which exposure is expected to be no greater than the existing exposure to *Aspergillus flavus* at current levels.

2. *Inhalation exposure*. Non-occupational inhalation exposure is not likely to pose a hazard. This determination is based on the pulmonary study which demonstrated that the pesticidal active ingredient is neither toxic nor infective to mammals when instilled into rats intratracheally (see Unit III.2., above). As discussed above, pesticide drift is expected to be minimal based on the granular nature of the pesticide, and on a formulation in which the active ingredient is expected to adhere to the carrier, primarily hulled barley. In addition, the low application rate (approximately or less than 0.002 pound or 1 gram active ingredient per acre) to the commercial and agricultural crop, peanut, and the method of soil application suggest minimal exposure potential. The low pulmonary and oral toxicity/pathogenicity potential, indicate that non-occupational inhalation exposure and risk are likely to be no greater than that which normally exists.

Furthermore, *Aspergillus* species occur naturally in the environment and the application of this pesticide is expected to displace the aflatoxin-producing strains of the fungi, thus decreasing risks posed by the public health hazard, aflatoxins.

## V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires the Agency to consider the cumulative effect of exposure to *Aspergillus flavus* NRRL 21882 and to other substances that have a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. Based on tests in mammalian systems, *Aspergillus flavus* NRRL 21882 does not appear to be toxic or pathogenic to humans. Another non-aflatoxin-producing strain, *Aspergillus flavus* AF36, is conditionally registered for use on cotton, but not on peanuts. There are no other registered pesticide products containing *Aspergillus flavus* NRRL 21882, and other *Aspergillus flavus* strains abound naturally in the environment. Moreover, the displacement of the aflatoxin-producing strain of *Aspergillus flavus* by *Aspergillus flavus* NRRL 21882 may reduce aflatoxin contamination of peanuts. Based on the low toxicity potential of *Aspergillus flavus* NRRL 21882, the fact that it is non-aflatoxigenic, and the safety net already in place to monitor food/feed commodities for aflatoxins (see Unit IV.A.1.), no cumulative or incremental effect is expected from the use of *Aspergillus flavus* NRRL 21882 on peanuts.

## VI. Determination of Safety for U.S. Population, Infants and Children

There is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposures to residues of *Aspergillus flavus* NRRL 21882, as a result of its use as an antifungal agent on peanuts. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there appears to be no potential for harm, from this fungus in its use as an antifungal agent on peanuts via dietary exposure since the organism is non-toxic and non-pathogenic to animals and humans. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity for acute oral and pulmonary effects with no toxicity or infectivity at the doses tested (see Unit III. above). Moreover, non-occupational inhalation or dermal exposure is expected to be no greater than that which currently exists (see Units IV. and V.).

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional ten-fold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety), which are often referred to as uncertainty factors, are incorporated into EPA risk assessment either directly, or through the use of a margin of exposure analysis, or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk. In this instance, based on all the available information (as discussed in detail above), the Agency concludes that the fungus, *Aspergillus flavus* NRRL 21882, is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children and adults when *Aspergillus flavus* NRRL 21882 is used as labeled, the Agency has determined that the additional margin of safety is not necessary to protect infants and children, and that not adding any additional margin of safety will be safe for infants and children. As a result, EPA has not used a margin of exposure (safety) approach to assess the safety of *Aspergillus flavus* NRRL 21882.

## VII. Other Considerations

*A. Endocrine Disruptors*

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen-and thyroid systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority, to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

At this time, the Agency is not requiring information on the endocrine effects of this active ingredient, *Aspergillus flavus* NRRL 21882. The Agency has considered, among other relevant factors, available information concerning whether the microorganism

may have an effect in humans similar to an effect produced by a naturally occurring estrogen or other endocrine effects. There is no known metabolite that acts as an ''endocrine disrupter'' produced by this microorganism. The submitted toxicity/infectivity or pathogenicity studies in the rodent (required for microbial pesticides) indicate that, following oral and pulmonary routes of exposure, the immune system is still intact and able to process and clear the active ingredient (see Unit III.). In addition, based on the low potential exposure level associated with the proposed single, seasonal, soil application of the pesticide at the pre-pegging stage of peanuts, the Agency expects no adverse effects to the endocrine or immune systems. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this Final Rule for *Aspergillus flavus* NRRL 21882.

*B. Analytical Method(s)*

*Aspergillus flavus* NRRL 21882 occurs naturally in the soil and may be associated with peanuts regardless of pesticide treatment. Thus, there is a great likelihood of prior exposure for most, if not all, individuals and the increase in exposure due to this proposed microbial pesticide would be negligible. In addition, it likely is not possible to differentiate between the naturally occurring residues of *Aspergillus flavus* NRRL 21882 and those residues attributable to *Aspergillus flavus* NRRL 21882, the pesticide. Moreover, the acute oral studies discussed above demonstrate that the active ingredient does not pose a dietary risk. For these reasons, the Agency has concluded that an analytical method to detect residues of this pesticide on peanuts for enforcement purposes is not needed. Treated peanut food/feed commodities, however, must meet the requirements for aflatoxins and metabolites as regulated by the FDA and the USDA.

Nevertheless, the Agency has concluded that for analysis of the pesticide itself, the methods discussed above (see Unit III.) are acceptable for enforcement purposes for product identity of *Aspergillus flavus* NRRL 21882 (VCG analysis) and its metabolites (TLC and HPLC). VCG analysis and nutrient utilization tests are used to screen starter cultures to identify the non-aflatoxin-producing *Aspergillus flavus* NRRL 21882 strain. Starter cultures of *Aspergillus flavus* NRRL 21882 are also selected on the basis of the lack of aflatoxin as monitored by standard thin layer chromatography (TLC) and HPLC procedures. Other appropriate methods are required for quality control to assure product characterization, the control of human pathogens and other unintentional metabolites or ingredients within regulatory limits, and to ascertain storage stability and viability of the pesticidal active ingredient.

*C. Codex Maximum Residue Level*

There is no Codex maximum residue level for residues of *Aspergillus flavus* NRRL 21882.

*D. Efficacy Data (MRID 46196805)*

PR Notice 2002–1 lists aflatoxin as a public health hazard, for which product performance or efficacy data are required according to 40 CFR 158.202(i). To demonstrate that this pesticide may reduce aflatoxin-producing strains and does not increase *Aspergillus flavus* populations above background levels, the applicant provided product performance or efficacy data from multiple years of studies monitoring peanuts and its byproducts. Aflatoxin, one of the most potent human carcinogens, is the metabolite of concern produced by the target pest, aflatoxin-producing strains of *Aspergillus flavus*. As such, the Agency considers aflatoxin a public health hazard. In the drought-ridden soils of peanut-producing areas, especially in the dry regions, the aflatoxin-producing strains are prominent. Few alternatives, if any, exist to displace aflatoxin-producing *Aspergillus flavus* strains from peanuts and other crops. Costly irrigation, or treating peanuts by roasting, or blanching or processing peanuts into peanut oil are among the methods used to decrease the effects of aflatoxin-producing strains of *Aspergillus flavus* on peanuts. *Aspergillus flavus* NRRL 21882 is proposed to displace toxigenic *Aspergillus flavus* strains that are present and colonize the peanut during pegging or below ground (possibly by vector transmission) if conditions favorable to infection are present during the growing season - namely drought conditions without sufficient irrigation or presence of nematode or insect vectors that penetrate the peanut shell. The applicant has provided product performance data to demonstrate the efficacy of the pesticide during three small scale field trials in which the proposed EP was used. Aflatoxin in treated peanuts is decreased by 71% to 98% in comparison to untreated controls demonstrating displacement of the aflatoxin-producing strains from the treated peanuts. (BPPD DER, 05/05/2004).

## VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0164 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 30, 2004.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver

your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Tolerance fee payment*. If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(I) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it ''Tolerance Petition Fees.''

EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0164, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp–docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this 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). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 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 directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, 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.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and

responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

**X. 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 this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 21, 2004.

**James Jones,**

*Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1254 is added to subpart D to read as follows:

**§ 180.1254 Aspergillus flavus NRRL 21882 on peanut; exemption from requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* NRRL 21882 on peanut and its food/feed commodities.

[FR Doc. 04–14609 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Parts 385, 386, and 390

**[Docket No. FMCSA–97–2180]**

**RIN 2126–AA07**

## Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Motor Carrier Safety Administration is establishing a national safety permit program for motor carriers that transport certain hazardous materials in interstate or intrastate commerce. This final rule implements provisions of Federal hazardous materials transportation law. The rule will promote safe and secure transportation of the designated hazardous materials and thereby improve motor carrier safety.

**DATES:** *Effective:* This rule is effective: July 30, 2004. *Compliance:* Compliance with this rule is required beginning January 1, 2005. The publication incorporated by reference in this final rule is approved by the Director of the Federal Register as of July 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Johnsen, (202) 366–4111, Hazardous Materials Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., EST, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**List of Topics**

I. Background
II. Summary of Final Rule
III. Analysis of Comments
A. General Comments
B. Preemption of State Programs
C. Qualification Based on State Permits
D. List of Materials (Applicability)
E. Duplication of Other Agency Programs
F. Obtaining a Safety Rating
G. Pre-Trip Inspections
H. Route Plans
I. Communications Plans
J. Permit Documentation
K. Enforcement
L. Cost-Benefit Analysis
IV. Rulemaking Analyses and Notices

### I. Background

Federal hazardous materials transportation law, 49 U.S.C. 5101 *et seq.*, was enacted ''to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce.'' The Federal Motor Carrier Safety Administration (FMCSA), formerly part of the Federal Highway Administration (FHWA), is responsible for implementing certain provisions of this law, including Sec. 5105(e), Inspections of motor vehicles transporting certain material; Sec. 5109, Motor carrier safety permits; and Sec. 5119, Uniform forms and procedures.

Section 5109 requires the U.S. Department of Transportation (DOT) to issue regulations for safety permits for transporting certain hazardous materials. A motor carrier must hold a safety permit issued by DOT and keep a copy of the permit or other proof of its existence in the vehicle, in order to transport certain hazardous materials in commerce or cause such materials to be transported in commerce by motor vehicle (49 U.S.C. 5109(a)).

FHWA published three notices in the 1990s to enact a permitting rule. FHWA's notice of proposed rulemaking (NPRM) of June 17, 1993 (58 FR 33418) was followed by notices in 1996 (61 FR 36016, Jul. 9, 1996) and 1998 (63 FR 15362, Mar. 31, 1998) addressing the role of States in implementing a unified permitting program State by State. FHWA's June 1993 NPRM formed the basis of a supplemental notice of proposed rulemaking (SNPRM) published by FMCSA on August 19, 2003 (68 FR 49737), with a correction notice published September 11, 2003 (68 FR 53535). The proposals in the SNPRM were based on statutory requirements and on public comments to the previous **Federal Register** notices. For a complete discussion of the prior proceedings, including the notices published by FMCSA and FHWA, please see the background discussion in the SNPRM.

The major proposals in the SNPRM are described below.

*Hazardous Materials for Which a Safety Permit Would Be Required*

FMCSA proposed that a motor carrier would be required to hold a safety permit in order to transport in commerce any of the four hazardous materials specified in 49 U.S.C. 5109(b), in the same threshold quantities for which the carrier must submit a registration statement and pay a registration fee under 49 U.S.C. 5108(a)(1)(A)–(D). The cost-benefit analysis for the rulemaking considered two other options: (a) an expanded list of materials that are sometimes subject to additional regulations, such as infectious substances and Hazard Zone B toxics, and (b) all materials subject to

the Research and Special Programs Administration (RSPA) security requirements.

*Intrastate and Foreign Motor Carriers*

In the proposed rule, an intrastate carrier would be required to apply for a USDOT number and undergo a compliance review. The safety rating issued by FMCSA to an intrastate carrier would be used only for purposes of issuing a safety permit. Likewise, an intrastate carrier would not be required to comply with any Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 390–399) to which it is not already subject.

The definition of ''interstate commerce'' includes foreign commerce. Therefore, Canada- and Mexico-domiciled motor carriers transporting hazardous materials (HM) required to be permitted in the United States would be subject to the requirements proposed in the SNPRM.

*Application Procedures*

FMCSA proposed to create a new form (Form MCS–150B) for a motor carrier to provide the limited additional information required for issuance of a safety permit. FMCSA proposed to phase in the safety permit program beginning January 1, 2005. The actual compliance date would depend on when the carrier is required to complete the MCS–150 under § 390.19(a). FMCSA did not propose to charge a fee for applying for a safety permit, but stated that it may consider the need to assess an application fee in the future, especially if the safety permit program is expanded to apply to motor carriers of additional types and quantities of hazardous materials.

*Conditions for Issuing a Safety Permit*

FMCSA proposed in the SNPRM to require that a motor carrier have a ''Satisfactory'' safety rating in order to obtain a safety permit. Appendix B to 49 CFR part 385 contains an explanation of the safety rating process including a list of violations that FMCSA considers ''acute'' (where noncompliance is so severe as to require immediate compliance) and ''critical'' (where noncompliance relates to management and/or operational controls). The SNPRM also proposed additions to the list of acute and critical violations in 49 CFR part 385, appendix B, paragraph VII.

FMCSA proposed two further conditions for issuing a safety permit: (1) the motor carrier must show that it has a satisfactory security program, and (2) the motor carrier must be (and remain) registered with RSPA. A satisfactory security program would apply to motor carriers transporting in commerce hazardous materials listed in the SNPRM.

Finally, FMCSA also proposed issuing a temporary safety permit, valid for up to 270 days, to a motor carrier that does not have a safety rating but certifies it has a satisfactory security program and is operating in full compliance with the Hazardous Materials Regulations (HMRs; 49 CFR parts 171–180); the FMCSRs; comparable State regulations, if applicable; and minimum financial responsibility requirements in 49 CFR part 387 or in State regulations, as applicable. However, FMCSA would not issue a temporary safety permit to a motor carrier that, as indicated in the Motor Carrier Management Information System (MCMIS), has a crash rate in the top 30 percent of the national average; has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average; or is listed on FMCSA's SafeStat A, B, C, or D lists.

*Permit Number and Evidence in the Vehicle*

FMCSA proposed that the carrier be required to maintain in the vehicle transporting a hazardous material a copy of the safety permit or another document (including a shipping paper) showing the permit number. The carrier's safety permit number would not be required to appear on the shipping paper.

*Written Route Plan and Communication*

In the SNPRM, we proposed to revise 49 CFR 397.67(d) to require the carrier, or its agent, to prepare and provide its driver with a written route plan covering any shipment of a toxic-by-inhalation (TIH) material or liquefied natural gas for which a safety permit is required, in addition to all shipments of Division 1.1, 1.2, and 1.3 materials. FMCSA proposed (in § 385.415) that the written route plan be carried in the vehicle and followed, unless an alternate route is required by a law enforcement officer or emergency conditions. A phone number would need to be provided where a company official or representative could provide route plan and other information about the shipment to the caller. This phone number would have to be maintained during the course of transportation of permitted loads.

In addition, FMCSA proposed a communications plan requiring the driver to communicate with the carrier at least once every two hours and any time there is a deviation from the written route plan. The motor carrier would be required to contact law enforcement officials if there had been no communication from its driver for more than three hours.

Finally, FMCSA proposed to require the motor carrier to maintain a record of all communications with the vehicle driver during transportation of a hazardous material for which a safety permit is required. The record would be required to contain the name of the driver, identification of the vehicle, the hazardous material(s) being transported, the date and time of each communication, and each period of more than two hours without a communication with the driver, including a statement of the facts or conditions that prevented communication for more than two hours.

*Pre-Trip Inspections*

To implement the pre-trip inspection requirement in 49 U.S.C. 5105(e), FMCSA proposed inspection standards similar to those contained in the North American Standard (NAS) Level VI Inspection developed by the Commercial Vehicle Safety Alliance (CVSA) for radioactive shipments. The pre-trip inspection would have to be performed by a government inspector—that is, an inspector employed by or under contract to a Federal, State or local government. The inspection would be required to cover all applicable requirements in the HMRs and in the FMCSRs—including 49 CFR parts 383 (commercial driver's license), 391 (driver qualifications), 395 (hours of service), 393 and 396 (vehicle condition)—or compatible State regulations. The inspection also would be required to cover provisions in the HMRs on the transportation of radioactive materials (49 CFR parts 171, 172, 173, and 178) and registration (49 CFR part 107, subpart G).

*Denial, Suspension, or Revocation of a Safety Permit*

FMCSA proposed that a safety permit would be subject to suspension or revocation if a carrier fails to maintain its ''Satisfactory'' safety rating, or under other specified circumstances. These include: (1) Failure to submit a renewal application or providing any false or misleading information on a required application form; (2) failure to maintain a satisfactory security plan; (3) failure to comply with an out-of-service order; (4) failure to comply with the FMCSRs, HMRs, compatible State requirements, or an order issued under any of these, in a manner that shows the carrier is not fit to transport the hazardous materials for which a safety permit is required; (5)

loss of the carrier's operating rights; and (6) suspension of the carrier's registration for failure to pay a civil penalty or to abide by a payment plan.

The SNPRM proposed procedures for administrative review of a denial, suspension, or revocation of a safety permit. A motor carrier's rights to administrative review would depend on the reason for denial, suspension, or revocation.

## II. Summary of Final Rule

This final rule amends the FMCSRs to incorporate the following new provisions for a safety permit program:

*Hazardous Materials for Which a Safety Permit Would Be Required*

The final rule adopts a slightly revised list comprised of hazardous materials requiring a safety permit. The new list compiles the statutory list and additional explosive and toxic-by-inhalation (TIH) materials in certain quantities as appropriate. Specifically, a permit will be required for:

1. Radioactive Materials—A highway route-controlled quantity of Class 7 materials.
2. Explosives—More than 25 kg (55 pounds) of a Division 1.1, 1.2 or 1.3 material, or an amount of a Division 1.5 material requiring a placard under 49 CFR part 172, subpart F.
3. Toxic-by-Inhalation (Division 2.3 and 6.1) Materials—Hazard Zone A materials in a packaging with a capacity greater than 1 liter (0.26 gallons); a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); or a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500) gallons.
4. A shipment of compressed or refrigerated liquid methane or natural gas or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

*Intrastate and Foreign Motor Carriers*

The safety permit program will apply to intrastate as well as interstate carriers. In addition, the program will apply to foreign carriers. Intrastate carriers must apply for a USDOT number and will be subject to a compliance review. The safety rating issued to the intrastate carrier is for the safety permit process only and, unless specifically noted, will be calculated based on State violations equivalent to FMCSA's list of critical and acute violations. Beyond the requirements to obtain a USDOT number and submit to a compliance review, the intrastate carrier seeking a safety permit will generally not be subject to any additional safety regulations under the FMCSRs (such as driver qualification requirements in 49 CFR part 391) that did not apply to such carriers before this final rule. Several sections of the regulations are being modified to include intrastate motor carriers subject to the permitting requirements. This revised text includes § 385.3 (definitions), § 385.5, and Appendix B to Part 385.

*Application Procedures*

The safety permit program will require hazmat carriers to complete Form MCS–150B in lieu of Form MCS–150. In addition, permitted carriers must complete the MCS–150B in lieu of the MCS–150 to renew both their permit and their USDOT number, according to the USDOT number renewal schedule. Implementation of the safety permit program will be phased in beginning January 1, 2005. The actual compliance date will depend on the schedule in § 390.19. A motor carrier not involved in the transportation of a permitted material on January 1, 2005, will need to apply for and receive a safety permit before it can transport any permitted material. FMCSA will not charge a fee for applying for a safety permit under this final rule.

*Conditions for Issuing a Safety Permit (Security Program)*

Motor carriers must have a ''Satisfactory'' safety rating in order to obtain a safety permit. In addition, until we complete a compliance review, FMCSA will not issue a safety permit to a motor carrier that has, as indicated in the agency's Motor Carrier Management Information System (MCMIS), a crash rate in the top 30 percent of the national average, or a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average. A motor carrier must have a satisfactory security program in place and must be registered with RSPA. A satisfactory security program consists of: (1) A security plan as prescribed in 49 CFR part 172, subpart I; (2) a means of communication that will enable the vehicle operator to contact the motor carrier during the course of transportation; and (3) a means of providing hazardous materials employees with security training as required in 49 CFR part 172.

FMCSA will adopt the proposed changes to the list of acute and critical violations in 49 CFR part 385, appendix B, paragraph VII, with some corrections.

Temporary safety permits will be issued to motor carriers without safety ratings, but only for a period of 180 days. In addition, a temporary safety permit will only be issued to companies that certify they have a satisfactory security program and are operating in full compliance with the HMRs, FMCSRs, or comparable State regulations. FMCSA will not issue a temporary safety permit to a motor carrier that has, as indicated in MCMIS, a crash rate in the top 30 percent of the national average, or a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average.

*Permit Number and Evidence in the Vehicle*

We are requiring that the carrier's safety permit number appear on the shipping paper, on a copy of the safety permit, or on other documents maintained in the vehicle transporting a hazardous material requiring a safety permit.

*Written Route Plan and Communication*

We are maintaining the written route plan required for radioactive materials set forth in 49 CFR 397.101, and for explosives in § 397.19 of the same title. Written route plans will not be expanded to include the other materials that require safety permits. However, we are requiring that while a permitted material is in transportation, the driver must have the telephone number of an employee or representative of the motor carrier who is able to determine whether the vehicle is on the general route for delivery of the material as expected by the company. The phone number must be made available to law enforcement officials upon request.

We are requiring companies holding safety permits to develop a communications plan that allows for the periodic tracking of the shipment. This may be accomplished either through phone calls or radio calls placed by the driver or through an electronic monitoring or tracking system. At a minimum, the communication plan must require contact from the driver or electronic tracking equipment at the beginning and end of transportation (during loading or unloading of a permitted material) or at the beginning and end of each duty period. If the driver is making the calls, he or she should make them during periodic rests (taken for reasons other than making the call), or at the beginning and end of each duty period while not operating the vehicle or obtaining necessary rest. If the company has any reason to suspect the shipment has been stolen, diverted, or otherwise off-route because of a lack or delay of contact from the

driver, or for other reasons, then the company should contact the Transportation Security Administration's (TSA) Transportation Security Coordination Center at (703) 563–3236 or (703) 563–3237.

We are also requiring that a record of communications be kept, by either the driver (for example, recorded in the logbook) or the company, containing the time of the call and the shipment location. These records must be kept, either physically or electronically, for at least six months at the company's principal place of business and must be readily available to employees.

*Pre-Trip Inspections*

We are adopting the proposal requiring that shipments containing highway route-controlled Class 7 (radioactive) materials undergo a pre-trip inspection. The standards for this inspection are contained in the North American Standard (NAS) Level VI Inspection for Radioactive Shipments. The pre-trip inspection must be performed by a Federal, State, or local government inspector, or an inspector under contract with a Federal, State, or local government. The inspector must have completed an appropriate training program of at least 104 hours, including at least 24 hours of training in conducting radiological surveys on inspecting vehicles transporting highway route-controlled quantity (HRCQ) radioactive materials. The inspection must cover all applicable requirements in the HMRs; the FMCSRs—including 49 CFR parts 383 (commercial driver's license), 391 (driver qualifications), 395 (hours of service), 393 and 396 (vehicle condition)—or compatible State regulations; and provisions in the HMRs on the transportation of radioactive materials (49 CFR parts 171, 172, 173 and 178) and registration (49 CFR part 107, subpart G).

*Denial, Suspension, or Revocation of a Safety Permit*

We are implementing a process to deny, suspend, and revoke safety permits in this final rule. A safety permit will be denied if the carrier does not have a ''Satisfactory'' safety rating, or if any of the criteria for suspension or revocation are discovered in the application process. A safety permit will be suspended or revoked when the carrier: (1) Does not have a ''Satisfactory'' safety rating; (2) fails to submit a renewal application or provides false or misleading information on a required application form; (3) fails to maintain a satisfactory security plan; (4) fails to comply with an out-of-service order; (5) fails to comply with the FMCSRs, with the HMRs or compatible State requirements, or with an order issued under any of these regulations showing the carrier is not fit to transport the permitted hazardous materials; (6) loses its operating rights; or (7) has its registration suspended for failure to pay a civil penalty or abide by a payment plan. The decision to suspend or revoke a permit will be based on the severity of the violations.

The first time a motor carrier is found to be in violation of any of these requirements, the permit will be suspended until the problems are rectified. The next time a company is found to be in violation of these requirements, the permit will be revoked for 365 days.

## III. Analysis of Comments

In response to the SNPRM, FMCSA received 27 written comments from State governments, motor carriers, associations, a public interest group, and individuals. These comments have been considered in the preparation of this final rule, as discussed below. The comments have been arranged by topic.

*A. General Comments*

Several commenters, including American Chemistry Council (ACC), Air Products and Chemicals, Inc. (Air Products), American Trucking Associations (ATA), American Pyrotechnics Association (APA), and Baker Petrolite Corporation (BPC), praise the agency for the intended effect of the SNPRM to promote the safe and secure transportation of the designated hazardous materials and thereby enhance motor carrier safety. However, none of the commenters believe the proposal should be finalized without further changes. Most of these comments are focused on the additional burden the proposed rules would place on the industry. Air Products and Department of California Highway Patrol (CHP) argue that the safety permit itself will not improve public safety. Air Products states it is the implementing requirements necessary to satisfy the intent of the safety permit that are important, and that these requirements must be clearly defined, effective, and workable for the motor carrier. The Michigan Department of Environmental Quality (Michigan DEQ) questions whether the proposed safety permit rule would have a significant impact on the safe transportation of hazardous materials.

*FMCSA Response:* We agree that the supporting requirements, and the ability to suspend, revoke, or deny a permit for companies found negligent in their responsibilities to transport hazmat safely and securely, provide the foundation for an effective permit program. We recognize the importance of constructing a permit program that minimizes complexity and maximizes security and safety benefits. FMCSA disagrees with the assertion that the permit by itself will not improve safety. The issuance of a permit is tied to a company's safety performance. Companies with a record of excessive safety concerns will not be issued a permit.

The Michigan DEQ, the National Small Shipments Traffic Conference (NASSTRAC), the Institute of Makers of Explosives (IME), APA, and CHP believe that an additional permitting program will only add to the burden on the industry by duplicating the existing permit efforts by the States without providing any appreciable risk reduction or security benefit. The Conference on Safe Transportation of Hazardous Articles (COSTHA) states that the regulated community may find it extremely difficult, if not impossible, to meet the minimum requirements of the proposed permit program necessary for obtaining and holding a permit.

*FMCSA Response:* FMCSA believes that we have been responsive to the specific concerns raised by commenters, and that, with the proposals adopted for this final rule, the regulated community will be able to meet the requirements to obtain and hold safety permits. We have analyzed commenters' concerns and adopted a balanced program that maximizes benefits while attempting to minimize burden on the regulated industry.

Advocates for Highway and Auto Safety (Advocates) states that this and similar recent rulemaking actions by FMCSA have been forged in a vacuum, without acknowledging recent research into transportation security. Advocates says that even though the SNPRM provides an opportunity for FMCSA to adopt aggressive safety and security measures, the agency ignores the realities of the potential threats that hazardous materials pose to people, institutions, and the environment.

*FMCSA Response:* While FMCSA appreciates Advocates' suggestion to adopt aggressive safety and security measures and has striven to create an aggressive safety program, we note that the development of these regulations has occurred over many years, involving dialog between not-for-profit organizations, States, and industry representatives through a number of notices in the rulemaking process. In addition, these rules were created in consultation with a number of

government agencies having jurisdiction over and particular interest in hazmat safety and security, and we have made a concerted effort to coordinate and unify efforts. The requirements for obtaining and maintaining a permit are commensurate with the level of safety appropriate to the high hazards posed by the materials covered under the program. The permit program is one piece of a comprehensive security and safety strategy including RSPA's security rulemaking, FMCSA's own research into security technologies, and the collaborative HM–232A rulemaking addressing multimodal security concerns.

Six commenters (ATA, COSTHA, CGA, IME, Advocates, and NASSTRAC) raise the issue that, rather than submit to the proposed permit requirements, carriers may refuse to ship hazardous materials. COSTHA and IME state that if legitimate carriers refuse to carry hazardous materials, then the transportation of these products may shift to noncompliant carriers or other modes of transportation. IME points to the example of the recent impact of security regulations issued by the Bureau of Alcohol, Tobacco, Firearms & Explosives (ATF) on the commercial transportation of explosives.

Fisher Scientific Company LLC (Fisher Scientific) states that some of its carriers have already indicated they will not be securing permits for transporting hazardous materials. As a shipper of many types of hazardous materials, Fisher Scientific tries to leverage its transportation costs by having one carrier satisfy all of its transportation needs. If carriers refuse to transport hazardous materials, Fisher Scientific's costs will increase because it will need to hire multiple carriers.

*FMCSA Response:* While we understand the possible effects a permitting program may have on the hazardous materials transportation industry, we also recognize that many factors play a role in a company's decision to carry hazardous materials. Permits are already required in 40 States, and recent security measures by RSPA, TSA, and other agencies may have a greater influence than today's final rule on a company's decision to carry hazmat. We believe commenters may have overestimated the impact this permitting rule will have on hazardous materials carriers. FMCSA has observed the development of companies specializing in hazardous materials transportation that handle all aspects of a hazmat shipment, including routing, tracking, and regulatory compliance. While it is possible that the nature of hazardous materials shipping may change due to new security awareness, FMCSA believes the market is well equipped to meet the ever-present demand for the transportation of hazardous materials in the United States.

In any case, FMCSA took these comments into consideration in developing the final rule and believes that the safety permit program adopted does not present the same burden as that which the SNPRM may have presented. FMCSA has also considered the effects on the industry in its cost-benefit evaluation for this rulemaking.

National Tank Truck Carriers (NTTC) and Overnite Transportation (Overnite) request that shippers be included as active participants in the permit program. NTTC and Overnite are concerned that only the carrier bears responsibility and liability under the proposed permit requirements, while in fact the shipper plays an integral role. NTTC points out that Section 5109 of the Hazardous Materials Transportation Act (HMTA) includes a direct reference to ''Shipper Responsibility'' and gives the Secretary unfettered discretion to determine the scope of the permit program.

*FMCSA Response:* FMCSA's direct jurisdiction is over carriers rather than shippers. Although Section 5109 references shipper responsibility and gives the Secretary discretion to determine the scope, our jurisdiction cannot reach shippers (unless the company is also a carrier). This authority was specifically delegated to RSPA.

In comments concerning the security aspects of this rule, ATA states, ''* * * it is important to recognize that there has never been a terrorist attack in the United States using a registered motor carrier transporting one of the designated hazardous materials.''

*FMCSA Response:* FMCSA points out that before the 9/11 attacks, terrorists had not attempted an attack of this magnitude. Airport and airline security had been identified prior to 9/11 as issues needing action, but it was only after 9/11 that cockpit doors were fully secured. We cannot limit our actions to prevent only the type of terrorist attacks that have already occurred. FMCSA strongly believes it is appropriate for the agency to address the transportation of these high-hazard materials in a proactive manner. Through this permitting program, FMCSA believes it is reducing the possibility of ''bad actors'' carrying high-hazard materials, and thereby helping to avoid accidental and purposeful releases.

*B. Preemption of State Programs*

Five commentors (IME, Advocates, ATA, NASSTRAC, and an individual) state that the proposed rule should preempt State permitting programs and eliminate the burden placed on hazardous materials motor carriers by dissimilar, redundant, non-Federal permitting programs unilaterally imposed by States. One commenter, the Alliance for Uniform Hazmat Transportation Procedures (Alliance), generally agrees with FMCSA's analysis of limited preemption and supports the continuing role of State permit programs as outlined in the SNPRM. The Alliance believes that the State Uniform Program could accomplish the objectives of the proposed Federal safety permit. The Alliance requests that FMCSA specifically name Alliance's uniform program as not preempted by the proposed regulations, and as a ''safe haven'' for States wishing to regulate hazardous materials transportation.

An individual commenter asserts that the State permit programs are ''really just a superficially legal means to gather revenue (taxation) from out of state hazmat carriers.'' This commenter says that if DOT refuses to preempt State programs, it should at least ''make them uniform in nature, limit the fees to the cost of administration, and to eliminate totally the county permit programs.''

IME states that the current state of hazmat motor carrier permitting requirements does not look much different than it did in 1990, when Congress enacted 49 U.S.C. 5109 and 5119 on permit authority, and that the proposed regulations do nothing to improve the situation. IME, Advocates, and the NASSTRAC point out that Congress expressly gave DOT authority to preempt State hazardous materials laws to ensure State laws achieve greater uniformity. The NASSTRAC states that, to the extent similar or other excessively burdensome or counterproductive requirements exist at the State level, it is a misguided form of federalism to forgo the opportunity to address them in this proceeding.

ATA and Advocates assert that the agency's decision in the SNPRM not to move forward with a uniform permitting system for intrastate transportation amounts to an unsubstantiated statement that such a program would be impossible to administer.

ATA and Advocates also point out that DOT has exercised its preemption authority in the past, through RSPA's final rule requiring that all intrastate shippers and carriers comply with RSPA's implementing regulations for hazardous material motor carrier

transport (62 FR 1208, Jan. 8, 1997). RSPA's final rule expressly preempts State laws, regulations, and other administrative mechanisms that conflict with prevailing Federal hazmat law and regulation. Both commenters noted RSPA is clearly fulfilling the congressional direction of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) by applying the broad authority granted to the Secretary to achieve more intrastate-interstate hazmat transportation uniformity. ATA and Advocates argue that FMCSA has the same statutory authority to establish more uniformity in the area of motor carrier hazardous materials transportation in this rulemaking.

IME asserts that FMCSA's summary of the background on this rulemaking is incomplete and misleading. IME states:

> In 1990, Congress directed the Secretary of Transportation to implement a motor carrier safety permit for motor carriers of certain hazardous materials and, at the Secretary's discretion, to expand the list of materials triggering a permit by November 1991—the ''§ 5109'' permit * * * FMCSA did not even release a proposed rulemaking until 1993.

IME states that the proposal was criticized as inadequate by the regulated community, States and safety advocates, and that, in the meantime, a congressionally mandated working group of States was convened to develop uniform forms and procedures for States to use to register and permit hazmat motor carriers—the ''§ 5119'' or ''uniform'' permit. According to IME, the working group met its 1993 statutory deadline to submit a report to Congress on the feasibility of a Uniform Permit. IME states that the working group recommendations supported a Uniform Program, and that Congress directed the Secretary to ''prescribe regulations to carry out the recommendations contained in the report.'' According to IME, all that remained to implement this section was for the Secretary to identify those ''recommendations with which the Secretary agrees.'' IME asserts that, as with ''the § 5109 permit, including the § 5105 inspection requirement for certain vehicles carrying radioactive material, the § 5119 permit has languished at FMCSA.''

ACC, Minnesota Department of Transportation, CVSA, and the Alliance also support a uniform program. The Alliance comments:

> States belonging to the Uniform Program urge the FMCSA to more closely consider the Uniform Program as an alternative to the proposed federal permit. The Uniform Program is an established, demonstrated program that could achieve the same goals as the proposed federal permit in a more cost-effective and efficient manner. Seven states are already successfully using this program and, with a few minor modifications which the Alliance is prepared to make, it could easily be extended to cover all shipments of the four types of materials covered under the federal safety permit. The Alliance proposes a consultation with FMCSA to work out the details of such an approach.

In view of its comments, the Alliance ''requests that FMCSA defer any decision relating to a uniform program until misunderstandings related to the Alliance Uniform Program is alleviated through consultation with Alliance members (sic) states and the Alliance Governing Board.''

ATA states that the most efficient way to ''* * * harmonize the myriad of existing hazardous materials permits and relieve the trucking industry of a significant administrative burden * * *'' is to incorporate any new Federal requirements into the existing Uniform Permitting Program, authorized by 49 U.S.C. 5119. COSTHA also urges that a ''uniform program be applied nationally and to preempt a myriad of state and local permitting systems.''

*FMCSA Response:* FMCSA recognizes the authority of States to implement hazardous materials permits. For the materials covered by FMCSA's safety permitting program, States are preempted only if implementing a program with more stringent operational requirements than prescribed in this final rule. This addresses commenters' concerns for a nationwide uniform program for the materials covered by the Federal safety permit. However, this does not prevent States from permitting other materials, such as hazardous wastes. This approach is similar to RSPA's administration of its registration program, which preempts State registration programs for the list of materials covered by the RSPA registration program while allowing States to implement other types of registration programs.

A uniform permit program for these identified materials is essential to provide for ease of interstate transportation. FMCSA acknowledges the Alliance program is not currently identical to the program required in this final rule. However, FMCSA has been assured by the Alliance that its program will mirror the FMCSA program in the future, thus aligning States currently working on a State-by-State uniform program with the Federal permit program. If a State's program is equivalent to the Federal program, then FMCSA will issue a safety permit based on the successful issuance of the comparable State permit.

*C. Qualification Based on State Permit*

Proposed § 385.411 would allow FMCSA to issue a Federal safety permit, without further inspection or investigation, when it can verify that a State has a safety permit program that is equivalent to the requirements in 49 U.S.C. 5109. Air Products and the Alliance both support this proposal. Short of adopting the Alliance Uniform Program, the Alliance supports the FMCSA proposal to ''issue a federal safety permit to a carrier without further inspection or investigation when FMCSA is able to verify that the carrier holds a safety permit issued by a State under a program that is equivalent to the federal safety permit program.'' The Alliance believes this is efficient and that it recognizes existing expertise in State programs. The Alliance also believes that the FMCSA proposal cuts the burden on carriers and recognizes the dual nature of State-Federal regulation of hazardous materials transportation.

ATA comments that the proposed rule states that where a motor carrier participates in an equivalent State program, the carrier must still apply for the Federal safety permit, and FMCSA will immediately issue the permit without further inspection or investigation. ATA points out that at this time there are no ''equivalent'' State permit programs.

Advocates states it is not completely averse to FMCSA's proposed reliance on prior State safety permits. However, Advocates comments that the preamble does not explaining how the agency will ensure that State permits are in fact equivalent to the Federal program requirements, and how often determinations of equivalence will be performed through frequent reevaluations of State permitting practices.

Alliance comments that, to work cooperatively with FMCSA, it is considering an upgrade to its program to cover elements of the new Federal permit that it currently lacks. This would consist primarily of adding questions related to a carrier's security plan and shipment tracking system. Once this program revision is in place, motor carriers with permits from Alliance member States and that transport hazmat in Alliance member States would have received scrutiny equivalent to the Federal permit. Alliance believes its program could substitute for the Federal safety permit.

*FMCSA Response:* FMCSA agrees with ATA that there are no current equivalent State programs. However, we have been assured by the Alliance that

it is dedicated to cooperating with FMCSA in developing equivalent programs. FMCSA will identify State programs that match the Federal safety permit program. These programs must have the same requirements as set forth in this final rule. If a carrier is issued a permit by a State identified as having the same requirements as the Federal requirements, FMCSA will automatically issue the carrier a Federal permit. Thus, individual States (including those in the Alliance) will be able to administer their registration programs, as long as the State program is identical to the requirements in this final rule for the materials covered by this final rule. FMCSA looks forward to the Alliance's adjusting its program to facilitate compliance and uniformity between State and Federal programs.

*D. List of Materials (Applicability)*

Twelve comments address the issue of applicability. Six commenters (Air Products, NTTC, ATA, Distilled Spirits Council of the United States (DISCUS), NASSTRAC, and ACC) agree with FMCSA's proposal not to expand the statutory mandated list of hazardous materials for which a permit is required. Three commenters (Advocates, IME, and Onyx Environmental Services (Onyx)) believe that FMCSA should address the need to permit coverage beyond the minimum mandated in 49 U.S.C. 5109.

IME states, ''FMCSA's determination to simply go with the section 5109 statutory list is not dictated by current realities.'' IME adds that in developing an appropriate list of materials for a safety/security permit and accompanying operational restrictions, FMCSA could consider ''the predictability of shipments, the volume per shipment or package, the population centers traversed, the number and distance of trips, the proximity of significant landmarks or public events, and the level of security risk as determined by the Department of Homeland Security.''

ATA believes that FMCSA should ''raise the threshold quantities used to trigger a motor carrier's obligation to obtain a federal safety permit.'' It states, ''* * * for example, it is unlikely that 55 lbs. of explosives or 1 liter of PIH material will cause damage approaching that of the Oklahoma City bombing.''

APA, Salt River Valley Water Users' Association, and Salt River Project Agricultural Improvement and Power District (SRP) state that the scope of the proposed safety permit program is unwarranted and unfair. SRP proposes that the rule be modified to apply only during transportation of hazardous materials in excess of 500 gallons or more than 75 road miles in a 12-hour period.

Advocates states that ''* * * unfortunately, the FMCSA has chosen to cover only the lowest possible number of motor carriers by limiting the regulation essentially to only the statutory minima specified by Congress.'' Advocates cites the 13-year period since the passage of the legislation, and in particular the two years since September 11, 2001, as reasons to urge FMCSA ''in the strongest possible terms to reconsider this unrealistic abbreviation of its oversight, approval, and enforcement role.'' Advocates also recommends that ''FMCSA should parallel at least the requirements of the RSPA security plan final rule with identical coverage for the federal safety permit program.'' Onyx mirrors these comments by suggesting that FMCSA adopt the list in § 172.800(b).

*FMCSA Response:* A number of considerations went into the development of the list adopted by FMCSA in this final rule. Indeed, in determining this list for applicability to the safety permit requirements, FMCSA analyzed the risks and potential damage various hazardous materials in different quantities could inflict if used maliciously or as a consequence of an accidental release. We used information from different sources to piece together a coherent picture on the possible risks these quantities of hazardous materials pose. For example, FMCSA disagrees with ATA about the effects one liter of a TIH, Hazard Zone A, could have on a population in an enclosed environment, or that 55 pounds of some Division 1.1 explosives would not produce significant damage to vital structures.

We also note that tying permits to distance traveled and time in transit (in addition to the basic criteria concerning amounts and types of materials) could pose significant logistical challenges to the implementation and enforcement of a permit requirement.

FMCSA reviewed risk analysis for hazardous materials safety, and developed risk assessments for accidents and terrorist strikes using hazardous materials. In addition, FMCSA considered the list of materials that Congress specifically mentioned in the statutory requirements for the permitting rule. The list developed for this final rule is the result of identifying not only materials that present the highest hazards in transportation, but also materials that pose the largest risks for human casualties and damage to property and the environment if used by a terrorist or militant. These materials also generally face a higher level of regulation in the HMRs and FMCSRs. In addition, the list of materials was developed in consultation with RSPA officials. The FMCSA safety permitting program materials list is a subset of those materials identified by RSPA's security requirements. Every effort has been made to fit the permit program into the larger realm of hazardous materials safety and security regulations.

*E. Duplication of Other Agency Programs*

NTTC, ATA, APA, Onyx, ACC, Alliance, and Minnesota Department of Transportation recommend that program duplication could be substantially eliminated if the FMSCA permitting program were somehow combined with the RSPA registration program. As referenced above, Alliance's ''first recommendation is for FMCSA to use the existing Alliance program to achieve the purposes of the proposed federal safety permit.'' Alternatively, Alliance agrees with commenters who suggest using the existing RSPA annual registration program rather than creating a new and separate system.

NTTC states that, with certain amendments, the FMCSA permitting program can prove a marginal improvement to the Administrator's comprehensive regulatory program despite its inherent redundancy with State programs and its overlap with the current ''hazmat carrier/shipper registration program'' (administered by RSPA).

Alliance, IME, Air Products, the Compressed Gas Association (CGA), Onyx, and ACC state that the proposed new form MCS–150B is unnecessary because it largely duplicates existing form MCS–150. Most of these commenters recommend that any additional information necessary could be obtained by adding to the current form. For example, IME states, ''* * * only nine of the 28 data elements on the proposed form MCS–150B require information that is not already reported on Form MCS–150.'' In addition to questioning the need for two separate application forms, Onyx requests that the term ''HM incidents'' be defined because item 20 on form MCS–150B requests information on any hazardous materials listed in question 18.

*FMCSA Response:* It was FMCSA's intent in the SNPRM to propose that the MCS–150B be completed in place of the MCS–150. Those entities seeking a safety permit would complete MCS–150B instead of MCS–150. This way, entities that do not transport permitted materials would not be presented with the fields on the form pertaining to the

permit application process, and carriers seeking a permit would only have to complete one form for FMCSA. In addition, the question asking about incidents over the last 2 years was eliminated because that information could be determined within DOT.

We disagree with commenters that the safety permit program administered by FMCSA should be combined with the RSPA registration program. The two programs serve completely different purposes and require significantly different types of information from motor carriers. A combined application form could confuse applicants and result in serious data and financial management problems. In addition, the registration program does not involve a safety or security evaluation of the covered carriers, and thus provides no enforcement mechanism for companies that do not comply with safety and security requirements.

There are several barriers to combining this permitting application process with RSPA's registration process, including the differences in entities applying for registration and the safety permit. However, FMCSA, RSPA and other DOT agencies are committed to reducing the paperwork burden resulting from the application process under the ''e-commerce'' initiative. FMCSA, along with other government agencies including RSPA, attempts to ease the burden by providing on-line application procedures. FMCSA was able to reduce the paperwork internally by replacing the MCS–150 with the MCS–150B. Future efforts to streamline related application processes are constantly being considered.

*F. Obtaining a Safety Rating*

Under proposed § 385.407(a), a motor carrier must have a ''Satisfactory'' safety rating in order to obtain a safety permit. CGA, Air Products, ATA, Advocates, NASSTRAC, CVSA, and Alliance, while generally supportive of the Satisfactory rating concept, raise questions as to how the concept will work in practice.

CGA, Air Products, Alliance, and NASSTRAC question FMCSA's ability to act promptly either to determine a carrier's initial eligibility for a Satisfactory safety rating or to reestablish that rating when it has been lost and the carrier has taken steps to remedy the problem.

Advocates opposes the proposed issuance of a temporary safety permit for up to 270 days. Advocates ''believes that this proposed feature of the supplemental proposed rule has numerous pitfalls both for safety and security, and that it would be unwise public policy to allow a carrier without a compliance review and ''Satisfactory'' safety rating nevertheless to secure a permit that would be valid for 9 months * * *.''

*FMCSA Response:* FMCSA agrees that 270 days is too long for a temporary permit. Carriers requiring a safety permit will receive a compliance review over the two-year phase in period within 180 days of initial application instead of the proposed 270 days. If a safety permit is revoked or suspended because of problems with the safety rating, procedures are in place to reinstate the suspended or revoked permit when the problems with the safety rating have been resolved.

*G. Pre-Trip Inspections*

GE Nuclear Energy expressed several concerns with the pre-trip inspection requirements. It appears that GE Nuclear Energy did not understand that the pre-trip requirement of this rule would be met by performing a NAS Level VI inspection developed by CVSA. GE Nuclear Energy also argued that the proposed regulation states that if ''any violation of requirements * * * is discovered, the vehicle must be placed ''out of service'' and may not be moved * * *.'' GE Nuclear Energy points out that certain radioactive materials shipments, such as irradiated fuel, are required to be moved to safe havens, as defined in 10 CFR part 73, for security reasons without delays. Therefore, GE Nuclear Energy requests that the proposed regulations in part 385 and any other necessary section be clarified to allow limited vehicle movement to safe havens.

Advocates and CVSA fully support the agency's proposals concerning pre-trip inspections, pursuant to 49 U.S.C. 5105(e), that the inspections be conducted by trained government inspectors using standards similar to the NAS Level VI protocol developed by CVSA. However, Advocates strongly supports extending inspection criteria similar in stringency to those required by CVSA Level VI to all hazmat carried under Federal safety permit. CVSA believes it should be stated explicitly that inspections will continue in the current manner, which would allow only CVSA certified officers and inspectors to conduct the inspections.

*FMCSA Response:* In response to GE Nuclear Energy's concerns about a vehicle with certain radioactive materials shipments being placed out of service because of the pre-trip inspection, FMCSA notes that this is a requirement for pre-trip inspections. Thus, if a vehicle did not comply with the requirements, it would remain at the shipper facility and not be allowed to enter transportation. In the unlikely event a vehicle were found in violation of any of the pre-trip inspection requirements while in transportation and placed out of service, the vehicle would be escorted to a safe haven or other suitable place.

In 49 U.S.C. 5105(e), FMCSA is required to implement a pre-trip inspection for route-controlled radioactive shipments, and this was proposed in the SNPRM. The North American Standard (NAS) Level VI pre-trip inspection is specifically referenced in the regulations as meeting the requirements for the permit pre-trip inspection process. In response to Advocates' suggestion to apply the pre-trip inspection to all permitted materials, we cannot consider this at present as it was not proposed in the SNPRM.

*H. Route Plans*

Most commenters are critical of and disagree with the proposal that a carrier prepare and provide its drivers with a written route plan covering any shipment designated in the rulemaking. Commenters have two general criticisms. First, they fail to see the security benefits of this proposal. For example, ATA writes:

> The SNPRM states that adherence to route plans will increase safety. Aside from this conclusory statement, FMCSA has not explained the safety benefits associated with maintaining written route plans. Based upon the FMCSA's historical experience with the use of route plans for radioactive substances, we believe that the Administration has the tools at its disposal to quantify the safety benefits that have been attributable to the use of route plans.

The second general criticism is that there are many instances in which a driver must alter the route. For example CGA writes:

> A vehicle transporting time sensitive deliveries may be forced to abandon a specific route due to a major traffic tie up. The carrier may, in the performance of a delivery of one shipment covered by this rulemaking, be required to pick-up a container of similarly regulated material in excess of the minimum for return. No written route plan would be available to the driver in this instance.
>
> On many city deliveries drivers need to adjust their route based on the customers receiving hours or congestion at the customer. The driver, rather than waste time in line to make a delivery, may opt to proceed to the next customer and then return to make the delivery at a later time. In addition to it being a good productivity practice it would be especially important when considering the Hours of Service regulations.

Most commenters argue that this proposal would curtail the legitimate

movement of materials and create a significant economic burden without a real increase in security.

Several commenters also are concerned about the requirement that drivers amend the written route plan to show any deviations from the original plan. Air Products requests clarification about when a driver must amend the written route plan and what constitutes a deviation requiring an amendment. NTTC writes:

> Even under totally legitimate circumstances, vehicle drivers should be free to make acceptable route changes to avoid extraordinary congestion, accidents, detours, etc. without having to make handwritten notations on documents while driving and without the permission (or direction) of local law enforcement.

Finally, commenters are critical about the requirement that carriers (not drivers) develop and maintain the written route plans. Advocates strongly supports this proposal and states:

> Advocates strongly supports the FMCSA's proposal for a prepared, written routing plan to be in the possession of the driver at all times for carrying Hazard Zone B materials * * * We also strongly support the requirement for alternate routing to be allowed only at the behest of enforcement authorities or *bona fide* emergency conditions. Advocates also supports the additional feature of this section of the supplemental proposed rule that prohibits the driver from preparing the written route plan.

However, Advocates believes that FMCSA needs to make it clear that amendments of the written route plan by the driver must be confined solely to alternate routes by reason of enforcement authority direction or because of verified emergency conditions, such as road and bridge closures, forest fires, and hazmat spills.

*FMCSA Response:* FMCSA recognizes the difficulties in developing route plans for a range of hazardous materials. Less-than-truckload (LTL) carriers, in particular, could face significant logistical problems. Thus, FMCSA will not adopt additional route plan requirements in this final rule. Instead, the route plan requirements will apply only to materials that currently require a route plan (highway route-controlled radioactive Class 7 and Division 1.1, 1.2, and 1.3 explosive materials). The requirements for route plans, which address any changes that the driver encounters en route, are specified in § 397.101 and § 397.67 of this subchapter.

The agency believes it is important to require the phone number aboard the vehicle, so that when called, it is answered by a company employee or representative of the company to confirm that the vehicle is within an expected route for that shipment. FCMSA believes that, although the phone-contact requirement is less comprehensive than a written route plan, it does provide an increased level of security. This provides enforcement officials with a mechanism to check that the vehicle has not deviated too far from its intended path. For example, if a shipment of a permitted material is in Ohio while it should be going from Baltimore, Maryland, to Atlanta, Georgia, an enforcement official would want to confirm with the company that this shipment is ''off course,'' and could be stolen or misdirected. The only way an enforcement official would be able to confirm the destination and origin of a material would be to contact the carrier company, since hazardous materials shipping papers do not require the destination address.

*I. Communications Plan*

The proposed rule included a provision that a communications system be installed on each motor vehicle used to transport a hazardous material listed in § 385.403(a), to enable the vehicle operator to immediately contact the motor carrier during the course of transportation of the hazardous material. The proposed rule also provided that each operator must be trained in the use of the communications system. All but one commenter on this issue opposed these requirements. Several commenters submit that neither cell phone nor satellite tracking devices will comply with this provision. Commenters state that cell phones are not ''installed'' in the vehicle as required by the provision, and there are vast regions of the country where cell phone use is limited or unavailable. Similarly, they note that satellite tracking devices only function when there is a direct ''line of sight'' between the vehicle's antenna and the relay satellite.

The proposed rule included new requirements for a driver to communicate with the motor carrier once every two hours while transporting a material for which a safety permit is required. Most commenters oppose this new requirement, citing three criticisms. First, several commenters discuss concerns about the driver using a cell phone while driving or needing to pull off the driving lines in order to make the required phone call. Second, several commentors mentioned the burden on motor carriers that the call-in procedure would create. The third criticism of the two-hour notification is that the proposal conflicts with driver hours-of-service requirements.

In addition, FMSCA proposed that a motor carrier must contact law enforcement authorities if more than three hours have elapsed between driver communications. Commenters call this proposal unreasonable, burdensome, confusing, and potentially unworkable. Nine of the ten comments received on this issue asked FMCSA to clarify what law enforcement authorities should be contacted. For example, several commentors submit that a vehicle could travel through various jurisdictions in a short time, so that there are many law enforcement choices (Federal, State, and local) for a motor carrier to contact.

Advocates strongly supports the FMCSA Field Operational Test initiative to test a wide variety of safety and security technologies for use within the hazmat supply chain from offerors to consignees. Advocates applauds this vigorous investigation of supplementary safety and security technologies and the agency's willingness to consider modifying the contours of its safety permitting system in light of the findings of these trial technologies. Advocates also emphasizes that the use of remote tracking technologies to ensure adherence to route plans, and to ensure that drivers do not violate hours-of-service limits, is crucial to advancing hazmat safety and security.

Along with the proposal to make these calls, FMCSA proposed a recordkeeping requirement. IME, Air Products, and ACC object to the proposal that motor carriers create and then retain for six months records of driver-carrier communications. IME comments that companies with larger numbers of drivers and carrier personnel may be overwhelmed by the demands of keeping and consolidating written records that include routine communications. Air Products would like to know the frequency for updating the communications log; in some instances it may be a considerable time before the facts or conditions that prevented communication from the driver are known. ACC states that maintaining a log of this nature would require substantial personnel resources and yield little security benefit.

*FMCSA Response:* FMCSA agrees with commenters that the communications requirements proposed in the SNPRM could present logistical problems. Further, we are working with RSPA on an ongoing security rulemaking under docket HM–232A. FMCSA does not want to create requirements in this rulemaking prior to completion of the Field Operational Test initiative and the HM–232A

rulemaking. Essentially, FMCSA's original proposal was an effort to develop a ''low-tech'' tracking system of permitted materials through the use of communication with the driver of the shipments. However, if the system is too cumbersome, it will fail to achieve this goal. Therefore, the requirements in this final rule create a basic tracking system that allows for flexibility. With a basic framework in place, FMCSA will work with RSPA in its security rulemaking process to develop further security measures.

The requirement in today's final rule for companies to develop a communications plan requiring at least two calls per day is an effort to minimize the burden on industry, while creating a basic structure for tracking vehicles. It is probably current practice with many drivers to check in with their company twice a day (or at the pickup and delivery of a load), and FMCSA believes this is a minimum requirement to assure that high-hazard shipments undergo some type of tracking and monitoring. FMCSA does not intend drivers to meet this requirement by using a cell phone while operating a motor vehicle, or to make an additional stop. The agency believes that the twice-a-day requirement is consistent with current practice and can be met without making additional stops. Due to the decrease in the number of required calls, maintaining a record of these calls does not present the same burden as maintaining a record of the number of calls proposed in the SNPRM.

In addition, providing in the final rule the TSA's Transportation Security Coordination Center phone number, and recommending, rather than requiring, that companies or drivers call the center if notification is late or absent, will reduce the number of ''false calls.'' FMCSA also believes it will provide more flexibility to companies inaccurately tracking shipments, while also providing an avenue to report missing or stolen shipments.

FMCSA notes that the reduced number of required calls in today's rule greatly diminishes the paperwork burden. In addition, the flexibility provided for this requirement should address commenters' concerns about the paperwork requirements. FMCSA allows for flexibility by requiring companies to have a system in place to track the calls made under the communications plan. Either the driver or the company may keep a record of when and where the calls are made. However a company wishes to keep this information, it must be made available to an enforcement official upon request.

*J. Permit Documentation*

CGA, Air Products, NASSTRAC, and ACC support FMCSA's proposal not to require the carrier's safety permit number to appear on shipping papers, but state that the carrier would still be required to maintain a copy of the safety permit or have another document showing the permit number in the vehicle transporting a designated hazardous material. These commenters suggest that if the registration application for the hazardous materials Certificate of Registration were used for issuing the safety permit, one document could contain both the registration and safety permit number(s), thereby reducing administrative effort and the driver's paperwork burden. ATA states that, to the extent evidence of the permit is required in the vehicle, that document should be combined with the RSPA registration certificate or Uniform Program document and FMCSA should not pursue the creation of a new, separate motor vehicle certificate.

NASSTRAC also supports FMCSA's decision to leave to another occasion implementation of the statutory requirement that shippers may offer a designated commodity ''only if the carrier has a safety permit.'' NASSTRAC suggests this requirement may be met in less burdensome ways, such as attaching permits to contracts with a requirement that the carrier notify the shipper immediately of any change in its status. Or it may be met in more burdensome ways, such as requiring that shippers confirm carrier permit status every time a shipment of a designated commodity is tendered. NASSTRAC would not support the latter approach.

Alliance asks about the statement in the SNPRM preamble that ''A state or local law enforcement officer would be able to confirm the validity of this number (safety permit number) through real-time or close to real-time information made readily accessible by FMCSA.'' Alliance wants to know what system would provide this information and how it would be used.

*FMCSA Response:* It is essential for enforcement purposes that a carrier's permit number or a copy of its permit be on board the vehicle for which the permit is required. Otherwise, it would be impossible for a roadside inspector to determine if the company held a current, valid permit. Using a computer system database or calling into a facility with access to these systems allows for real-time or close to real-time tracking of permit numbers through current FMCSA systems.

Since this program is not being combined with RSPA's registration program, FMCSA will not require the permit number to be on the RSPA registration statement. However, a carrier that wishes to present all its required registration or permit numbers together will have the flexibility to display the permit number on any document the carrier desires.

*K. Enforcement*

Advocates strongly supports the criteria under which a safety permit will be subject to denial, suspension, or revocation, but asks for clarification on the terms of each of the three actions. Since the hazmat safety permit addresses a specific subset of hazmat deemed especially dangerous and worthy of additional Federal approval and oversight, the agency should specify a minimum period that must elapse before the carrier can reapply for a hazmat permit after the permit was suspended or revoked. Advocates strongly suggests establishing a minimum suspension period of 30 days and a minimum revocation period of 90 days before a carrier could attempt to regain its safety permit status.

*FMCSA Response:* Any violation of the permitting rule falls under the HM statute penalty provision found in 49 U.S.C. 5123. We have modified the title of paragraph (e) in Appendix B to Part 386 to reflect this. FMCSA has compiled a list of critical and acute violations that could affect a company's safety rating, leading to the suspension or revocation of a safety permit, along with a listing of other actions that could lead to revocation or suspension of a permit.

For the first instance of violating these requirements, the permit will be suspended until the problems are addressed. The second time a motor carrier is found in violation of these requirements, the permit will be revoked for one year. The decision to deny a permit is outlined in §§ 385.405 and 385.407.

Although we did not receive comments concerning this issue, FMCSA removed the SafeStat listing as a reason for denying a permit because the SafeStat listing is redundant in view of the crash rate, out-of-service rate, and security requirement criteria for denial.

*L. Cost-Benefit Analysis*

The 10 commenters addressing cost and benefit issues question virtually all of FMCSA's assumptions and estimates, with respect to costs, benefits, or both. These commenters are IME, CGA, ATA, COSTHA, NASSTRAC, Motor Freight Carriers Association (MFCA), Alliance,

Fisher Scientific, BPC, and an individual.

ATA, COSTHA, MFCA, BPC, and Fisher Scientific question FMCSA's assumption that currently 90 percent of carrier vehicles or drivers are equipped with cell phones or some kind of communications equipment. MFCA estimates that the costs of communication devices to the industry would be ''10 times the FMCSA total industry estimate of $125,000.''

IME, ATA, Alliance, COSTHA, and Fisher Scientific all question FMCSA's estimate of a 25 percent reduction in the number of hazardous materials accidents as a result of this rulemaking.

NASSTRAC, IME, and ATA question the use of September 11 as a basis for estimating the costs of an intentional hazardous materials incident and the potential benefits from avoiding such an incident. ATA states:

> Using the September 11, 2001, incident cost estimates is inappropriate in the context of discussing the cost of a truck bomb with some quantity of regulated hazardous materials. First, the September 11th attack was not one terrorist attack; it was the coordination of four separate attacks. Second, the instruments used in the attacks were airplanes, not trucks. Third, the damage from the attacks was not caused by the release of hazardous materials that are subject to this Proposed Rule. As such, the cost estimates used do not comply with DOT'S data quality guidelines and are otherwise arbitrary and capricious.

ATA further states that based on FMCSA's own assumption that the SNPRM will thwart one of the next thousand terrorist attempts, ''we would expect this rule to stop one terrorist attack over the next 5,000 years.''

*FMCSA Response:* The cost of communications equipment was partially responsible for FMCSA's reducing the number of phone calls required and for allowing the calls to be placed at times where access to a payphone or customer phone would be available. FMCSA has addressed many comments concerning the use of terrorist events in the cost-benefit analysis for this final rule. For example, instead of using a set probability that this rule would prevent a terrorist attack, we have performed a simple sensitivity analysis to show the possible range of benefits depending on the probability the rule will prevent a terrorist attack. Readers are encouraged to refer to the full cost-benefit analysis in the docket for further discussion of these issues.

## IV. Rulemaking Analyses and Notices

### *Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

FMCSA has determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in the issues related to hazardous materials permitting.

FCMSA's analysis determined that first-year costs to implement the permit program established in the final rule are $5.3 million. The estimated annual costs to HM carriers and FMCSA are $4.8 million, resulting in total discounted costs over a 10-year period of $33.9 million. The estimated annual benefits resulting from improved safety derived from reduced accidental HM releases alone are $3.6 million, which results in total discounted safety benefits over a 10-year period of $25.3 million. Additional security benefits are also gained because the rule's provisions will hamper terrorists. Although we cannot predict the actual security benefits or the number and size of future terrorist acts, the security benefits clearly would be immense if the rule prevented a terrorist act even a fraction of the size of the Twin Towers calamity. Further, based on the sensitivity analysis performed for the security benefits of the rule, using terrorism costs assumed in a recent RSPA rule establishing requirements for security plans, if the permitting program has at least a one-in-ten-thousand chance of stopping a terrorist attack annually, then security benefits would total $2.5 million annually, or $17.5 million discounted over 10 years. This results in a total net benefit to society. FMCSA also did not quantify the rule's secondary benefits of avoiding property damage, environmental damage, clean-up costs, and evacuations, because of the uncertainty associated with these estimates.

The intent of this rulemaking is to enhance the safety and security of HM shipments. This rule includes requirements for motor carriers of certain HM to obtain a safety permit from FMCSA. In order to obtain a permit, motor carriers must comply with safety and security standards and establish a system for communicating with drivers either telephonically or via electronic device. FMCSA will conduct carrier assessments to ensure compliance with operational, safety, and security standards. Carriers with less-than-Satisfactory safety ratings will be prohibited from transporting HM materials requiring a permit.

The analysis presented in this regulatory evaluation focuses on benefits and costs for a permit program covering only a certain group of highly hazardous materials. The final rule adopts a slightly expanded list comprised of the statutory list and additional explosive and toxic by inhalation (TIH) materials in certain quantities as appropriate. The list of materials requiring a permit in this final rule is as follows:

1. Radioactive Materials—A highway route-controlled quantity of Class 7 materials.
2. Explosives—More than 25kg (55 pounds) of a Division 1.1, 1.2 or 1.3 material, or an amount of a Division 1.5 material requiring a placard under part 172, subpart F of Title 49 CFR.
3. Toxic by Inhalation (Division 2.3 and 6.1) Materials—Hazard Zone A materials in a packaging with a capacity greater than 1 liter (0.26 gallons); a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); or a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500) gallons.
4. A shipment of compressed or refrigerated liquid methane or natural gas or other liquefied gas with a methane content of at least 85 percent in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

The first-year costs to implement the permit program established in the final rule are $5.3 million. These include the one-time costs for the permit application and, if needed, a compliance review. The estimated annual costs to HM carriers and FMCSA are $4.8 million. The total discounted costs over a 10-year period are $33.9 million.

The major driver of HM carrier costs is the cost to record and maintain communication records. This cost item represents about 99 percent of the total annual costs to HM carriers to comply with the permit program requirements.

The safety benefits were derived from the projected crash reductions resulting from the permitting program. These total estimated benefits are large because of the number of conventional crashes that may be prevented.

Determining exact benefits of preventing a terrorist attack is difficult. Those that are available offer only inexact comparisons. For example, the benefit-cost analysis for RSPA's HM–232 final rule indicates that the cost of

the attack on the Murrah Federal Building in Oklahoma City amounted to approximately $1.5 billion. Clearly, the costs from the attacks of September 11, 2001, are far greater than the attack on the Murrah Federal Building.

FMCSA derived a scaled estimate of $25 billion as the cost of a malicious hazardous materials incident. This figure is based upon the lowest estimate reported of the most costly terrorist attack ever—the September 11th attacks; the estimated cost of the Oklahoma City attack; and the costs of other recent terrorist attacks occurring in the past ten years. Based on this information, FMCSA prepared a simple sensitivity analysis to produce a range of benefits for the security portion of this rule. FMCSA uses a range of probability that the permitting program would prevent a terrorist event using hazmat regulated under the final rule. FMCSA uses the estimate of $25 billion as the cost of an intentional release of hazardous materials covered by the rule.

This sensitivity analysis shows that if the permitting rule has a one-in-one-million chance of preventing a terrorist attack, then that benefit is worth $25,000. If the rule has a one-in-one-hundred chance of preventing a terrorist attack, the benefit falls to $250 million. While it is difficult to determine the chance that the permitting program would prevent or deter an intentional release, this type of analysis demonstrates that because of the potential high cost of a terrorist attack, efforts that may present even a small chance of averting a terrorist attack can provide security benefits.

As shown in Table ES–1 below, the one-time costs for the carrier, representing the costs of permit application and compliance review, are $0.5 million. The estimated annual cost to HM carriers is $2.8 million. The estimated annual cost to FMCSA is $2 million. These costs total $5.3 million.

The annual safety benefit is $3.7 million. If we conservatively estimate that the rule has a one-in-ten-thousand chance of stopping a terrorist attack, we add an annual security benefit of $2.5 million. This provides a total benefit of $6.2 million.

TABLE ES–1.—SUMMARY OF BENEFITS AND COSTS

| Annual cost to FMCSA | Cost to HM carriers | | Annual benefits | |
|---|---|---|---|---|
| | Initial one-time costs | Annual costs | Accidental releases | International releases |
| $2 million | $0.5 million | $2.8 million | $3.7 million | $25,000–$250 million |

The total discounted cost to both FMCSA and HM carriers over a 10-year period to implement the permit program is $33.9 million. The total discounted safety benefit over a 10-year period is $26 million from accidental releases alone. An additional amount of security benefit is also gained but was not included in this ten-year estimation.

Despite the *potential* for benefits to exceed costs, there is a significant difference in how benefits and costs are allocated. The costs are assumed primarily by thousands of carriers, while most of the benefits accrue to the general public. Furthermore, the analysis does not account for some of the benefits that would flow from avoiding or preventing major HM incidents. Major HM incidents may result in long-term psychological and economic effects that are costly to a society and economy. Although avoidance of these effects is a benefit that can be measured in monetary terms, this analysis has not attempted to calculate these benefits because of the great uncertainty associated with estimating them.

FMCSA has prepared an in-depth regulatory analysis that further explains the basis for determining the costs and benefits of this rule. This cost-benefit analysis is available in the public docket (Docket No. FMCSA–97–2180; formerly FHWA–97–2180) for this rule. The public docket is located on the Docket Management System Web site: *http://dms.dot.gov/search/searchFormSimple.cfm.*

*Executive Order 13175 (Tribal Consultation)*

FMCSA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes the rule will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

*Executive Order 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this rule under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' FMCSA has determined that this action will not be a significant energy action under this Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

*Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532, *et seq.*) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments, and on the private sector. Any agency promulgating a final rule that is likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that this rulemaking will not have an impact of $100 million or more in any one year.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires FMCSA to evaluate the potential impacts of its HM permitting rule on small businesses, organizations, and governmental jurisdictions. Whenever FMCSA publishes a final rule, it must make available to the public for comment the flexibility analysis that evaluates the impact of the proposed rule on small entities. Section 603(b) of the Act specifies that the contents of the Regulatory Flexibility Analysis (RFA) include the following five requirements:

1. Description of the reasons why action by the agency is being considered;

2. Statement of the objectives of, and legal basis for, the final rule;

3. Description of and, where feasible, an estimate of the number of small entities to which the final rule will apply;

4. Description of the projected reporting, recordkeeping and other

compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

5. Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the final rule.

In addition to the above requirements, a description of any significant alternatives to the final rule, which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the final rule on small entities, is also included in the analysis. The following sections discuss the various elements of the regulatory flexibility analysis outlined above.

(1) *Reasons why action by the agency is being considered.* FMCSA has initiated a rulemaking mandated by Congress for a new HM truck transportation permit system. The intent of the final rulemaking is to enhance the safety and security of high-hazard HM shipments. FMCSA is taking this action because certain high-hazardous materials, if released either accidentally or intentionally during transportation, have the potential to be used in terrorist attacks or present a greater hazard in the event of an accident.

(2) *Objectives of and legal basis for the final rule.* The objective of FMCSA's permit program is to provide oversight of the safety and security of carriers transporting selected high-hazard HM. The permitting program will impose additional requirements and provide additional oversight of these carriers. Oversight will include imposing operational security requirements, setting minimum safety and security standards, and making safety and security assessments of carriers to ensure compliance with operational, safety, and security standards. The permit program is intended to improve the safety and security of HM shipments and thus reduce deaths, injuries, and related damages stemming from accidental and intentional incidents involving these commodities.

Motor Carrier Safety Permits (49 U.S.C. 5109) requires that FMCSA permit carriers that transport Divisions 1.1, 1.2, or 1.3 explosives, liquefied natural gas, extremely toxic by inhalation hazardous materials, and highway route-controlled quantities (HRCQ) of radioactive materials. Section 5109 allows FMCSA to permit other HM if appropriate. Section (E), part (2), of 49 U.S.C. 5109 enables the Secretary of Transportation to determine the standards for deciding the duration, terms, and limitations of a safety permit.

(3) *Description and estimate of the number of small entities.* The final rule affects intrastate and interstate carriers of HM. The number of small carriers is determined based on the Small Business Administration (SBA) definition used for the RSPA registration file. RSPA flags the small carriers using the SBA definition to indicate if they are qualified based on the number of employees and business dollars. The number of small carriers that could potentially be affected by the new permit system is determined by the implementation of the amounts and types of materials covered. This list is described below.

List of Covered Materials

The permitting program covers the statutory or congressionally required list of HM under 49 U.S.C. 5109. This legislation requires FMCSA to permit carriers that transport these types and amounts of HM. In addition to this statutory list, FMCSA has modified the list to include bulk quantities of Division 1.5 materials and toxic—by-inhalation materials that include Zone B, C, or D materials in bulk quantities. The list of covered materials is as follows:

- More than 25 kg (55 pounds) of Division 1.1, 1.2, or 1.3 explosives, or an amount of a Division 1.5 material requiring a placard under 49 CFR part 172, subpart F.
- Radioactive Materials—A highway route-controlled quantity of Class 7 materials.
- Toxic-by-Inhalation (Division 2.3 and 6.1) Materials—Hazard Zone A materials in a packaging with a capacity greater than 1 liter (0.26 gallons); a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); or a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500) gallons.
- A shipment of compressed or refrigerated liquid methane or natural gas or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

Table 1 shows the number of small carriers that could potentially be affected. Small carriers are defined as carriers with 20 power units or less. About 78 percent of the carriers included for this list of materials are designated as small carriers.

TABLE 1.—NUMBER OF SMALL CARRIERS

| Carriers | Number of small carriers | Total carriers |
|---|---|---|
| Total Number of Carriers for List of Materials Covered | 2,436 | 3,131 |
| Number of Interstate Carriers | 1,664 | 2,139 |
| Number of Intrastate Carriers | 772 | 992 |

In addition to small carriers, other small businesses and small entities could potentially be affected by the permitting system. Small businesses that provide services to small carriers, supply product for shipment, or receive shipments also could be affected by the rule. The customers and suppliers of small carriers could be adversely affected if a carrier were prohibited from shipping certain HM because a permit had been denied or revoked. Similarly, local government entities such as police could be affected by the proposed HM permitting requirements. The police could be notified by TSA anytime a planned communication was not received from the driver of a permitted HM vehicle. This probably would require the expenditure of law enforcement resources to investigate the communication lapse. The number of local police entities that would be involved is difficult to estimate before the permit program is implemented. The number of small businesses that potentially could be affected by the new permit rule is also difficult to estimate without further research.

(4) *Description of reporting, recordkeeping, and other compliance requirements.* The compliance requirements include an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for

preparation of the report or record. The reporting, recordkeeping and other compliance requirements of the final rule are addressed in the following discussion.

The initial application for the permit will include the following elements:

1. Submitting a new MCS–150B form. This form contains all fields on the current MCS–150 form, which will need to be updated, and additional fields unique to the MCS–150B form.
2. Certifying that all HM incidents have been reported to DOT.
3. Certifying the carriers have the required security plan and training.
4. Certifying compliance with the communication requirements.
5. Ensuring the carrier's safety and security records are adequate.

Carriers will need to devote some effort to completing a permit application. Each interstate carrier, whether small or large, will have to spend about six additional minutes preparing the permit application (for the fields that are not on the existing MCS–150 form). This amounts to approximately $2.10 of clerical labor. For an intrastate carrier, the expenditure is approximately $9.10, because the carrier will not previously have been required to complete the MCS–150B form (26 minutes for the form). These expenditures apply to the first year. However, much of the effort in the permit application will be performed by FMCSA. FMCSA will check accident reporting and safety facts by using the MCMIS and Hazardous Materials Information System (HMIS) databases. FMCSA will also determine that the application is complete and that safety records are adequate.

If safety records are not adequate, then an on-site Compliance Review (CR) will be performed to determine if a permit should be issued. This activity is likely to result in additional paperwork for carriers rated either Unsatisfactory or Conditional, as these carriers will be required to undergo a new CR. The Benefit-Cost Analysis of Permitting Options report estimates that each carrier requiring a new CR will have to spend at least $182 of clerical time for completion of paperwork.

In addition to completing a permit application, the applicable HM carriers in the HM permit program will have to do the following:

- Develop a ''plan'' to meet the HM permit requirements that drivers be able to easily contact the carrier and/or law enforcement agencies in emergencies. Document required communications between the driver and dispatcher, and maintain written communication records. The cost per shipment was estimated at about $1.75 each trip.
- Carriers in the HM permitting program will be required to renew their permit application biennially. This will require about 6 minutes of clerical time for an interstate carrier and 16 minutes of clerical time for an intrastate carrier. The actual permit renewal will consist of checking the necessary boxes on the application for renewal.

In summary, the HM permitting rules will create additional responsibilities for small carriers. These responsibilities will also produce additional labor costs. However, FMCSA believes that the great majority of small carriers will use existing staff to handle the permit program duties.

For this Regulatory Flexibility Analysis, costs are cited for the small carriers identified in Table 1. The cost profile for small carriers should be different from that for large carriers. This is because large carriers have more trucks, and consequently move a greater volume of shipments. Data for fleet size and number of miles traveled in the Vehicle Inventory and Use Survey (VIUS) were used to estimate the proportion of shipment volume moved by small carriers. In VIUS, carriers with fleets of greater than 25 trucks accounted for about 56 percent of the mileage traveled. Based on assumptions that the number of miles traveled approximates shipment volume, and that large carriers may make more long-distance trips than small carriers, the cost analysis assigns 50 percent of all trips to small carriers.

Table 2 summarizes the first-year and annual costs for a small carrier.

TABLE 2.—COST SUMMARY PER SMALL CARRIER

| Permit-related activity | Unit cost | Cost per carrier for first year | Cost per carrier for successive years |
|---|---|---|---|
| Permit application: | | | |
| Interstate carrier | $21/hour [1] [2] | $1.05 | N/A |
| Intrastate carrier | $21/hour | 9.10 | N/A |
| Permit renewal: | | | |
| Interstate carrier | $21/hour | N/A | 1.05 |
| Intrastate carrier | $21/hour | N/A | 2.80 |
| Safety record compliance | $182/carrier [3] | 182 | N/A |
| Communication recordkeeping requirements | $1.75/trip | 1,129 | 1,129 |
| Worst Case Total Cost per Small Carrier [4] | | 1,321 | 1,133 |

[1] Unit cost is assumed as clerical hourly pay of $15/hour plus fringe benefits (40%) for a total of $21/hour.
[2] Assumes that one-half of interstate small carriers will require permit for the first year.
[3] Applies to all small carriers without a SafeStat rating.
[4] Assumes an intrastate carrier that requires a compliance review.

A small carrier could face two major negative impacts. First, the carrier could be prohibited from shipping certain HM because a permit was denied or revoked. Aside from the loss of contracts and income, this action would likely force the carrier to expend considerable effort in addressing and correcting problem areas and successfully completing the permit application process. The second impact would be financial, related to compliance with the HM permit process. For all but the most marginal small-carrier operations—that is, those already suffering from poor cash flow and a small profit margin—an initial impact of about $1,300 or an annual impact of about $1,100 would not be significant. This added expenditure is unlikely to prevent the overwhelming majority of small carriers from participating in the HM trucking business.

(5) *Relevant Federal rules which may duplicate, overlap, or conflict with the final rule.* Two statutory provisions, 49 U.S.C 5119 and 5105(e), could conflict with the HM permit rule if the rule did not specifically reference the provisions.

First, section 5119 authorizes States to participate in the Alliance for Uniform HM Transportation program (Alliance). FMCSA intends to automatically issue a Federal permit to a carrier that obtains a permit from a State having a program equivalent to the Federal permit program. Therefore, a comparable State program will be deemed equivalent to the Federal HM Permit Program and no statutory conflict will exist. However, the motor carrier must still possess at least a Satisfactory safety rating. If a carrier's rating is less than Satisfactory, the permit may be suspended or revoked until a Satisfactory rating is achieved.

The second potential conflict is the Point of Origin Inspections for Highway Route-Controlled Quantities (HRCQ) shipments required by 49 U.S.C. 5105(e). These inspections are currently required to be conducted via the CVSA Level VI Enhanced Radioactive Materials Inspection Program, which fulfills the requirements of 49 U.S.C. 5105(e). Today's final rule explicitly cites this requirement for HRCQ and thus prevents any statutory conflict.

Conclusion

The final rule is not anticipated to have any significant impact on the great majority of small carriers transporting HM covered by the proposed HM permit. As discussed above, the approximately 2,400 small carriers will incur some additional costs to implement the permitting program. A small carrier transporting HM would incur an annual cost of about $1,100 to comply with the rule. This added expenditure is unlikely to prevent the overwhelming majority of small carriers from participating in the HM trucking business. For these small carriers, the cost increase will not be reflected in significantly lower carrier profits or higher charges to suppliers, shippers, or other customers.

Small businesses that work with the small carriers would not ordinarily be affected by the permit rules during the course of normal business operations. These small businesses would experience a negative impact only if a small carrier they dealt with were seriously harmed by the permit program and forced either to cut back its business volume or cease operations entirely. Since HM permit holders are unlikely to experience consequences of this nature if a required permit is rejected or suspended, small businesses that work with the carriers are also unlikely to be affected.

Small governmental entities such as local police departments may receive some additional calls and may need to prepare some reports if the permit system's communications requirements mandate that a particular truck be traced and/or investigated. These calls and reports are not anticipated to significantly affect the workload or staffing of these local entities.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. FMCSA analyzed this final rule and determined that its implementation will increase the existing information collection (IC) burden on motor carriers, both interstate and intrastate. The final rule adopts a slightly expanded list of HM requiring a permit, comprised of the statutory list and additional explosive and toxic by inhalation (TIH) materials in certain quantities as appropriate. Specifically, a permit will be required for:

1. Radioactive Materials—A highway route-controlled quantity of Class 7 materials.

2. Explosives—More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 material, or an amount of a Division 1.5 material requiring a placard under title 49 CFR, part 172, subpart F.

3. Toxic-by-Inhalation (Division 2.3 and 6.1) Materials—Hazard Zone A materials in a packaging with a capacity greater than 1 liter (0.26 gallons); a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); or a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500) gallons.

4. A shipment of compressed or refrigerated liquid methane or natural gas or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

The burden on industry was determined for this option and is described in detail in the Regulatory Flexibility Analysis report.

Change to Current Collection

One currently approved information collection is affected by this final rule: OMB Control No. 2126–0013, titled ''Motor Carrier Identification Report,'' which is approved for 74,250 burden hours. This final rule would increase the IC burden hours for OMB Control No. 2126–0013 by extending the data collection to 992 intrastate motor carriers (both small and large) that transport the permitted hazardous materials. FMCSA estimates that interstate motor carriers that have already completed MCS–150 forms will require about 6 minutes to complete and file an application for registration, and that intrastate carriers that have not completed MCS–150 forms will require about 26 minutes (0.43 hours). Using RSPA's registration database to obtain the number of affected intrastate carriers, the burden hour increase for this collection is 430 hours (992 intrastate carriers × 26 minutes/60 minutes per hour = 430 hours).

Thus, for existing OMB Control No. 2126–0013, the burden hours would be increased to 74,680 (74,250 current + 430 additional), and the number of respondents would increase to 549,992 (549,000 current + 992 additional).

The permitting program requires carriers to maintain written records of communication between drivers and their carriers. This communication must take place at least twice a day. The types of information required include time and location of communication. The communication recordkeeping requirements were assumed to take 5 minutes per trip of a clerk's time at an hourly pay of $15 (plus 40 percent for fringe benefits). The total burden hours were based on 1,570,391 estimated annual trips for carriers. This annual burden is 41.80 hours per carrier (5 minutes/60 minutes per hour × 1,570,391/3,131 carriers).

The estimated IC burden hours are summarized in Table 3 below. These values reflect the additional burden that the final rule will place on the affected carriers and are derived from MCMIS and RSPA data as mentioned above.

TABLE 3.—BURDEN CALCULATIONS

| | Carriers | | | Burden hours | |
|---|---|---|---|---|---|
| | Intrastate | Interstate | Total | Per carrier [1] | Total |
| Increased reporting under OMB Control No. 2126–0013 ... | 992 | N/A | 992 | 0.43 | 430 |

TABLE 3.—BURDEN CALCULATIONS—Continued

| | Carriers | | | Burden hours | |
|---|---|---|---|---|---|
| | Intrastate | Interstate | Total | Per carrier [1] | Total |
| Maintaining communications records | 992 | 2,139 | 3,131 | 41.80 | 130,866 |
| Total | | | | | 131,296 |

[1] Figures are rounded to the nearest hundredth; unrounded numbers are used in calculations.

As shown in Table 3, the total estimated first-year burden is 131,296 hours.

It is estimated that burden hours in subsequent years would primarily be the time to provide shipment estimates and communication records, as also indicated in Table 3.

New Information Collection Activity

This final rule will also establish a new data collection for all motor carriers that transport any of the permitted hazardous materials. Three provisions of the final rule would *not* require any substantive increase in the reporting burden:

1. To certify that all hazardous materials incidents have been reported to RSPA;
2. To certify that the communication requirements of this rule have been met; and
3. To certify that the security plan and training requirements have been met.

All carriers of hazardous materials requiring a permit under this rule are subject to RSPA's registration requirements and should already have a valid registration number. The certifications required under this rule are simple affirmations that the requirements have been met, without the need for providing supporting documentation. The affirmation is included in the permit application form.

For purposes of calculating the burden hours, RSPA registration data were used for estimating the number of HM carriers, both interstate and intrastate, that transport the listed types of HM under each permitting option.

The biennial permit renewal requires carriers only to check off a few additional boxes (relative to the existing MCS–150 form) on the MCS–150B form. The burden hours to check off the additional boxes on the MCS–150B form are small—about 6 minutes. Interstate carriers already must complete the MCS–150 and will only incur an additional 6-minute burden; however, intrastate carriers have never completed an MCS–150 and will need about 16 minutes (0.27 hours) to complete the permit renewal.

The burden hours for the communication records will be the same for all years. The annual burden hour estimate of 131,105 is shown in Table 4. As only one-half of all carriers will be required to renew their permit application each year, the per-carrier burden hours shown have been divided by two to compute the annual average. The annual burden hours are the sum of the burden hours for permit renewals ([992 intrastate carriers × 16 minutes + 2,139 interstate carriers × 6 minutes]/60 minutes per hour × ½ of all carriers each year = 239 hours) and communication records.

TABLE 4.—ANNUAL BURDEN CALCULATIONS

| | Carriers | | Burden hours | | |
|---|---|---|---|---|---|
| | Intrastate | Interstate | Per carrier [1] | | Total |
| | | | Intrastate | Interstate | |
| Increased reporting under OMB Control No. 2126–xxxx | 992 | 2,139 | 0.13 | 0.05 | 239 |
| Maintaining communications records | 992 | 2,139 | 41.80 | 41.80 | 130,866 |
| Total | | | | | 131,105 |

[1] Figures are rounded to the nearest hundredth; unrounded numbers are used in calculations.

The first-year and annual burden hours are summarized together in Table 5.

TABLE 5.—SUMMARY OF BURDEN HOURS

| Burden hours | |
|---|---|
| First-year | Annual |
| 131,296 | 131,105 |

We estimate that the new total information collection and recordkeeping burden resulting from the additional Motor Carrier Identification Reports and permit applications under this rule are as follows:

Motor Carrier Identification Report

[OMB No. 2126–0013]

*Total Annual Number of Respondents:* 549,992.

*Total Annual Burden Hours:* 74,680.

Hazardous Materials Permit

[OMB No. 2126–xxxx]

*Total Annual Number of Respondents:* 3,131.

*Total Annual Burden Hours:* 130,866.

As noted above, the Paperwork Reduction Act requires that Federal agencies obtain approval from OMB for each collection of information they conduct, sponsor or require through regulations. We are coordinating this final rule with a submission to OMB in accordance with the Act. Thus, comments on the additional Motor Carrier Identification Reports, specifically the MCS–150B, and permit applications should go to the Office of Management and Budget. Send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW, Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is useful; the accuracy of the estimated

burden for the information collected; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*National Environmental Policy Act*

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined under the agency's National Environmental Policy Act Implementing Procedures, FMCSA Order 5610.1C (published at 69 FR 9680 [Mar. 1, 2004] with an effective date of March 30, 2004) that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d of the Order from further environmental documentation. That CE relates to establishing regulations and actions concerning the training, qualifying, licensing, certifying, and managing of personnel. The agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment.

Nevertheless, because the rulemaking concerns hazardous materials transportation, the agency prepared an Environmental Assessment pursuant to Appendices 5 and 6 of the Order, and placed it in the public docket for this rulemaking. You may access the EA on the DMS Web site at *http://dms.dot.gov*. We received no comments on the EA in response to the August 19, 2003, supplemental notice of proposed rulemaking. Based on the findings of the EA, FMCSA has determined that this rulemaking does not pose any significant negative impacts to the environment and may result in a net benefit from increased protection and monitoring of hazardous materials shipments. Thus, the action does not require an environmental impact statement.

We have also analyzed this rule under section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. We performed a conformity analysis of the CAA according to the procedures outlined in appendix 14 of FMCSA Order 5610.1C. This rule will not result in any emissions increase, nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule change will not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers. This action merely establishes that a carrier desiring to transport certain hazardous materials in commerce must obtain a safety permit from the Department and adhere to additional communication standards.

*Executive Order 12988 (Civil Justice Reform)*

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999.

Federal hazardous materials transportation law allows States, political subdivisions, and Indian tribes to continue their permit requirements after the implementation of a Federal safety permit program. To the extent a State permit program is equivalent to the Federal requirements, no preemption issues would arise. To the extent there are differences between Federal and non-Federal requirements, the preemption provisions in 49 U.S.C. 5125 will continue to apply to non-Federal permit requirements, just as those criteria have applied in the past.

FMCSA may preempt some State permitting programs for materials covered in this final rule. This preemption is necessary to conform to the statutory requirements, but it will have a small overall effect on State permit programs. For these reasons, FMCSA has determined this rule does not have a substantial direct effect on, or sufficient federalism implications for, the States, nor will it limit the policymaking discretion of the States.

*Executive Order 13045 (Protection of Children)*

FMCSA has analyzed this action under Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 1985, Apr. 23, 1997). The rule will not present an environmental risk to health or safety that may disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

*Executive Order 13166 (Limited English Proficiency)*

Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency'' (LEP), requires each Federal agency to examine the services it provides and to develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services, consistent with, and without unduly burdening, the fundamental mission of the agency. Its purpose is to clarify for Federal fund recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin. FMCSA believes that this action complies with the principles enunciated in the Executive Order.

**List of Subjects**

*49 CFR Part 385*

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 386*

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

*49 CFR Part 390*

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, reporting and recordkeeping requirements.

■ Accordingly, FMCSA amends parts 385, 386, and 390 of title 49, Code of Federal Regulations, as follows:

## PART 385—SAFETY FITNESS PROCEDURES

■ 1. Revise the authority citation for part 385 to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 2. Amend § 385.1 by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

**§ 385.1 Purpose and scope.**

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(c) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in § 385.403.

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■ 3. Amend § 385.3 by revising the definition of the terms ''applicable safety regulations or requirements'' and ''commercial motor vehicle'' and adding a new acronym ''RSPA'' in alphabetical order to read as follows:

**§ 385.3 Definitions and acronyms.**

*Applicable safety regulations or requirements* means 49 CFR chapter III, subchapter B—Federal Motor Carrier Safety Regulations or, if the carrier is an intrastate motor carrier subject to the hazardous materials safety permit requirements in subpart E of this part, the equivalent State standards; and 49 CFR chapter I, subchapter C—Hazardous Materials Regulations.

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*Commercial motor vehicle* shall have the same meaning as described in § 390.5 of this subchapter, except that this definition will also apply to intrastate motor vehicles subject to the hazardous materials safety permit requirements of subpart E of this part.

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*RSPA* means the Research and Special Programs Administration.

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■ 4. Add a new § 385.4 to read as follows:

**§ 385.4 Matter incorporated by reference.**

(a) *Incorporation by reference.* Part 385 includes references to certain matter or materials, as listed in paragraph (b) of this section. The text of the materials is not included in the regulations contained in part 385. The materials are hereby made a part of the regulations in part 385. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version in the regulation is incorporated. Material is incorporated as it exists on the date of the approval and a notice of any changes in these materials will be published in the **Federal Register**.

(b) *Matter or materials referenced in part 385.* The matter or materials in this paragraph are incorporated by reference in the corresponding sections noted.

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,'' January 1, 2004. Information and copies may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036. Phone number (202) 775–1623.

(2) All of the materials incorporated by reference are available for inspection at: The Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 400 Seventh Street, SW, Washington, DC 20590; and 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/code_of_federal_regulations/ibr_locations.html.*

■ 5. In § 385.5 revise the introductory text to read as follows:

**§ 385.5 Safety fitness standard.**

The Satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. For intrastate motor carriers subject to the hazardous materials safety permit requirements of subpart E of this part, the motor carrier must meet the equivalent State requirements. To meet the safety fitness standard, the motor carrier must demonstrate it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

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■ 6. Add a new subpart E to part 385 to read as follows:

**Subpart E—Hazardous Materials Safety Permits**

Sec.

385.401 What is the purpose and scope of this subpart?
385.402 What definitions are used in this subpart?
385.403 Who must hold a safety permit?
385.405 How does a motor carrier apply for a safety permit?
385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?
385.409 When may a temporary safety permit be issued to a motor carrier?
385.411 Must a motor carrier obtain a safety permit if it has a State permit?
385.413 What happens if a motor carrier receives a proposed safety rating that is less than Satisfactory?
385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?
385.417 Is a motor carrier's safety permit number available to others?
385.419 How long is a safety permit effective?
385.421 Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?
385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

## Subpart E—Hazardous Materials Safety Permits

**§ 385.401 What is the purpose and scope of this subpart?**

(a) This subpart contains the requirements for obtaining and maintaining a safety permit to transport certain hazardous materials. No one may transport the materials listed in § 385.403 without a safety permit required by this subpart.

(b) This subpart includes:

(1) Definitions of terms used in this subpart;

(2) The list of hazardous materials that require a safety permit if transported in commerce;

(3) The requirements and procedures a carrier must follow in order to be issued a safety permit and maintain a safety permit;

(4) The procedures for a motor carrier to follow to initiate an administrative review of a denial, suspension, or revocation of a safety permit.

**§ 385.402 What definitions are used in this subpart?**

(a) The definitions in parts 390 and 385 of this chapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part,

*Hazardous material* has the same meaning as under § 171.8 of this title: A substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under Sec. 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see § 172.101 of this title), and materials that meet the defining criteria for hazard classes and divisions in part 173 of this title.

*Hazmat employee* has the same meaning as under § 171.8 of this title: A

person who is employed by a hazmat employer as defined under § 171.8 of this title, and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle that transports hazardous materials in commerce. This term includes an individual who, during the course of employment:

(1) Loads, unloads, or handles hazardous materials;

(2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;

(3) Prepares hazardous materials for transportation;

(4) Is responsible for the safe transportation of hazardous materials; or

(5) Operates a vehicle used to transport hazardous materials.

*Liquefied natural gas (LNG)* means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85 percent or more.

*Safety permit* means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in § 385.403.

*Shipment* means the offering or loading of hazardous materials at one loading facility using one transport vehicle, or the transport of that transport vehicle.

**§ 385.403 Who must hold a safety permit?**

After the date following January 1, 2005, that a motor carrier is required to file a Motor Carrier Identification Report Form (MCS–150) according to the schedule set forth in § 390.19(a) of this chapter, the motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this title;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

(c) More than one liter (1.08 quarts) per package of a ''material poisonous by inhalation,'' as defined in § 171.8 of this title, that meets the criteria for ''hazard zone A,'' as specified in § 173.116(a) or § 173.133(a) of this title;

(d) A ''material poisonous by inhalation,'' as defined in § 171.8 of this title, that meets the criteria for ''hazard zone B,'' as specified in § 173.116(a) or § 173.133(a) of this title in a bulk packaging (capacity greater than 450 L [119 gallons]);

(e) A ''material poisonous by inhalation,'' as defined in § 171.8 of this title, that meets the criteria for ''hazard zone C,'' or ''hazard zone D,'' as specified in § 173.116(a) of this title, in a packaging having a capacity equal to or greater than 13,248 L (3,500) gallons; or

(f) A shipment of compressed or refrigerated liquefied methane or liquefied natural gas, or other liquefied gas with a methane content of at least 85 percent, in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

**§ 385.405 How does a motor carrier apply for a safety permit?**

(a) *Application form(s).* To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS–150B, Combined Motor Carrier Identification Report and HM Permit Application.

(1) The Form MCS–150B will also satisfy the requirements for obtaining and renewing a DOT identification number; there is no need to complete Form MCS–150, Motor Carrier Identification Report.

(2) A new entrant, as defined in § 385.3, must also submit Form MCS–150A, Safety Certification for Application (Safety Certification for Application for USDOT Number) (see subpart D of this part).

(b) *Where to get forms and instructions.* The forms listed in paragraph (a) of this section, and instructions for completing the forms, may be obtained on the Internet at *http://www.fmcsa.dot.gov*, or by contacting FMCSA at Federal Motor Carrier Safety Administration, MC–RIS, Room 8214, 400 7th Street, SW, Washington, DC 20590, Telephone: 1–800–832–5660.

(c) *Signature and certification.* An official of the motor carrier must sign and certify that the information is correct on each form the motor carrier submits.

(d) *Updating information on Form MCS–150B.* A motor carrier holding a safety permit must report to FMCSA any change in the information on its Form MCS–150B within 30 days of the change. The motor carrier must use Form MCS–150B to report the new information (contact information in paragraph (b) of this section).

**§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?**

(a) *Motor carrier safety performance.* (1) The motor carrier must have a ''Satisfactory'' safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of this part, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of this part; and,

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier Management Information System (MCMIS); or

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(b) *Satisfactory security program.* The motor carrier must certify that it has a satisfactory security program, including:

(1) A security plan meeting the requirements of part 172, subpart I of this title, and addressing how the carrier will ensure the security of the written route plan required by this part;

(2) A communications plan that allows for contact between the commercial motor vehicle operator and the motor carrier to meet the periodic contact requirements in § 385.415(c)(1); and

(3) Successful completion by all hazmat employees of the security training required in § 172.704(a)(4) and (a)(5) of this title.

(c) *Registration with the Research and Special Programs Administration (RSPA).* The motor carrier must be registered with RSPA in accordance with part 107, subpart G of this title.

**§ 385.409 When may a temporary safety permit be issued to a motor carrier?**

(a) *Temporary safety permit.* If a motor carrier does not meet the criteria in § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS–150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that:

(1) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(2) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA's MCMIS; or

(3) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS.

(c) A temporary safety permit shall be valid for 180 days after the date of issuance or until the motor carrier is assigned a new safety rating, whichever occurs first.

(1) A motor carrier that receives a Satisfactory safety rating will be issued a safety permit (see § 385.421).

(2) A motor carrier that receives a less than Satisfactory safety rating is ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 180-day time period, FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

**§ 385.411 Must a motor carrier obtain a safety permit if it has a State permit?**

Yes. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined to be equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with § 385.405, without further inspection or investigation.

**§ 385.413 What happens if a motor carrier receives a proposed safety rating that is less than Satisfactory?**

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until a Satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see § 385.421).

**§ 385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?**

(a) *Information that must be carried in the vehicle.* During transportation, the following must be maintained in each commercial motor vehicle that transports a hazardous material listed in § 385.403 and must be made available to an authorized official of a Federal, State, or local government agency upon request.

(1) A copy of the safety permit or another document showing the permit number, provided that document clearly indicates the number is the FMCSA Safety Permit number;

(2) A written route plan that meets the requirements of § 397.101 of this chapter for highway route-controlled Class 7 (radioactive) materials or § 397.67 of this chapter for Division 1.1, 1.2, and 1.3 (explosive) materials; and

(3) The telephone number, including area code or country code, of an employee of the motor carrier or representative of the motor carrier who is familiar with the routing of the permitted material. The motor carrier employee or representative must be able to verify that the shipment is within the general area for the expected route for the permitted material. The telephone number, when called, must be answered directly by the motor carrier or its representative at all times while the permitted material is in transportation including storage incidental to transportation. Answering machines are not sufficient to meet this requirement.

(b)(1) *Inspection of vehicle transporting Class 7 (radioactive) materials.* Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403,'' January 1, 2004, which is incorporated by reference. The Director of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Information and copies may be obtained from the Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036. Phone number (202) 775–1623.

(2) All materials incorporated by reference are available for inspection at the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 400 Seventh Street, SW., Washington, DC 20590; and 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/code_of_federal_regulations/ibr_locations.html.*

(c) *Additional requirements.* A motor carrier transporting hazardous materials requiring a permit under this part must also meet the following requirements:

(1) The operator of a motor vehicle used to transport a hazardous material listed in § 385.403 must follow the communications plan required in § 385.407(b)(2) to make contact with the carrier at the beginning and end of each duty tour, and at the pickup and delivery of each permitted load. Contact may be by telephone, radio or via an electronic tracking or monitoring system. The motor carrier or driver must maintain a record of communications for 6 months after the initial acceptance of a shipment of hazardous material for which a safety permit is required. The record of communications must contain the name of the driver, identification of the vehicle, permitted material(s) being transported, and the date, location, and time of each contact required under this section.

(2) The motor carrier should contact the Transportation Security Administration's Transportation Security Coordination Center (703–563–3236 or 703–563–3237) at any time the motor carrier suspects its shipment of a hazardous material listed in § 385.403 is lost, stolen or otherwise unaccounted for.

**§ 385.417 Is a motor carrier's safety permit number available to others?**

Upon request, a motor carrier must provide the number of its safety permit to a person who offers a hazardous material listed in § 385.403 for transportation in commerce. A motor carrier's permit number will also be available to the public on the FMCSA Safety and Fitness Electronic Records System at *http://www.safersys.org.*

**§ 385.419 How long is a safety permit effective?**

Unless suspended or revoked, a safety permit (other than a temporary safety permit) is effective for two years, except that:

(a) A safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth for filing Form MCS–150 in § 390.19(a) of this chapter; and

(b) An existing safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MS–150B) in accordance with the schedule set forth

in § 390.19(a)(2) and (a)(3) of this chapter.

**§ 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by FMCSA?**

(a) *Grounds.* A safety permit will be subject to revocation or suspension by FMCSA for the following reasons:

(1) A motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth in § 390.19(a)(2) and (a)(3) of this chapter;

(2) A motor carrier provides any false or misleading information on its application (Form MCS–150B), on Form MCS–150A (when required), or as part of updated information it is providing on Form MCS–150B (see § 385.405(d));

(3) A motor carrier is issued a final safety rating that is less than Satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in § 385.407(b);

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner showing that the motor carrier is not fit to transport the hazardous materials listed in § 385.403;

(8) A motor carrier fails to maintain the minimum financial responsibility required by § 387.9 of this chapter or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Research and Special Programs Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with § 386.83 or § 386.84 of this chapter for failure to pay a civil penalty or abide by a payment plan.

(b) *Determining whether a safety permit is revoked or suspended.* A motor carrier's safety permit will be suspended the first time any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier. A motor carrier's safety permit will be revoked if any of the conditions specified in paragraph (a) of this section are found to apply to the motor carrier and the carrier's safety permit has been suspended in the past for any of the reasons specified in paragraph (a) of this section.

(c) *Effective date of suspension or revocation.* A suspension or revocation of a safety permit is effective:

(1) Immediately after FMCSA determines that an imminent hazard exists, after FMCSA issues a final safety rating that is less than Satisfactory, or after a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) Thirty (30) days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) As specified in § 385.423(c), when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

(4) A motor carrier whose safety permit has been revoked will not be issued a replacement safety permit or temporary safety permit for 365 days from the time of revocation.

**§ 385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?**

A motor carrier has a right to an administrative review pursuant to the following procedures and conditions:

(a) *Less than Satisfactory safety rating.* If a motor carrier is issued a proposed safety rating that is less than Satisfactory, it has the right to request (1) an administrative review of a proposed safety rating, as set forth in § 385.15, and (2) a change to a proposed safety rating based on corrective action, as set forth in § 385.17. After a motor carrier has had an opportunity for administrative review of, or change to, a proposed safety rating, FMCSA's issuance of a final safety rating constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has been issued a final safety rating that is less than Satisfactory.

(b) *Failure to pay civil penalty or abide by payment plan.* If a motor carrier is notified that failure to pay a civil penalty will result in suspension or termination of its operating rights, it has the right to an administrative review of that proposed action in a show cause proceeding, as set forth in § 386.83(b) or § 386.84(b) of this chapter. The decision by FMCSA's Chief Safety Officer in the show cause proceeding constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has lost its operating rights or had its registration suspended for failure to pay a civil penalty or abide by a payment plan.

(c) *Other grounds.* Under circumstances other than those set forth in paragraphs (a) and (b) of this section, a motor carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has denied a safety permit, that FMCSA has immediately suspended or revoked a safety permit, or that FMCSA has proposed to suspend or revoke a safety permit. The rules for computing time limits for service and requests for extension of time in §§ 386.31 and 386.33 of this chapter apply to the proceedings on a request for administrative review under this section.

(1) The motor carrier must send or deliver its written request for administrative review to FMCSA Chief Safety Officer, with a copy to FMCSA Chief Counsel, at the following addresses:

(i) FMCSA Chief Safety Officer, Federal Motor Carrier Safety Administration, c/o Adjudications Counsel (MC–CC), 400 Seventh Street, SW., Washington, DC 20590.

(ii) FMCSA Chief Counsel, Federal Motor Carrier Safety Administration, Office of the Chief Counsel, Room 8125, 400 Seventh Street, SW., Washington, DC 20590.

(2) A request for administrative review must state the specific grounds for review and include all information, evidence, and arguments upon which the motor carrier relies to support its request for administrative review.

(3) Within 30 days after service of a written request for administrative review, the Office of the Chief Counsel shall submit to the Chief Safety Officer a written response to the request for administrative review. The Office of the Chief Counsel must serve a copy of its written response on the motor carrier requesting administrative review.

(4) The Chief Safety Officer may decide a motor carrier's request for administrative review on the written submissions, hold a hearing personally, or refer the request to an administrative law judge for a hearing and recommended decision. The Chief Safety Officer or administrative law judge is authorized to specify, and must notify the parties of, specific procedural rules to be followed in the proceeding (which may include the procedural

rules in part 386 of this chapter that are considered appropriate).

(5) If a request for administrative review is referred to an administrative law judge, the recommended decision of the administrative law judge becomes the final decision of the Chief Safety Officer 45 days after service of the recommended decision is served, unless either the motor carrier or the Office of the Chief Counsel submits a petition for review to the Chief Safety Officer (and serves a copy of its petition on the other party) within 15 days after service of the recommended decision. In response to a petition for review of a recommended decision of an administrative law judge:

(i) The other party may submit a written reply within 15 days of service of the petition for review.

(ii) The Chief Safety Officer may adopt, modify, or set aside the recommended decision of an administrative law judge, and may also remand the petition for review to the administrative law judge for further proceedings.

(6) The Chief Safety Officer will issue a final decision on any request for administrative review when:

(i) The request for administrative review has not been referred to an administrative law judge;

(ii) A petition for review of a recommended decision by an administrative law judge has not been remanded to the administrative law judge for further proceedings; or

(iii) An administrative law judge has held further proceedings on a petition for review and issued a supplementary recommended decision.

(7) The decision of the Chief Safety Officer (including a recommended decision of an administrative law judge that becomes the decision of the Chief Safety Officer under paragraph (c)(5) of this section) constitutes final agency action, and there is no right to further administrative reconsideration or review.

(8) Any appeal of a final agency action under this section must be taken to an appropriate United States Court of Appeals. Unless the Court of Appeals issues a stay pending appeal, the final agency action shall not be suspended while the appeal is pending.

## Appendix B to Part 385—Explanation of Safety Rating Process

■ 7. Amend Appendix B to part 385 by adding, to the introductory text before Paragraph I, a new paragraph (e) to read as follows:

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(e) The hazardous materials safety permit requirements of part 385, subpart E apply to intrastate motor carriers. Intrastate motor carriers that are subject to the hazardous materials safety permit requirements in subpart E will be rated using equivalent State requirements whenever the FMCSRs are referenced in this appendix.

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■ 8. Amend Appendix B to part 385 by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order after § 397.67(d):

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**VII. List of Acute and Critical Regulations**

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§ 397.101(d) Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in § 173.403, of radioactive materials that is not accompanied by a written route plan.

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■ 9. Amend Appendix B to part 385 by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order after § 171.16:

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**VII. List of Acute and Critical Regulations**

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§ 172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words ''Inhalation Hazard'' (acute).

§ 172.704(a)(4) Failing to provide security awareness training (critical).

§ 172.704(a)(5) Failing to provide in-depth security awareness training (critical).

§ 172.800(b) Transporting HM without a security plan (acute).

§ 172.800(b) Transporting HM without a security plan that conforms to Subpart I requirements (acute).

§ 172.800(b) Failure to adhere to a required security plan (acute).

§ 172.802(b) Failure to make copies of security plan available to hazmat employees (critical).

§ 173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).

§ 173.421(a) Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).

§ 173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.441(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).

§ 173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50 °C (122 °F) in other than an exclusive use shipment, or 85 °C (185 °F) in an exclusive use shipment (acute).

§ 173.443(a) Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

* * * * *

■ 10. Amend Appendix B to part 385 by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order after § 177.800(c):

* * * * *

**VII. List of Acute and Critical Regulations**

* * * * *

§ 177.801 Accepting for transportation or transporting a forbidden material (acute).

§ 177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§ 177.835(c) Accepting for transportation or transporting Division 1.1, 1.2, or 1.3 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§ 177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

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## PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 11. The authority citation for part 386 continues to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31132–31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 105–159, 113 stat. 1748, 1767; and 49 CFR 1.73.

## Appendix B to Part 386—Penalty Schedule; Violations and Maximum Monetary Penalties

■ 12. Amend Appendix B to part 386 by revising the introductory text to paragraph (e) to read as follows:

* * * * *

(e) Violations of the Hazardous Materials Regulations (HMRs) and Safety Permitting Regulations found in subpart E of Part 385. This paragraph applies to violations by motor carriers, drivers, shippers and other persons who transport hazardous materials on the highway in commercial motor vehicles or cause hazardous materials to be so transported.

* * * * *

## PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 13. The authority citation for part 390 continues to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31131, 31133, 31502, and 31504, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.73.

■ 14. Amend § 390.3 by adding a new paragraph (g) to read as follows:

### § 390.3 General applicability.

* * * * *

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of subchapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, for carriers subject to the requirements of § 385.403 of this chapter.

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings, of this chapter.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this chapter.

(4) Section 390.19, Motor carrier identification report, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19(a)(1).

* * * * *

■ 15. Amend § 390.19 by revising paragraphs (a) introductory text, (b), (c) introductory text, (c)(2), (d), (e), and (f) to read as follows:

### § 390.19 Motor carrier identification report.

(a) Each motor carrier that conducts operations in interstate commerce (or intrastate commerce if the carrier requires a Safety Permit as per § 385.400 of this chapter) must file a Motor Carrier Identification Report, Form MCS–150, or the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B for permitted carriers, at the following times:

* * * * *

(b) The Motor Carrier Identification Report, Form MCS–150, and the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, with complete instructions, are available from the FMCSA Web site at: *http://www.fmcsa.dot.gov* (Keyword ''MCS–150'' or ''MCS–150B''); from all FMCSA Service Centers and Division offices nationwide; or by calling 1–800–832–5660.

(c) The completed Motor Carrier Identification Report, Form MCS–150, or Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, must be filed with FMCSA Office of Information Management.

(1) * * *

(2) A for-hire motor carrier should submit the Form MCS–150, or Form MCS–150B, along with its application for operating authority (Form OP–1 or OP–2), to the appropriate address referenced on that form, or may submit it electronically or by mail separately to the address mentioned in this section.

(d) Only the legal name or a single trade name of the motor carrier may be used on the motor carrier identification report (Form MCS–150 or MCS–150B).

(e) A motor carrier that fails to file a Motor Carrier Identification Report, Form MCS–150, or the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, or furnishes misleading information or makes false statements upon Form MCS–150 or Form MCS–150B, is subject to the penalties prescribed in 49 U.S.C. 521(b)(2)(B).

(f) Upon receipt and processing of the Motor Carrier Identification Report, Form MCS–150, or the Combined Motor Carrier Identification Report and HM Permit Application, Form MCS–150B, the FMCSA will issue the motor carrier an identification number (USDOT Number). The motor carrier must display the number on each self-propelled CMV, as defined in § 390.5, along with the additional information required by § 390.21.

* * * * *

Issued on: June 22, 2004.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 04–14654 Filed 6–29–04; 8:45 am]

BILLING CODE 4910–EX–P

# Proposed Rules

Federal Register
Vol. 69, No. 125
Wednesday, June 30, 2004

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.

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 102, 106, and 109

**[Notice 2004–11]**

### Coordinated and Independent Expenditures by Party Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on the proposed deletion of its current rules that restrict the ability of political party committees to make both independent expenditures and coordinated party expenditures with respect to the same candidate in connection with a general election for Federal office. The current rules also prohibit a political party committee that makes coordinated expenditures with respect to a candidate from transferring funds to, or assigning authority to make coordinated expenditures to, or receive a transfer of funds from, a political party committee that has made or intends to make an independent expenditure with respect to that candidate. These rules were promulgated in order to implement section 213 of the Bipartisan Campaign Reform Act of 2002. However, in *McConnell* v. *FEC*, the U.S. Supreme Court held that section 213 is unconstitutional. Therefore, the Commission proposes to remove the rules implementing section 213. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

**DATES:** Comments must be received on or before July 30, 2004. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *choiceprovision@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, or Mr. Ron B. Katwan, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** Under the Federal Election Campaign Act of 1971 (''FECA'' or the ''Act''), as amended, 2 U.S.C. 431 *et seq.*, a national committee, State committee, or a subordinate committee of a State committee of a political party may make expenditures in coordination with a Federal candidate for that candidate's general election campaign up to prescribed limits without these expenditures counting against the party committee's contribution limits. 2 U.S.C. 441a(d)(1)–(3). While the Act limits coordinated expenditures, political party committees may make unlimited ''independent expenditures,'' which are not coordinated with a candidate's campaign. *See Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604 (1996) (''Colorado I'').[1]

Section 213 of the Bipartisan Campaign Reform Act of 2002 (Pub. L. 107–155 (Mar. 27, 2002)) (''BCRA'') amended 2 U.S.C. 441a(d), by prohibiting political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. 441a(d)(4).

In 2002, the Commission promulgated rules at 11 CFR 109.35 to implement section 213. Coordinated and Independent Expenditures; Final Rules, 68 FR 421, 422 (January 3, 2003).

Subsequently, in *McConnell* v. *FEC*, 540 U.S.____; 124 S.Ct. 619, 700–704 (2003), the Supreme Court found section 213 unconstitutional. The Court held that by requiring political parties to choose between coordinated and independent expenditures during the post-nomination, pre-election period, section 213 placed an unconstitutional burden on the parties' right to make unlimited independent expenditures. 124 S.Ct. at 700–704. Accordingly, the Commission now proposes to remove its regulations at 11 CFR 109.35 implementing BCRA section 213 and to delete from other regulations cross-references to the rules that would be removed.

### I. Proposed 11 CFR 102.6—Transfer of Funds; Collecting Agents

The Commission proposes to revise section 102.6 by deleting the cross-reference to current section 109.35, which the Commission proposes to remove.

[1] The holding of Colorado I is limited to independent expenditures in connection with congressional campaigns. The opinion in Colorado I did not address the issue of whether regulation of independent expenditures is constitutionally permissible in connection with Presidential campaigns. (''Since this case involves only the provision concerning congressional races, we do not address issues that might grow out of the public funding of Presidential campaigns.'') 518 U.S. at 612. Thus, the opinion in Colorado I did not reach the issue of whether former 11 CFR 110.7(a)(5) which prohibited independent expenditures by the national committee of a political party in connection with a presidential campaign was constitutional. Subsequently, however, BCRA effectively repealed section 110.7(a)(5) and the Commission replaced the section with 11 CFR 109.36, which prohibits independent expenditures by the national committee of a political party in connection with a presidential campaign only in certain circumstances in which the national committee of a political party serves as the principal campaign committee or authorized committee of its Presidential candidate. *See* Coordinated and Independent Expenditures; Final Rules, 68 FR 421, 447–48 (January 3, 2003).

**II. Proposed 11 CFR 106.8—Allocation of Expenses for Political Party Committee Phone Banks That Refer to Clearly Identified Federal Candidate**

The Commission proposes to revise section 106.8 by deleting the cross-reference to current section 109.35, which the Commission proposes to remove.

**III. Proposed 11 CFR 109.30—How Are Political Party Committees Treated for Purposes of Coordinated and Independent Expenditures?**

The Commission proposes to revise section 109.30 by deleting the cross-references to current section 109.35, which the Commission proposes to remove.

**IV. Proposed 11 CFR 109.33—May a Political Party Committee Assign Its Coordinated Party Expenditure Authority to Another Political Party Committee?**

The Commission proposes to revise section 109.33 by deleting the cross-reference to current section 109.35, which the Commission proposes to remove.

**V. Proposed 11 CFR 109.35—What Are the Restrictions on a Political Party Committee Making Both Independent Expenditures and Coordinated Party Expenditures in Connection With the General Election of a Candidate?**

The Commission proposes to remove and reserve current section 109.35, because, as explained above, the statutory foundation for this section, 2 U.S.C. 441a(d)(4), has been invalidated by the Supreme Court.

**VI. Proposed 11 CFR 109.36—Are There Additional Circumstances Under Which a Political Party Committee Is Prohibited From Making Independent Expenditures?**

The Commission proposes to revise section 109.36 by deleting the word ''additional'' in the heading of section 109.36, because, if section 109.35 is removed, the circumstances described in section 109.36 will be the only circumstances under which a political party committee is prohibited from making independent expenditures.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b)**

*Regulatory Flexibility Act*

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions.

To the extent that political party committees may fall within the definition of ''small entities,'' their number is not substantial. In addition, the proposed rules would remove, not add, restrictions applicable to political party committees.

**List of Subjects**

*11 CFR Part 102*

Political committees and parties, reporting and recordkeeping requirements.

*11 CFR Part 106*

Political candidates, campaign funds, political committees and parties.

*11 CFR Part 109*

Coordinated expenditures, independent expenditures, political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

## PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for Part 102 would continue to read as follows:

**Authority:** 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

2. Section 102.6 would be amended by revising paragraph (a)(1)(ii) to read as follows:

**§ 102.6 Transfers of funds; collecting agents.**

(a) * * *

(1) * * *

(ii) Subject to the restrictions set forth at 11 CFR 300.10(a), 300.31 and 300.34(a) and (b), transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

* * * * *

## PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for Part 106 would continue to read as follows:

**Authority:** 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

4. Section 106.8 would be amended by revising paragraph (b)(2)(ii) to read as follows:

**§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified Federal candidate.**

* * * * *

(b) * * *

(2) * * *

(ii) A coordinated expenditure or an independent expenditure, subject to the limitations, restrictions, and requirements of 11 CFR 109.10, 109.32, and 109.33; or

* * * * *

## PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) and (d), AND PUB. L. 107–155 SEC. 214(c))

5. The authority citation for Part 109 would continue to read as follows:

**Authority:** 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107–155, 116 Stat. 81.

6. Section 109.30 would be revised to read as follows:

**§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?**

Political party committees may make independent expenditures subject to the provisions in this subpart. See 11 CFR 109.36. Political party committees may also make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart. See 11 CFR 109.32 through 11 CFR 109.34.

7. Section 109.33 would be amended by revising paragraph (a) to read as follows:

**§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?**

(a) *Assignment.* The national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee. Such an assignment must be made in writing, must state the amount

of the authority assigned, and must be received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment.

* * * * *

**§ 109.35 [Removed and Reserved]**

8. Section 109.35 would be removed and reserved.

9. Section 109.36 would be amended by revising the heading to read as follows:

**§ 109.36 Are there circumstances under which a political party committee is prohibited from making independent expenditures?**

* * * * *

Dated: June 24, 2004.

**Ellen L. Weintraub,**

*Vice Chair, Federal Election Commission.*

[FR Doc. 04–14817 Filed 6–29–04; 8:45 am]

BILLING CODE 6715–01–P

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## DEPARTMENT OF COMMERCE

## International Trade Administration

## DEPARTMENT OF THE INTERIOR

## 15 CFR Part 303

**[Docket No. 040609177–4177—01]**

**RIN 0625–AA65**

## Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs

**AGENCIES:** Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Departments of Commerce and the Interior (the Departments) propose amending their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) . The proposed rule would amend existing regulations by updating the maximum total value of watch components per watch that are eligible for duty-free entry into the United States under the insular program.

**DATES:** Written comments must be received on or before July 30, 2004.

**ADDRESSES:** Address written comments to Faye Robinson, Acting Director, Statutory Import Programs Staff, FCB, Suite 4100W, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Faye Robinson, (202) 482–3526, same address as above.

**SUPPLEMENTARY INFORMATION:** The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97–446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. No. 103–465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States (''HTSUS''), as amended by Pub. L. 94–241 (90 Stat. 263) (1976) requires the Secretary of Commerce and the Secretary of the Interior (''the Secretaries''), acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands. After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

### Proposed Amendments

We propose amending Sec.303.14(b)(3) by raising the maximum total value of watch components per watch that are eligible for duty-free entry into the U.S. from $500 to $800. The insular watch program producers requested an increase primarily due to a substantial increase in the price of gold and the weakness of the dollar against the euro over the last several years. Also, there has not been an adjustment in the maximum value since 1998. Raising the value levels of watch components that may be used in the assembly of duty-free watches will help producers maintain the level of diversity in the kinds of watches they assemble, thereby affording them an opportunity to maintain or hopefully increase shipments and raise territorial employment.

### Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities. There are currently four watch companies in the insular watch program, all of which are small entities. This rulemaking would update the total maximum value of watch components per watch that are eligible for duty-free entry into the U.S. Increases in the price of gold and a weakened dollar against the euro have driven up the price of gold watch components. Therefore, companies are faced with a difficult situation because if the value limit is exceeded, the watch becomes ineligible for the duty-free benefit under the program (due to the fact that the insular possessions are outside the Customs territory of the United States). Adoption of this rule would increase the maximum value of watch components per watch that would be eligible for duty-free treatment into the United States. This would allow producers to include higher-priced components in their watches. As a result, producers would realize an economic benefit in that they would regain greater flexibility in the types of watches they could produce, which, hopefully, will lead to increased sales and employment to help the insular economy. There would be no adverse economic impact from this proposed change.

This proposed rule also would not change reporting or recordkeeping requirements. The changes in the regulations will also not duplicate, overlap or conflict with other laws or regulations. Consequently, the changes are not expected to meet of the RFA criteria of having a ''significant'' economic effect on a ''substantial number'' of small entities, as stated in 5 U.S.C. 603 *et seq*. Therefore, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act. This proposed rulemaking does not contain revised collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134.

Notwithstanding any other provision of the 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 unless it displays a currently valid OMB Control Number.

E.O. 12866. It has been determined that the proposed rulemaking is not significant for purposes of Executive Order 12866.

**List of Subjects in 15 CFR Part 303**

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, the Departments propose to amend 15 CFR Part 303 as follows:

## PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAMS

1. The authority citation for 15 CFR Part 303 continues to read as follows:

**Authority:** Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat.167.

**§ 303.14 [Amended]**

2. Section 303.14 is amended by removing ''$500'' from the first sentence of paragraph (b)(3) and adding ''$800'' in its place.

**James J. Jochum,**

*Assistant Secretary for Import Administration, Department of Commerce.*

**Nikolao Pula,**

*Acting Deputy Assistant Secretary for Insular Affairs, Department of the Interior.*

[FR Doc. 04–14854 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–DS–P; 4310–93–P**

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## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

## 20 CFR Part 901

**[REG–159704–03]**

**RIN 1545–BC82**

## Regulations Governing the Performance of Actuarial Services Under the Employee Retirement Income Security Act of 1974: Solicitation for Comments

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Solicitation for comments.

**SUMMARY:** The Joint Board for the Enrollment of Actuaries (Joint Board) is seeking public comments regarding possible revisions to the regulations governing actuarial services under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

**DATES:** Comments are requested on or before September 28, 2004.

**ADDRESSES:** Send written comments to: Internal Revenue Service; Attn: SE:OPR (Joint Board regulations); 1111 Constitution Avenue, NW., Washington, DC 20224. Comments may be submitted electronically at *www.irs.gov/regs* or via the Federal eRulemaking portal *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Elizabeth Van Osten, (202) 622–8257 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

The Joint Board for the Enrollment of Actuaries (Joint Board) was established on October 31, 1974, pursuant to section 3041 of the Employee Retirement Income Security Act of 1974 (ERISA). Section 3042 of ERISA provides that the Joint Board shall, by regulations, establish reasonable standards and qualifications for persons performing actuarial services under ERISA and enroll qualified actuaries. It also provides that the Joint Board may, after notice and an opportunity for a hearing, suspend or terminate the enrollment of an actuary who fails to discharge his or her duties under ERISA or who does not satisfy the requirements for enrollment.

Consistent with section 3042 of ERISA, the Joint Board has promulgated regulations, addressing eligibility for enrollment, requirements for continuing education of enrolled actuaries, professional standards for performance of actuarial services under ERISA, bases for disciplinary actions and the procedures to be followed in taking those actions. Those regulations are found at 20 CFR part 901 and were last amended in 1988.[1]

### Comments

In recent years, the Joint Board has noted that changes in the actuarial profession, as well as modern innovations, such as the availability of alternative modes of training, are not adequately addressed in the regulations, thus necessitating revision of the regulations.

Prior to issuing proposed regulations, the Joint Board wishes to obtain comments from the public regarding matters for consideration, including but not limited to the following areas:

(1) Whether and to what extent the provisions in the current regulations on the procedures and conditions for enrollment and renewal of enrollment should be updated or revised, including provisions on qualifying experience, the structure and content of the basic and pension examinations, the completion of professional society examinations and qualifying formal education in lieu of the basic and pension examinations, and the definitions of terms used in the regulations.

(2) Whether and to what extent provisions in the current regulations on Continuing Professional Education (CPE) should be updated or revised, including those relevant to formal and informal programs, the means for measuring attendance and completion, and acceptability of new technologies (computer-based programs, webcasts, recorded telecasts, audiotapes, videotapes, etc.).

(3) Whether and to what extent provisions in the current regulations relevant to waivers of the CPE requirement should be updated or revised, including the circumstances, conditions, and limitations under which a waiver might be granted.

(4) Whether and to what extent provisions in the current regulations on the types of enrollment statuses (active, inactive, retired) should be updated or revised, including the incorporation of limitations on the number of consecutive enrollment cycles during which an individual may be placed in either inactive or retired status.

(5) Whether and to what extent provisions in the current regulations relevant to standards of conduct, performance and practice that relate to enrolled actuaries' duties under ERISA should be updated or revised, including those relevant to conflicts of interest, professional independence, disciplinary procedures, and sanctions.

The Joint Board is also interested in obtaining information regarding the potential costs and benefits of any changes to the current regulations, including the potential impact of such changes on small entities. Therefore, in submitting comments in response to this notice, commentators are encouraged to include information with regard to the potential costs, benefits, and impact of any suggested regulatory changes for small businesses.

All comments submitted will be made available for public inspection and copying, although comments will not be

[1] 40 FR 18776 (April 30, 1975); 42 FR 39200 (August 3, 1977); 43 FR 39757 (September 7, 1978); 44 FR 11751 (March 2, 1979); 44 FR 68458 (November 29, 1979); 53 FR 34484 (September 7,1988).

individually acknowledged. Therefore, commentators should refrain from including personal information or other information that they believe should not be publicly disclosed. Additionally, in submitting comments with regard to some or all of the listed areas, please refer to the item numbers specified above.

**Martin L. Pippins,**

*Chairman, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 04–14719 Filed 6–29–04; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 872

**[Docket No. 2002P–0520]**

## Dental Devices; Tricalcium Phosphate Granules and Other Bone Grafting Material for Dental Bone Repair

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to reclassify tricalcium phosphate (TCP) granules for dental bone repair from class III to class II (special controls); classify into class II (special controls) all other bone grafting material for dental indications, except those that contain drug or biologic components; and revise the classification name and identification of the device. Bone grafting materials that contain a drug or biologic component would remain in class III. The proposed classification identification includes materials such as hydroxyapatite, demineralized bone additives, collagen, and polylactic acids. After considering public comments on the proposed reclassification and classification, FDA will publish a final regulation, if appropriate. This action is being taken to establish sufficient regulatory controls that will provide reasonable assurance of the safety and effectiveness of this device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a draft guidance document that the agency proposes to use as a special control for the device.

**DATES:** Submit written or electronic comments by September 28, 2004. See section VI of this document for the proposed effective date of a final rule based on this document.

**ADDRESSES:** You may submit comments, identified by Docket No. 2002P–0520, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations. gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2002P–0520 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

*Instructions*: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket*: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/dockets/ecomments* and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850; 301–827–5283; e-mail: *mea@cdrh.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (Public Law 101–629), the Food and Drug Administration Modernization Act of 1997 (Public Law 105–115), and the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after the following requirements are met: (1) FDA has received a recommendation from a device classification panel (an FDA advisory committee); (2) FDA has published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) FDA has published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Under section 520(l) of the act (21 U.S.C. 360j(l)), devices formerly regulated as new drugs are automatically classified into class III, unless the Secretary of Health and Human Services, in response to a reclassification petition, has classified the device into class I or II.

### II. Recommendation of the Panel

#### *A. Identification of the Device*

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA issued a final rule codifying the classification of ''tricalcium phosphate for dental bone repair'' as a class III device under the 1976 amendments. At that time, FDA was not aware that bone grafting material, other than TCP, was a preamendments device and inadvertently omitted classifying it. Consistent with the act and regulations, FDA has since consulted with the Dental Products Advisory Panel (the panel), an FDA advisory committee, regarding classification of this device.

On November 12, 2002, Bicon, Inc., Boston, MA, submitted a petition to FDA to reclassify beta-tricalcium phosphate for dental indications from ''Class III to Class Unclassified'' (Ref. 1). On December 9, 2002, the petitioner amended its petition to make clear that it was requesting that FDA reclassify beta-tricalcium phosphate from class III to class II. Beta-tricalcium phosphate and all other forms of tricalcium phosphate for dental bone repair, including alpha and amorphous forms, are transitional devices and are currently regulated as class III devices under 21 CFR 872.3930, ''Tricalcium phosphate granules for dental bone

repair,'' requiring premarket approval. Consistent with section 520(l)(2) the act and the regulations in 21 CFR 860.136, FDA consulted with the panel regarding reclassification of this device.

Other bone grafting materials in the form of synthetic hard tissue replacements have been used in dentistry since the 1970s (Ref. 2). Because they were inadvertently omitted from the August 12, 1987, final rule classifying most dental devices, these other bone grafting materials are unclassified preamendments devices. Although unclassified, they are nevertheless subject to general controls, such as premarket notification. TCP and other bone grafting materials share the same indications, risks, and recommended mitigation measures.

FDA believes that one classification identification that encompasses all bone grafting materials for dental indications would provide a more scientifically accurate and more administratively transparent regulation for these materials. Therefore, FDA is identifying bone grafting material as a naturally or synthetically derived material, such as hydroxyapatite, tricalcium phosphate, demineralized bone additives, collagen, or polylactic acids, that is intended to fill, augment, or reconstruct periodontal or bony defects of the oral and maxillofacial region.

*B. Recommended Classification of the Panel*

At the meeting of the Dental Products Advisory Panel held on May 22, 2003, the panel voted five to zero (with no abstentions) to recommend that TCP for dental indications be reclassified from class III to class II (special controls). The panel considered all forms of TCP, including beta-tricalcium phosphate, and concluded that special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of these bone grafting materials devices (Ref. 3).

In addition, on August 8 and 9, 1995, in accordance with the procedures set forth in 21 CFR 860.84, the panel considered classification of the non-TCP materials. The panel recommended unanimously that non-TCP bone grafting materials be classified into class II, except when intended to be used alone in filling or repair of bony defects and/or augmentation of the alveolar ridge. For that indication, the panel recommended placing the device in class III, but with a low priority for establishing an effective date for the requirement for premarket approval (Ref. 4).

*C. Summary of Reasons for the Recommendation*

For TCP for dental indications and for bone grafting materials for certain dental indications, the panel believed that special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of these devices and that there is sufficient information to establish special controls to provide such assurance.

The panel recommended that TCP should remain in class III when used alone in filling or repair of bony defects and/or augmentation of the alveolar ridge because they believed that the materials present risks to health that cannot be addressed by special controls.

*D. Summary of the Data for the Recommendation*

For TCP for dental indications, the panel based its recommendation on the information provided by the petitioner and FDA, the presentations made by stakeholders and FDA at the panel meeting, the open discussion during the panel meeting, and the panel members' personal knowledge of and clinical experience with the device (Ref. 5). The panel did not discuss bone grafting materials containing a drug or biologic component.

For non-TCP materials, the panel based its recommendation on the information provided by FDA, presentations made by stakeholders who marketed bone filling and augmentation devices, the open discussion during the panel meeting, and the panel members' personal knowledge of and clinical experience with the device.

## III. Risks to Health

The panel identified the following risks to health associated with bone grafting material: Ineffective bone formation, adverse tissue reaction, infection, and improper use.

*A. Ineffective Bone Formation*

The quality and physical properties of bone grafting material may be insufficient to support the required loads and lead to device failure. Device failure may result in ineffective treatment, revision, and permanent impairment for the patient.

*B. Adverse Tissue Reaction*

Inadequate biocompatibility of any of the components contained in bone grafting material may result in adverse tissue reaction and presents the potential for surgical revision (i.e., reoperation).

*C. Infection*

Implantation of an improperly sterilized device may result in an infection. Infection may result in revision or explantation of the device, which presents the potential for permanent impairment.

*D. Improper Use*

Inadequate labeling may result in improper use. Improper use may result in ineffective treatment and may cause permanent impairment.

## IV. Proposed Rule

FDA believes that bone grafting material that does not contain a drug or biologic component should be classified into class II and that TCP should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

FDA disagrees with the (1995) panel's recommendation that bone grafting materials should remain in class III when used alone in filling or repair of bony defects and/or augmentation of the alveolar ridge. FDA believes that when used for these indications, the risks to health can be addressed by special controls and that all of these bone grafting material devices share the same risks and recommended mitigation measures. Accordingly, FDA has developed the draft guidance document entitled ''Class II Special Controls Guidance Document: Dental Bone Grafting Material'' to serve as the special control for TCP and other bone grafting material devices for dental indications. As noted previously, bone grafting material that contains a drug or biologic component would remain in class III and the special control guidance document would not apply.

## V. Proposed Special Control

FDA believes that the special controls guidance document entitled ''Class II Special Controls Guidance Document: Dental Bone Grafting Material,'' in addition to general controls, can address the risks to health described in section III of this document. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the draft guidance document.

If adopted, following the effective date of a final rule reclassifying and classifying the device, any firm submitting a 510(k) premarket notification for the device would need to address the issues covered in the special control guidance. However, the firm would need to show only that its

device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

The special controls guidance document contains recommendations with regard to the information and testing that should be included in a premarket notification. The guidance document addresses the following topics: Characterization, biocompatibility, sterilization, and labeling. Adequate characterization of the composition, physical properties, and in vivo performance can address the risk of ineffective bone formation. Adequate biocompatibility can address the risk of adverse tissue reaction. Sterilization can address the risk of infection, and labeling can address the risk of improper use.

The agency is not proposing to exempt this device from the premarket notification requirements of the act, as permitted by section 510(m) of the act (21 U.S.C. 360(m)). FDA believes that it needs to review information in a premarket notification submission that addresses the risks identified in the guidance document in order to assure that a new device is at least as safe and effective as legally marketed devices of this type.

## VI. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

## VII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed classification is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, as categorically excluded, neither an environmental assessment nor an environmental impact statement is required.

## VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Manufacturers of the preamendments devices that FDA is reclassifying are being relieved of the burden of eventually submitting a premarket approval application. Manufacturers of these devices are already subject to the premarket notification requirements. FDA has designated a guidance document as the special control. FDA believes that manufacturers, including small manufacturers, are already substantially in compliance with the recommendations in the guidance document, and they will not need to submit substantially more information in their premarket notification submissions in order to meet the recommendations in the guidance document or otherwise provide reasonable assurances of safety and effectiveness. FDA believes that any regulation based on this proposed rule will impose no significant economic impact on any small entities. The agency, therefore, certifies that this proposed rule will not have a significant impact on a substantial number of small entities. In addition, it will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

## IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) is not required.

## X. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## XI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Bicon, Inc., Boston, MA to FDA, November 12, 2002.
2. Le Geros, R. Z., ''Calcium Phosphate Materials in Restorative Dentistry: A Review,'' *Advances in Dental Research*, vol. 2, pp. 164–180, 1988.
3. Dental Products Panel of the Medical Devices Advisory Committee, meeting transcript, May 22, 2003.
4. Dental Products Panel of the Medical Devices Advisory Committee, meeting transcript, August 8 and 9, 1995.
5. Dental Products Panel of the Medical Devices Advisory Committee, information package, May 22, 2003.

## List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended in subpart D as follows:

## PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR Part 872 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.3930 is revised to read as follows:

### § 872.3930 Bone grafting material.

(a) *Identification*. Bone grafting material is a naturally or synthetically derived material, such as hydroxyapatite, tricalcium phosphate, demineralized bone additives, collagen, or polylactic acids, that is intended to fill, augment, or reconstruct periodontal or bony defects of the oral and maxillofacial region.

(b) *Classification*. (1) Class II (special controls) if it contains no drug or biologic component. The special control for bone grafting materials that do not contain a drug or biologic component is FDA's ''Class II Special Controls Guidance Document: Dental Bone Grafting Material.'' (See § 872.1(e) for the availability of this guidance document.)

(2) Class III (premarket approval) if it contains a drug or biologic component. Bone grafting materials that contain a drug or biologic component, such as biological response modifiers, require premarket approval.

(c) *Date PMA or notice of PDP is required*. For devices described in paragraph (b)(2) of this section, no

effective date has been established for the requirement of premarket approval. (See § 872.3).

Dated: May 4, 2004.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 04–14767 Filed 6–29–04; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 110

**[CGD01–03–107]**

**RIN 1625–AA01**

## Anchorage Regulations: Yonkers, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish two Special Anchorage areas along the Hudson River adjacent to the City of Yonkers. This proposed action is necessary to facilitate safe navigation in that area and provide safe and secure anchorages for vessels not more than 20 meters in length. This action is intended to increase the safety of life and property on the Hudson River, improve the safety of anchored vessels in both anchorages, and provide for the overall safe and efficient flow of recreational vessel traffic and commerce.

**DATES:** Comments and related material must reach the Coast Guard on or before August 30, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (oan) CGD01–03–107, First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110, or deliver them to room 628 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. John J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355; E-mail *jmauro@d1.uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD01–03–107, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of comments received.

### Public Meeting

We do not plan to hold a public meeting, but you may submit a request for a meeting by writing to Commander (oan) CGD01–03–107, First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110 or delivering your request to room 628 at the same address above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. In your request please explain why a public meeting would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

As part of a waterfront revitalization and redevelopment effort, the City of Yonkers is proactively encouraging waterfront use by the general public. This proposed rule is in response to a request made by the City of Yonkers to help ensure the safe navigation of increased vessel traffic expected to arrive along the city waterfront due to this revitalization effort.

The Coast Guard is designating the areas as special anchorage areas in accordance with 33 U.S.C. 471. In accordance with that statute, vessels will not be required to sound signals or exhibit anchor lights or shapes which are otherwise required by rule 30 and 35 of the Inland Navigation Rules, codified at 33 U.S.C. 2030 and 2035. The two proposed special anchorage areas will be located on the west side of the Hudson River in the vicinity of Main Street and the JFK Marina, well removed from the channel and located where general navigation will not endanger or be endangered by unlighted vessels. Providing anchorage well removed from the channel and general navigation would greatly increase navigational safety.

While developing the proposed rule, in accordance with Title 33 of the Code of Federal Regulations, Part 109.05(b) the U.S. Coast Guard has consulted with the U.S. Army Corps of Engineers, New York District, located at 26 Federal Plaza, New York, NY 10278. The U.S. Army Corps of Engineers has determined that the proposed Special Anchorage Areas would not have an adverse affect on any federally maintained navigation channels in the area, structures the U.S. Army Corps of Engineers has permitted, or any pending permit applications submitted to the U.S. Army Corps of Engineers in this area.

### Discussion of Proposed Rule

The proposed rule would create two new special anchorage areas. The first, located on the Hudson River at Main Street, Yonkers, New York, would be that portion of the Hudson River starting on shore at point 40°56′15.4″ N, 073°54′11.1″ W; thence northwest to point 40°56′18.0″ N, 073°54′21.0″ W; thence south to point 40°55′58.8″ N, 073°54′24.8″ W; thence southeast to shore at point 40°55′58.0″ N, 073°54′21.0″ W.

The second, located on the Hudson River at JFK Marina, Yonkers, New York, would be that portion of the Hudson River starting on shore at point 40°57′28.5″ N, 073°53′46.0″ W; thence west to point 40°57′30.5″ N, 073°53′56.8″ W; thence southwest to point 40°57′07.5″ N, 073°54′06.2″ W; thence east to shore at point 40°57′08.0″ N, 073°53′58.5″ W. All proposed coordinates are North American Datum 1983 (NAD 83).

The special anchorage areas would be limited to vessels no greater than 20 meters in length. Vessels not more than 20 meters in length are not required to sound signals as required by rule 35 of the Inland Navigation Rules (33 U.S.C. 2035) or exhibit anchor lights or shapes required by rule 30 of the Inland Navigation Rules (33 U.S.C 2030) when at anchor in a special anchorage area. Additionally, mariners utilizing the anchorage areas are encouraged to contact local and state authorities, such as the local harbormaster, to ensure compliance with additional applicable state and local laws. Such laws may involve, for example, compliance with direction from the local harbormaster when placing or using moorings within the anchorage.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of Department of Homeland Security is unnecessary. This finding is based on the fact that this proposal conforms to the changing needs of the City of Yonkers and the changing needs of recreational vessels along the Hudson River. This proposed rule is in the interest of safe navigation and property protection.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of recreational or commercial vessels intending to transit in a portion of the Hudson River encumbered by the special anchorage areas. These anchorage areas, however, would not have a significant economic impact on these entities for the following reasons. The proposed special anchorage areas extend past the 30-foot depth contour by approximately 200 feet on the east side of the Hudson River. This leaves approximately 2,200 feet of safe water before reaching the 30-foot depth contour on the west side. This is more than enough room for the types of vessels currently operating on the river, which include both small and large commercial vessels. Thus these special anchorage areas will not impede safe and efficient vessel transit on the Hudson River.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. John J Mauro at the address listed in **ADDRESSES** above.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

Arule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus

standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environment documentation. A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Regulations**

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g); and Department of Homeland Security Delegation No. 0170.1.

2. In § 110.60 add new paragraphs (o–4) and (o–5) to read as follows:

**§ 110.60 Port of New York and vicinity.**

* * * * *

(o) * * *

(o–4) *Hudson River, at Main Street, Yonkers.* That portion of the Hudson River starting on shore at point 40°56′15.4″ N, 073°54′11.1″ W; thence northwest to point 40°56′18.0″ N, 073°54′21.0″ W; thence south to point 40°55′58.8″ N, 073°54′24.8″ W; thence southeast to shore at point 40°55′58.0″ N, 073°54′21.0″ W.

**Note:** This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbormaster for any additional ordinances and to ensure compliance with additional applicable state and local laws.

(o–5) *Hudson River, at JFK Marina, Yonkers.* That portion of the Hudson River starting on shore at point 40°57′28.5″ N, 073°53′46.0″ W; thence west to point 40°57′30.5″ N, 073°53′56.8″ W; thence southwest to point 40°57′07.5″ N, 073°54′06.2″ W; thence east to shore at point 40°57′08.0″ N, 073°53′58.5″ W.

**Note:** This area is limited to vessels no greater than 20 meters in length and is primarily for use by recreational craft on a seasonal or transient basis. These regulations do not prohibit the placement of moorings within the anchorage area, but requests for the placement of moorings should be directed to the local government to ensure compliance with local and state laws. All moorings shall be so placed that no vessel, when anchored, will at any time extend beyond the limits of the area. Fixed mooring piles or stakes are prohibited. Mariners are encouraged to contact the local harbormaster for any additional ordinances and to ensure compliance with additional applicable state and local laws.

* * * * *

Dated: June 15, 2004.

**Vivien S. Crea,**

*RADM, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 04–14869 Filed 6–29–04; 8:45 am]

BILLING CODE 4910–15–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

**[R07–OAR–2004–MO–0003; FRL–7779–8]**

### Approval and Promulgation of Implementation Plans; State of Missouri; Designation of Areas for Air Quality Planning Purposes; Arcadia and Liberty Townships

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the state of Missouri and Missouri's request to redesignate the lead nonattainment area in Iron County, Missouri, bounded by Arcadia and Liberty townships to attainment of the National Ambient Air Quality Standard (NAAQS). EPA proposes to approve the maintenance plan for this area including a settlement agreement which was submitted with the redesignation request.

**DATES:** Comments on this proposed action must be received in writing by July 30, 2004.

**ADDRESSES:** Comments may be mailed to James Hirtz, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** James Hirtz at (913) 551–7472 or by e-mail at *hirtz.james@epa.gov*.

**SUPPLEMENTARY INFORMATION:** In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision and redesignation request as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: June 21, 2004.

**James B. Gulliford,**

*Regional Administrator, Region 7.*

[FR Doc. 04–14702 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 63**

**[OAR–2003–0191; FRL–7780–7]**

**RIN 2060–AE–94**

## Appendix C to 40 CFR Part 63—Determination of the Fraction Biodegraded ($F_{bio}$) in a Biological Treatment Unit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; amendments.

**SUMMARY:** This action proposes amendments to appendix C to 40 CFR part 63. Appendix C defines the procedures for an owner or operator of a facility that generates wastewater to calculate the site-specific fraction of organic compounds biodegraded ($F_{bio}$) in a biological treatment unit. The proposed amendments to Appendix C would add a non-speciated test procedure to the batch test procedures for use in demonstrating compliance with wastewater rules that regulate volatile organic compounds (VOC), such as the synthetic organic chemical manufacturing industry (SOCMI) Wastewater new source performance standards (NSPS). The proposed amendments would also make minor editorial changes throughout appendix C.

**DATES:** *Comments.* Comments must be received on or before August 30, 2004.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by July 20, 2004, a public hearing will be held on July 30, 2004. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact JoLynn Collins, Waste and Chemical Processes Group, Emissions Standards Division (C439–03), U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541–5671 at least 2 days in advance of the public hearing.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. OAR–2003–0191, by one of the following methods to the docket. If possible, also send a copy of your comments to Mary Tom Kissell by either mail or e-mail as identified in the **FOR FURTHER INFORMATION CONTACT** section.

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

4. Hand Delivery: Air Docket, Room B–102, Environmental Protection Agency, 1301 Constitution Avenue, NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions.* Direct your comments to Docket ID No. OAR–2003–0191. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket.* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, 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 either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. This docket facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Air and Radiation Docket telephone number is (202) 566–1742. The 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 Public Reading Room is (202) 566–1744.

*Public Hearing.* If timely requests to speak at a public hearing are received, a public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina.

Persons interested in attending the public hearing must call JoLynn Collins to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

**FOR FURTHER INFORMATION CONTACT:** Mary Tom Kissell, Office of Air and Radiation, Emission Standards Division (C439–03), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–4516, fax number (919) 685–3219, e-mail: *kissell.mary@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Regulated Entities.* The proposed amendments could possibly apply to a large number of industries that could be using the provisions of 40 CFR part 63, appendix C, to demonstrate compliance with an air standard. Therefore, we have not listed specific affected industries or their North American Industrial Classification System (NAICS) codes here. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Outline.* The information presented in the preamble is organized as follows:

I. Background
II. Summary of the Proposed Amendments
III. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism

F. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045, Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act

## I. Background

Appendix C to 40 CFR part 63 provides procedures for calculating $F_{bio}$ in a biological treatment system. The appendix currently contains five procedures for determining $F_{bio}$: bench-top reactors, site-specific system performance data, inlet and outlet concentration data, batch tests, and multiple zone concentration measurements. Each of the procedures in appendix C are compound-specific (*i.e.*, the individual compound fraction biodegraded ($F_{bio}$) is determined for each identified compound and then summed to obtain an overall $F_{bio}$). However, in developing the new source performance standards for wastewater sources in the synthetic organic chemical manufacturing industry, we realized that $F_{bio}$ determinations on an individual compound basis may be problematic for sources demonstrating compliance for large numbers of undefined VOC.

Wastewater streams from SOCMI processes can contain hundreds of organic wastewater compounds (OWWC). For these wastewater streams, identifying all (or the predominant constituents) of the OWWC would require costly analytical testing. To provide for a more cost-effective evaluation of wastewater streams with multiple OWWC, the proposed amendments to appendix C to 40 CFR part 63 add a procedure for determining an overall $F_{bio}$ that does not require identification of specific OWWC.

## II. Summary of the Proposed Amendments

The proposed amendments to appendix C to 40 CFR part 63 add a non-speciated, aerated draft tube reactor test to the existing batch test procedures described in section III.D of appendix C. The proposed non-speciated test procedure uses the same approach as the aerated reactor test, but also includes procedures that are related to evaluating individual components in a wastewater stream without having to identify these components or make separate measurements of the characteristics of the components.

The proposed test procedure relies on establishing correlations between peak areas of unidentified compounds resulting from gas chromatography (GC) analysis with the measured concentrations of the unidentified compounds in the draft tube headspace. Automated gas sampling or solid phase microextraction (SPME) fibers are used to collect samples of the gas in the headspace of the draft tube over the time period of the test. Compounds in the gas samples are measured using a gas chromatography/flame ionization detector (GC/FID).

The change in each VOC concentration in the headspace of the draft tube is related to the decrease in aqueous phase concentration of each VOC over time. This correlation is used to calculate biodegradation rates for each VOC. Also, an overall $F_{bio}$ for the biological treatment system is calculated from the sum of the individual organic compound concentrations and individual $F_{bio}$ values. Appendix C to 40 CFR part 63 allows the use of manual or computer-assisted methods to analyze the GC concentration data.

Today's proposed non-speciated aerated draft tube reactor test method is an appropriate addition to appendix C to 40 CFR part 63 to provide a more cost-effective option for compliance demonstrations for activated sludge biological treatment units affected by wastewater rules regulating VOC. While we consider this to be a cost-effective option, the non-speciated method also provides an accurate procedure for demonstrating biodegradation as opposed to volatilization for an activated sludge biological unit. Although appropriate for rules such as the proposed SOCMI Wastewater NSPS that would regulate OWWC, the non-speciated aerated method may not be appropriate for other rules. In the case of the proposed SOCMI Wastewater NSPS, the regulated pollutants would be OWWC which comprise all of the organic compounds in the wastewater streams that may volatilize, *i.e.*, compounds with a Henry's law constant greater than 0.1 atmosphere per mole fraction. For rules requiring destruction of hazardous air pollutants (HAP), other appendix C procedures are preferred because they require identification and quantification of HAP, ensuring the overall $F_{bio}$ reflects the actual destruction of the HAP and not the average of all the organic compounds present in the wastewater. Therefore, today's proposed non-speciated aerated draft tube reactor test method may only be used to comply with rules that regulate VOC, such as the SOCMI Wastewater NSPS.

In addition to the non-speciated aerated draft tube reactor test, the proposed amendments also make minor revisions to clarify the existing batch test procedures in section III.D of appendix C to 40 CFR part 63. We are clarifying that the batch test procedures are headspace characterization methods. Also, we are clarifying that the equilibrium verification required by the aerated reactor test must be demonstrated for one or more of the most volatile compounds to be tested for biodegradation.

## III. Statutory and Executive Order Reviews

### *A. Executive Order 12866, Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by the OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that the proposed amendments are not a ''significant regulatory action'' under the terms of Executive Order 12866 and do not impose any additional control requirements. The proposed amendments add an additional, potentially less-costly option for compliance demonstration for certain biological treatment units. Therefore, the proposed amendments are not subject to review by OMB.

### *B. Paperwork Reduction Act*

The proposed amendments to appendix C to 40 CFR part 63 do not impose or change any information collection requirements. Therefore, the requirements of the Paperwork Reduction Act do not apply to the proposed amendments.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act 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 impact on a substantial number of small entities. Small entities include small businesses, small government organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business with up to 1,000 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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's proposed amendments do not increase the cost of compliance because: (1) The proposed amendments do not impose requirements independent of the proposed SOCMI Wastewater NSPS; (2) we proposed using appendix C to 40 CFR part 63 to demonstrate compliance with the proposed SOCMI Wastewater NSPS in the supplement to the proposed rule; (3) the cost of compliance demonstrations is accounted for in the proposed SOCMI Wastewater NSPS; and (4) the procedure we are proposing to add to appendix C provides another, less expensive, alternative to the procedures currently available in appendix C. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (URMA), 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 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 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, under section 203 of the UMRA, a small government agency plan. 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the proposed amendments are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that the proposed amendments do not contain regulatory requirements that might significantly or uniquely affect small governments because the proposed amendments do not impose any additional regulatory requirements. Therefore, the proposed amendments are not subject to the requirements of section 203 of the UMRA.

*E. Executive Order 13132, Federalism*

Executive Order 13132 (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.''

The proposed amendments do not have federalism implications. The proposed amendments 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. The proposed amendments will not impose substantial direct compliance costs on State or local governments, and they will not preempt State law. Thus, Executive Order 13132 does not apply to the proposed amendments.

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

Executive Order 13175 (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.''

The proposed amendments do not have tribal implications and will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to the proposed amendments.

*G. Executive Order 13045, Protection of Children From Environmental Health & Safety Risks*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 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 EPA 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 EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. The proposed amendments are not subject to

Executive Order 13045 because they are based on technology performance and not on health and safety risks. Also, the proposed amendments are not ''economically significant.''

*H. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

The proposed amendments are not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because they are not a significant regulatory action under Executive Order 12866 and because they will not have an adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed amendments include technical standards and requirements for taking measurements. Consistent with the NTTAA, we conducted searches for applicable voluntary consensus standards that could be used in addition to the method proposed in this action by searching the National Standards System Institute (NSSN) database. We searched for methods and tests required by the proposed amendments, all of which are methods or tests previously promulgated. No potentially equivalent methods for the methods and tests in the proposal were found in the NSSN database search. Therefore, we do not propose to use any voluntary consensus standards. The search and review results are documented in Dockets No. OAR–2003–0191 and A–94–32.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 24, 2004.

**Michael O. Leavitt,**

*Administrator.*

For reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Appendix C is amended by revising Section III Procedures for Determination of $F_{bio}$ introductory text to read as follows:

### Appendix C to Part 63—Determination of the Fraction Biodegraded ($F_{bio}$) in a Biological Treatment Unit

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**III. Procedures for Determination of $F_{bio}$**

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Procedure 4 explains three types of batch tests which may be used to estimate the first order biodegradation rate constant. * * *

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3. Appendix C is amended by revising section III.D to read as follows:

*D. Batch Tests (Procedure 4)*

Three types of batch tests which may be used to determine kinetic parameters are: (1) The aerated reactor test, (2) the sealed reactor test, and (3) the non-speciated aerated draft tube reactor test. The non-speciated aerated draft reactor test is appropriate for compliance demonstrations with rules that regulate volatile organic compounds (VOC). Where there is a limited specific list of HAP compounds of concern one of the other batch tests or procedures is preferable. The aerated reactor test is also known as the BOX test (batch test with oxygen addition). The sealed reactor test is also known as the serum bottle test. These batch tests should be conducted only by persons familiar with procedures for determining biodegradation kinetics. Detailed discussions of batch procedures for determining biodegradation kinetic parameters can be found in references 1–4. A detailed discussion of the non-speciated aerated draft tube reactor test can be found in reference 9.

For the batch test approaches, a biomass sample from the activated sludge unit of interest is collected, aerated, and stored for no more than 4 hours prior to testing. To collect sufficient data when biodegradation is rapid, it may be necessary to dilute the biomass sample. If the sample is to be diluted, the biomass sample shall be diluted using treated effluent from the activated sludge unit of interest to a concentration such that the biodegradation test will last long enough to make at least six concentration measurements. It is recommended that the tests not be terminated until the compound concentration falls below the limit of quantitation (LOQ). Measurements that are below the LOQ should not be used in the data analysis. Biomass concentrations shall be determined using standard methods for measurement of mixed liquor volatile suspended solids (MLVSS) (reference 5).

The change in concentration of a test compound may be monitored by either measuring the concentration in the liquid or in the reactor headspace. The analytical technique chosen for the test should be as sensitive as possible. For the batch test procedures using headspace characterization described in this section, equilibrium conditions must exist between the liquid and gas phases of the experiments because the data analysis procedures are based on this premise. To use the headspace sampling approach, the reactor headspace must be in equilibrium with the liquid so that the headspace concentrations can be correlated with the liquid concentrations. Before the biodegradation testing is conducted using headspace analysis, the equilibrium assumption must be verified. A discussion of the equilibrium assumption verification is given below in sections D.1 and D.2 since different approaches are required for the two types of batch tests.

To determine biodegradation kinetic parameters in a batch test, it is important to choose an appropriate initial substrate (compound(s) of interest) concentration for the test. The outcome of the batch experiment may be influenced by the initial substrate ($S_o$) to biomass ($X_o$) ratio (see references 3, 4, and 6). This ratio is typically measured in chemical oxygen demand (COD) units. When the $S_o/X_o$ ratio is low, cell multiplication and growth in the batch test is negligible and the kinetics measured by the test are representative of the kinetics in the activated sludge unit of interest. The $S_o/X_o$ ratio for a batch test is determined with the following equation:

$$\frac{S_o}{X_o} = \frac{S_i}{1.42\ X} \qquad \text{(Eqn. App. C-1)}$$

Where:

$S_o/X_o$ = initial substrate to biomass ratio on a COD basis

$S_i$ = initial substrate concentration in COD units(g COD/liter)

X = biomass concentration in the batch test (g MLVSS/liter)

1.42 = Conversion factor to convert to COD units

For the batch tests described in this section, the $S_o/X_o$ ratio (on a COD basis) must be initially less than 0.5.

1. *Aerated Reactor Test.* An aerated draft tube reactor may be used for the biokinetics testing (as an example see Figure 2 of appendix C). Other aerated reactor configurations may also be used. Air is bubbled through a porous frit at a rate sufficient to aerate and keep the reactor uniformly mixed. Aeration rates typically vary from 50 to 200 milliter per minute (ml/min) for a 1 liter system. A mass flow rate controller is used to carefully control the air flow rate because it is important to have an accurate measure of this rate. The dissolved oxygen (DO) concentration in the system must not fall below 2 milligram per liter (mg/liter) so that the biodegradation observed will

not be DO-limited. Once the air flow rate is established, the test mixture (or compound) of interest is then injected into the reactor and the concentration of the compound(s) is monitored over time. Concentrations may be monitored in the liquid or in the headspace. A minimum of six samples shall be taken over the period of the test. However, it is recommended to collect samples until the compound concentration falls below the LOQ. If liquid samples are collected, they must be small enough such that the liquid volume in the batch reactor does not change by more than 10 percent.

Before conducting experiments with biomass, it is necessary to verify the equilibrium assumption using one or more of the more volatile components from the list of volatile components that will be tested. A demonstration of equilibrium with the most volatile components that will be tested is expected to assure that equilibrium is also achieved with the less volatile components. The number of volatile components needed to demonstrate equilibrium depends on experimental uncertainty, literature measurement uncertainty, and the availability of previous demonstrations of equilibrium using similar equipment. If the most volatile component(s) that will be tested have a Henry's constant of less than 0.1 (y/x), then a demonstration of equilibrium with those components is not required if a previous demonstration of equilibrium is available using similar equipment. The equilibrium assumption can be verified by conducting a stripping experiment using the effluent (no biomass) from the activated sludge unit of interest. Effluent is filtered with a 0.45 micrometer (um) or smaller filter and placed in the draft tube reactor. Air is sparged into the system and the compound concentration in the liquid or headspace is monitored over time. This test with no biomass will provide an estimate of the Henry's law constant. If the system is at equilibrium, the Henry's law constant may be estimated with the following equation:

$$-\ln(C/C_o)=(GK_{eq}/V)t \quad \text{(Eqn. App. C–2)}$$

Where:

C = concentration at time, t (min)
$C_o$ = concentration at t = 0
G = volumetric gas flow rate (ml/min)
V = liquid volume in the batch reactor (ml)
$K_{eq}$ = Henry's law constant (mg/L-gas)/(mg/L-liquid)
t = time (min)

A plot of $-\ln(C/C_o)$ as a function of t will have a slope equal to $GK_{eq}/V$. The equilibrium assumption can be verified by comparing the experimentally determined $K_{eq}$ for the system to literature values of the Henry's Law constant (including those listed in this appendix). If $K_{eq}$ does not match the Henry's law constant, $K_{eq}$ shall be determined from analysis of the headspace and liquid concentration in a batch system.

The concentration of a compound decreases in the bioreactor due to both biodegradation and stripping. Biodegradation processes are typically described with a Monod model. This model and a stripping expression are combined to give a mass balance for the aerated draft tube reactor:

$$-\frac{ds}{dt}=\left(\frac{GK_{eq}}{V}\right)s+\left(\frac{Q_mX}{K_s+S}\right)s \quad \text{(Eqn. App. C-3)}$$

Where:

s = test compound concentration, mg/liter
G = volumetric gas flow rate, liters/hr
$K_{eq}$ = Henry's Law constant measured in the system, (mg/liter gas)/(mg/liter liquid)
V = volume of liquid in the reactor, liters
X = biomass concentration (g MLVSS/liter)
$Q_m$ = maximum rate of substrate removal, mg/g MLVSS/hr
$K_s$ = Monod biorate constant at half the maximum rate, mg/liter

Equation App. C–3 can be integrated to obtain the following equation:

$$-t=\frac{VK_s}{A}\ln\left(\frac{s}{s_o}\right)+\frac{Q_mXV^2}{AB}\ln\left(\frac{A+Bs}{A+Bs_o}\right) \quad \text{(Eqn. App. C-4)}$$

where:

$A = GK_{eq}K_s + Q_mVX$
$B = GK_{eq}$
$S_o$ = test compound concentration at t=0

This equation is used along with the substrate concentration versus time data to determine the best fit parameters ($Q_m$ and $K_s$) to describe the biodegradation process in the aerated reactor. If the Aerated Reactor test is used, the following procedure is used to analyze the data. Evaluate $K_{eq}$ for the compound of interest with Form XI. The concentration in the vented headspace or liquid is measured as a function of time and the data is entered on Form XI. A plot is made from the data and attached to the Form XI. $K_{eq}$ is calculated on Form XI and the results are contrasted with the expected value of Henry's law obtained from Form IX. If the comparison is satisfactory, the stripping constant is calculated from $K_{eq}$, completing Form XI. The values of $K_{eq}$ may differ because the theoretical value of $K_{eq}$ may not be applicable to the system of interest. If the comparison of the calculated $K_{eq}$ from the form and the expected value of Henry's law is unsatisfactory, Form X can alternatively be used to validate $K_{eq}$. If the aerated reactor is demonstrated to not be at equilibrium, either modify the reactor design and/or operation, or use another type of batch test. This equilibrium testing must only be demonstrated for one or more of the most volatile compounds to be tested for biodegradation. Once it is demonstrated that the aerated reactor achieves equilibrium, then Form IX is used to adjust published or measured Henry's law constants for the other volatile compounds to be tested.

The compound-specific biorate constants are then measured using Form XII. The stripping constant that was determined from Form XI and a headspace correction factor of 1 are entered on Form XII. The aerated reactor biotest may then be run, measuring concentrations of each compound of interest as a function of time. If headspace concentrations are measured instead of liquid concentrations, then the corresponding liquid concentrations are calculated from the headspace measurements using the $K_{eq}$ determined on Form XI and entered on Form XII.

The concentration data on Form XII may contain scatter that can adversely influence the data interpretation. It is acceptable to curve fit the concentration data and enter the concentrations on the fitted curve instead of the actual data. If curve fitting is used, the curve-fitting procedure must be based upon the Equation App. C–4. When curve fitting is used, it is necessary to attach a plot of the actual data and the fitted curve to Form XII.

If the stripping rate constant is relatively large when compared to the biorate at low concentrations, it may be difficult to obtain accurate evaluations of the first-order biorate constant. In these cases, either reducing the stripping rate constant by lowering the aeration rate, or increasing the biomass concentrations should be considered. The final result of the batch testing is the measurement of a biorate that can be used to estimate the fraction biodegraded, $f_{bio}$. The number transferred to Form III is obtained from Form XII, line 9.

2. *Sealed Reactor Test.* This test uses a closed system to prevent losses of the test compound by volatilization. This test may be conducted using a serum bottle or a sealed draft tube reactor (for an example see Figure 3 of appendix C). Since no air is supplied, it is necessary to ensure that sufficient oxygen is present in the system. The DO concentration in the system must not fall below 2 mg/liter so that the biodegradation observed will not be DO-limited. As an

alternative, oxygen may be supplied by electrolysis as needed to maintain the DO concentration above 2 mg/liter. The reactor contents must be uniformly mixed, by stirring or agitation using a shaker or similar apparatus. The test mixture (or compound) of interest is injected into the reactor and the concentration is monitored over time. A minimum of six samples shall be taken over the period of the test. However, it is necessary to monitor the concentration until it falls below the LOQ.

The equilibrium assumption must be verified for the batch reactor system that depends on headspace characterization. In this case, $K_{eq}$ may be determined by simultaneously measuring gas and liquid phase concentrations at different times within a given experiment. The equilibrium testing must only be demonstrated for one or more of the most volatile component(s) that will be tested. A constant ratio of gas/liquid concentrations indicates that equilibrium conditions are present and $K_{eq}$ is not a function of concentration. This ratio is then taken as the $K_{eq}$ for the specific component(s) in the test. It is not necessary to measure $K_{eq}$ for each experiment. If the ratio is not constant, the equilibrium assumption is not valid and it is necessary to (1) increase mixing energy for the system and retest for the equilibrium assumption, or (2) use a different type of test that does not depend on headspace characterization (for example, a collapsible volume reactor).

The concentration of a compound decreases in the bioreactor due to biodegradation according to Equation App. C–5:

$$\frac{ds}{dt} = \left[\frac{-V_l}{V_g K_{eq} + V_l}\right]\left[\left(\frac{Q_m X}{K_s + s}\right) s\right] \qquad \text{(Eqn. App. C-5)}$$

where:

s = test compound concentration (mg/liters)

$V_l$ = the average liquid volume in the reactor (liters)

$V_g$ = the average gas volume in the reactor (liters)

$Q_m$ = maximum rate of substrate removal (mg/g MLVSS/hr)

$K_{eq}$ = Henry's Law constant determined for the test, (mg/liter gas)/(mg/liter liquid)

$K_s$ = Monod biorate constant at one-half the maximum rate (mg/liter)

t = time (hours)

X = biomass concentration (g MLVSS/liter)

$S_o$ = test compound concentration at time t=0

Equation App. C–5 can be solved analytically to give:

$$t = -\frac{\left(V_g K_{eq} + V_l\right)}{V_l Q_m X}\left[\left(s - s_o\right) + K_s \ln\left(\frac{s}{s_o}\right)\right] \qquad \text{(Eqn. App. C-6)}$$

This equation is used along with the substrate concentration versus time data to determine the best fit parameters ($Q_m$ and $K_s$) to describe the biodegradation process in the sealed reactor.

If the sealed reactor test is used, Form X is used to determine the headspace correction factor. The disappearance of a compound in the sealed reactor test is slowed because a fraction of the compound is not available for biodegradation because it is present in the headspace. If the compound is almost entirely in the liquid phase, the headspace correction factor is approximately one. If the headspace correction factor is substantially less than one, improved mass transfer or reduced headspace may improve the accuracy of the sealed reactor test. A preliminary sealed reactor test must be conducted to test the equilibrium assumption. As the compound of interest is degraded, simultaneous headspace and liquid samples should be collected and Form X should be used to evaluate $K_{eq}$. The ratio of headspace to liquid concentrations must be constant in order to confirm that equilibrium conditions exist. If equilibrium conditions are not present, additional mixing or an alternate reactor configuration may be required.

The compound-specific biorate constants are then calculated using Form XII. For the sealed reactor test, a stripping rate constant of zero and the headspace correction factor that was determined from Form X are entered on Form XII. The sealed reactor test may then be run, measuring the concentrations of each compound of interest as a function of time. If headspace concentrations are measured instead of liquid concentrations, then the corresponding liquid concentrations are calculated from the headspace measurements using $K_{eq}$ from Form X and entered on Form XII.

The concentration data on Form XII may contain scatter that can adversely influence the data interpretation. It is acceptable to curve fit the concentration data and enter the concentrations on the fitted curve instead of the actual data. If curve fitting is used, the curve-fitting procedure must be based upon Equation App. C–6. When curve fitting is used, it is necessary to attach a plot of the actual data and the fitted curve to Form XII.

If a sealed collapsible reactor is used that has no headspace, the headspace correction factor will equal 1, but the stripping rate constant may not equal 0 due to diffusion losses through the reactor wall. The ratio of the rate of loss of compound to the concentration of the compound in the reactor (units of per hour) must be evaluated. This loss ratio has the same units as the stripping rate constant and may be entered as the stripping rate constant on line 1 of Form XII.

If the loss due to diffusion through the walls of the collapsible reactor is relatively large when compared to the biorate at low concentrations, it may be difficult to obtain accurate evaluations of the first-order biorate constant. In these cases, either replacing the materials used to construct the reactor with materials of low permeability or increasing the biomass concentration should be considered.

The final result of the batch testing is the measurement of a biorate that can be used to estimate the fraction biodegraded, $f_{bio}$. The number transferred to Form III is obtained from Form XII, line 9.

The number on Form XII line 9 will equal the Monod first-order biorate constant if the full-scale system is operated in the first-order range. If the full-scale system is operated at concentrations above that of the Monod first-order range, the value of the number on line 9 will be somewhat lower than the Monod first-order biorate constant. With supporting biorate data, the Monod model used in Form XII may be used to estimate the effective biorate constant K1 for use in Form III.

If a reactor with headspace is used, analysis of the data using Equation App. C–6 is valid only if $V_l$ and $V_g$ do not change more than 10 percent (*i.e.*, they can be approximated as constant for the duration of the test). Since biodegradation is occurring only in the liquid, as the liquid concentration decreases it is necessary for mass to transfer from the gas to the liquid phase. This may require vigorous mixing and/or reducing the volume in the headspace of the reactor.

If there is no headspace (*e.g.*, a collapsible reactor), Equation App. C–6 is independent of $V_l$ and there are no restrictions on the liquid volume. If a membrane or bag is used as the collapsible-volume reactor, it may be important to monitor for diffusion losses in the system. To determine if there are losses, the bag should be used without biomass and spiked with the compound(s) of interest. The concentration of the compound(s) in the reactor should be monitored over time. The data are analyzed as described above for the sealed reactor test.

3. *Non-speciated aerated draft tube reactor test.* This method is appropriate for compliance demonstrations with rules that regulate VOC. The aerated draft tube reactor test is used for assessing the $F_{bio}$ for non-speciated VOC. The methods and procedures that are used with the Aerated reactor test (described in section 1 above) are also used

with the non-speciated draft tube test, with the exception of special procedures that are related to the limited information available for identifying the waste components, the volatility of the components, and the amount of the components that are present in the waste. The non-speciated test method described here is based upon evaluating individual components in a waste without the need to identify the name of the component or make separate measurements of the characteristics of the components.

3.1 *Purpose of the method.* The following sections identify specific purposes for which the non-speciated method is used. For each purpose identified in sections 3.1.1 through 3.1.6, a correlation between the peak area of the compound in the GC analysis and the concentration in the draft tube headspace must be available as discussed in section 3.10.

3.1.1 *Henry's law constant for each non-speciated organic compound.* One run of the non-speciated method without biomass is used to obtain estimates of the Henry's law value for each individual organic compound identified in the waste. For each volatile organic component, correlations of the vapor phase concentration and the stripping times are developed. A Henry's law value is determined for each component. See section 3.6.

3.1.2 *Non-speciated organic compound concentration.* One run of the non-speciated method without biomass is used to evaluate the individual organic compound concentrations in the waste. The amount of each component initially present in the waste is determined from the Henry's law value and the correlation between the peak area and the gas correlation. See section 3.9.

3.1.3 *Total concentration of non-speciated organic compounds.* One run of the non-speciated method without biomass is used to obtain estimates of the individual organic compound concentrations in the waste. These individual concentrations are summed to obtain the total concentration of organic compounds. See section 3.11.

3.1.4 *Biodegradation rate for each non-speciated organic compound.* Two runs of the non-speciated method, one with biomass and one without biomass are used to obtain estimates of the biodegradation rate for each individual organic compound identified in the waste. The stripping rates from the run without biodegradation is compared to the air stripping run with biodegradation. The difference in the rates of removal in the two runs is used to calculate the biodegradation rate. See section 3.7.

3.1.5 *Individual values of* $f_e$ and $f_{bio}$ for each non-speciated organic compound. The use of Form III or an equivalent method is used to evaluate the fraction biodegraded (individual $F_{bio}$) using the Henry's law value for each component (3.6), the amount of each component (3.9), and the biodegradation rate for each component (3.7), together with the characteristics of the biotreatment unit. See section 3.12.

3.1.6 *Overall* $F_e$ and $F_{bio}$ for the total concentration of non-speciated organic compounds. The use of Form III or an equivalent method is used to evaluate the fraction biodegraded (individual $f_{bio}$) using the Henry's law value for each component (3.6), the amount of each component (3.9), and the biodegradation rate for each component (3.7), together with the characteristics of the biotreatment unit.

These individual $F_{bio}$ numbers for each of the components are used to obtain an overall $F_{bio}$ value for the overall non-speciated waste. Non-speciated compounds with low Henry's law constants of less than 0.1 mol fraction gas per mol fraction in liquid at one atmosphere can be excluded from this summation.

A weighted summation of these individual estimates of biological and air emission removal is used to obtain an overall $F_{bio}$ and an overall Fe. See section 3.13.

3.2 *Reactor configuration.* An aerated draft tube reactor is used for the biokinetics testing for the non-speciated reactor test (as an example see Figure 2 of appendix C). Other aerated reactor configurations may also be used if equivalent to the aerated draft tube reactor. Air is bubbled through a porous frit at a rate sufficient to aerate and keep the reactor uniformly mixed. A discussion of the setup and the operation of the aerated draft tube reactor is presented in Section D.1.

3.3 *Reactor sampling.* Concentrations of volatile compounds are only monitored in the headspace in the non-speciated aerated draft tube reactor test. The headspace may be monitored with solid phase microextraction (SPME) fibers or with automated gas sampling. A minimum of six headspace samples shall be taken over the period of the test for each individual run and analyzed by gas chromatography. Sufficient gas samples will be taken to provide at least 3 data samples for each relevant component for each air stripping run. It is necessary to collect enough samples to quantify the characteristics of the individual volatile compound peaks in the system; therefore, in some cases it is possible to reduce the total number of headspace samples by sampling more frequently at the beginning of the run.

3.4 *Reactor equilibrium verification.* It is necessary to verify the equilibrium assumption for the non-speciated aerated draft tube reactor test as discussed in section D.1, using Equation C–2.

A plot of $-\ln(C/C_o)$ as a function of t will have a slope equal to $GK_{eq}/V$. Verification of equilibrium can be performed initially and periodically with a set of known volatile compounds with known Henry's law constants. The selection of compounds should represent the most volatile compounds in the waste stream (at least as great as the experimentally measured Henry's law constants for the top 5 percent of the non-speciated components, or alternatively with Henry's law constants of 300 y/x). Experimentally measured Henry's law values are available from the WATER7 (or any subsequent update to the model) data base for a number of compounds. In addition, the compounds that are selected for the verification of equilibrium should be included in the determination of the SPME fiber partition factor. Verification of equilibrium in the non-speciated aerated draft tube reactor test under each set of operating conditions is important because accurate measurement of the Henry's law constant is necessary to permit accurate characterization of non-speciated peaks. Non-speciated compound peaks that demonstrate Henry's law constants less than 0.1 (y/x) in the test are excluded from the analysis. If the aerated draft tube reactor cannot be demonstrated to be at equilibrium, modify the reactor design and/or operation.

3.5 *Two reactor runs.* The concentration of a compound in the bioreactor is measured in the headspace in two different runs, first with air stripping only and then second with both biodegradation and air stripping. A first order biodegradation rate model is used to model the biodegradation in the aerated draft tube reactor. Since the measurement of the first order biodegradation rate constant is a function of concentration, it is important to have concentrations of non-speciated compounds in this test that closely represent the conditions in the full-scale biodegradation unit that you are evaluating. Since the components and concentrations are generally unknown for this non-speciated method, samples of actual wastewater should be obtained from the applicable location in the full-scale facility, or as close to these conditions as practicable, such as a sample of wastewater from a pilot plant, a full-scale process from another site, etc. This model and a stripping expression are combined to give a mass balance for the aerated draft tube reactor:

$$-\frac{ds}{dt} = \left(\frac{GK_{eq}}{V}\right) s + K_1 + X_s \qquad \text{(Eqn. App. C-7)}$$

where:

s = test compound concentration, mg/liter

G = volumetric gas flow rate, liters/hr

$K_{eq}$ = Henry's Law constant measured in the system, (mg/liter gas)/(mg/liter liquid)

V = volume of liquid in the reactor, liters

X = biomass concentration (g MLVSS/liter)

$K_1$ = first order biodegradation rate constant, liter/g MLVSS/hr

Equation App. C–7 can be integrated to obtain the following equation:

$$\ln\left(\frac{\text{Peakarea}_t}{\text{Peakarea}_o}\right) = -\left(\frac{GK_{eq}}{V} + K_1X\right)t \qquad \text{(Eqn. App. C-8)}$$

where:

$\text{Peakarea}_t$ = the area of the non-speciated compound peak at time t,

$\text{Peakarea}_o$ = the area of the non-speciated compound peak at the beginning of the run,

$GK_{eq}/V$ = contribution to the slope from stripping only, and

$K_1X$ = contribution to the slope from biodegradation.

If ln(Peakarea) is plotted on the y axis and t is plotted on the x axis, the data should form a straight line with a slope that equals the negative of the terms in parenthesis on the right of Equation App. C–8 and the intercept of this line on the y axis equals ln ($\text{Peakarea}_o$).

A discussion of Equation App. C–8 is provided in reference 9. This equation is used to analyze the two stripping runs, with and without biodegradation. Evaluate the slope for each non-speciated peak for both the run without biodegradation and the run with biodegradation.

3.6 *Henry's law constants.* To evaluate the Henry's law constant for each unspeciated VOC, you obtain the slope for the run without biodegradation and then equate this slope (with a negative value) to $-GK_{eq}$. The value of $K_{eq}$ is then equal to the product of the negative of the slope and V, divided by G.

3.7 *Biodegradation rate constant.* To evaluate the first order biorate constant, use the slope for each non-speciated peak for the run without biodegradation and subtract the corresponding slope of the non-speciated peak with biodegradation. This difference equals $K_1X$. The value of $K_1$ that is determined in this manner is used to characterize the biodegradation rate under the conditions in the full-scale biodegradation unit that you are evaluating.

3.8 *Accuracy concerns.* The non-speciated compound peak data may contain scatter that can adversely influence the data interpretation. In the case of significant data scatter for a specific compound that will limit the ability to determine the difference in slopes from the two runs, it is possible to use conventional statistics to estimate the accuracy of the difference in slopes. When it is not possible to demonstrate a significant difference in the slopes of the two runs for a non-speciated compound, the value of $K_1$ is set to zero. A negative value of $K_1$ is never used. If the specific compound of concern has a statistically significant negative value of $K_1$, this can be an indication of the formation of the compound as a byproduct and is reported as an anomalous result. It is necessary to provide documentation of data and calculations.

If the stripping rate constant is relatively large when compared to the biorate, it may be difficult to obtain an accurate evaluation of the first-order biorate constant. In these cases, either reducing the stripping rate constant by lowering the aeration rate, or increasing the biomass concentrations should be considered. If the aeration rate is changed, the equilibrium assumption will have to be verified again. Equilibrium conditions are typically more difficult to obtain at greater aeration rates, but lower aeration rates could result in difficulty in achieving equilibrium conditions due to poorer mixing.

3.9 *The concentration of each compound.* The amount of each individual non-speciated organic compound is calculated by measuring the initial area of the chromatographic peak of the individual compound, $\text{Peakarea}_o$, the ratio of the peak area to the gas phase concentration, F, the SPME fiber partition factor, $K_{fiber}$, and the partition coefficient, $K_{eq}$. The $\text{Peakarea}_o$ is the intercept of the line with the y axis (plot of ln Peakarea vs. time). If automatic gas sampling is used for the analysis, a representative calibration of the gas chromatographic peak area and the gas phase concentration is required, and a correlation for the fiber partition factor is not used because the SPME method is not used. For complex chemicals with relatively poor biodegradation rates, it may be necessary to modify the procedure using multiple columns or detectors.

The equation used for the SPME method is as follows:

$$C_L = \frac{P_A}{FK_{eq}K_{fiber}} \qquad \text{(Eqn. App. C-9)}$$

where:

$C_L$ = the concentration of the component in the water, (mg/L),

$P_A$ = the integrated peak area of the component in the gas chromatograph, (area counts),

$K_{eq}$ = the ratio of the concentration of the component in the headspace to the concentration of the component in the water, (mg/L per mg/L),

$K_{fiber}$ = the ratio of the mass on the extraction fiber to the concentration of the component in the headspace, (mg per mg/L), and

F = the ratio of the peak area to the mass on the extraction fiber, (area counts/mg).

The equation used for the automatic headspace sampling alternative is as follows:

$$C_L = \frac{P_A}{FcK_{eq}} \qquad \text{(Eqn. App. C-10)}$$

where the symbols are defined above, and Fc is the ratio of the peak area count to the concentration in the gas phase, (mg/L). This number depends on the sampling and analysis setup.

3.10 *SPME fiber partition correlation.* If automatic gas sampling is used, it is not necessary to account for SPME fiber partition effects, but it is necessary to use gas chromatographic calibration factors for the compounds of interest. Reference 9 presents additional details on the use of gas chromatographic calibration factors and SPME fiber partition factors.

The SPME fiber partition factor is obtained by preparing an aqueous solution or solutions with known compounds of varying volatility and chemical characteristics that are representative of the waste stream of concern. The detector peak areas and retention times are then obtained with the SPME method for these known compounds. The mass of compound is calculated from the area counts of the GC compound peak, and the concentration in the headspace is calculated from the Henry's law factor and the known liquid concentration. The fiber partition factor $K_{fiber}$ is the ratio of the mass of compound to the concentration in the headspace at equilibrium with the aqueous solution. A correlation is then obtained between the value of $K_{fiber}$ and the retention time of the detector response.

The SPME fiber partition factor correlation for a series of petrochemical compounds that is provided in Figure 4 of reference 9 can be used with verification of the correlation with a few compounds if the chemicals in that correlation are representative of the waste stream of concern. The fiber recovery of the compound is correlated with the volatility (aqueous Henry's law constant) as a result of the experimental measurements of the headspace concentrations by the fiber extraction method.

If some characterization is available for the waste stream of concern, such as a compound identification of more than 25 percent of the major compounds present in the waste, it is recommended that selected members of these identified compounds are included in the measurements for the determination of the site-specific SPME fiber partition factor correlation.

In some cases, after concluding the non-speciated method runs for the waste with and without biomass, the SPME partition factor correlation may appear to be inappropriate for the waste stream. Some of the reasons for this could include incorrect compound concentration for a known compound, incorrect concentration ratios of known compounds, or test data outside the applicable range of the correlation. When there are problems with the SPME partition factor correlation, the correlation may be improved without the need to rerun the non-speciated method runs for the waste with and without biomass.

If, unlike the petroleum compound set evaluated in reference 9, you are unable to obtain a single correlation for use in interpreting the data that you obtain from this method, you should consider the use of two or more correlations with multiple correlations and multiple detectors/fiber types. A discussion of the methods used in this multiple correlation technique alternative is outside the scope of this discussion. This alternative of more than one correlation should not be used without supporting experimental investigations to verify the technical approach that you are using. The EPA Method 25D describes the use of two different types of gas

chromatograph detectors to more completely characterize the compounds in the waste. You may wish to consider the use of automatic direct headspace sampling in the case of difficulty with identifying adequate SPME correlations.

3.11 *Calculation of the total non-speciated compound concentration.* The measured individual organic compound concentrations are summed to obtain the total non-speciated compound concentration. Certain compounds may be excluded from this total. Examples of components that may be excluded from the total summation procedures are the following:

- Components that are present in the vapor phase in concentrations too low to measure.
- Components that are identified and have specific regulatory exclusion.
- Components that have gas chromatographic retention times that are substantially greater than can be considered characteristic of volatile components.

3.12 *Calculation of $f_e$ and $f_{bio}$ for each compound.* The site specific biodegradation unit characteristics are used with the measured values of the compound Henry's law value and the biodegradation first order rate constant to estimate $f_e$ and $f_{bio}$ for each compound.

3.13 *Calculation of the overall $f_e$ and $f_{bio}$ for the total volatile waste components.* The individual organic compound concentrations are used with individual values of $f_e$ and $f_{bio}$ to obtain the total biological removal and the total air emission removal from the treatment unit. In the case of an ideal stirred tank reactor, the amount of each component entering the reactor is calculated by multiplying the flow rate of the waste ($m^3$/s) by the concentration (g/$m^3$) to obtain the individual loading rate (g/s). For each compound that is not excluded, the individual loading is summed to obtain the total loading. The overall biological removal is the sum of the products of the individual loading rate (g/s) and the individual value of $f_{bio}$. The overall air removal is the sum of the products of the individual loading rates (g/s) and the individual values of $f_e$. The overall $f_{bio}$ value is the ratio of the overall biological removal to the total loading. The overall $f_e$ value is the ratio of the overall air emissions loss to the total loading.

Reference 9 presents examples of the use of the above procedures to evaluate the fraction biodegraded for two types of biotreatment units.

3.14 *Computer assisted calculations.* It is possible to use computer assisted data acquisition and data analysis in order to reduce the extensive labor requirements to perform the above procedures manually. You may use either manual methods, electronic spreadsheets, or compiled programs that can directly import the gas chromatographic computer files. Present the results for each non-speciated component, the summary of the weighted average $f_{bio}$ using each relevant component, and supporting quality assurance information. The slope and intercept of the correlation curve, the correlation coefficient, and the number of data points used for the correlation are examples of supporting quality assurance information.

4. *Quality Control/Quality Assurance (QA/QC).* A QA/QC plan outlining the procedures used to determine the biodegradation rate constants shall be prepared and a copy maintained at the source. The plan should include, but may not be limited to:

1. A description of the apparatus used (*e.g.*, size, volume, method of supplying air or oxygen, mixing, and sampling procedures) including a simplified schematic drawing.
2. A description of how biomass was sampled from the activated sludge unit.
3. A description of how biomass was held prior to testing (age, etc.).
4. A description of what conditions (DO, gas-liquid equilibrium, temperature, etc.) are important, what the target values are, how the factors were controlled, and how well they were controlled.
5. A description of how the experiment was conducted, including preparation of solutions, dilution procedures, sampling procedures, monitoring of conditions, etc.
6. A description of the analytical instrumentation used, how the instruments were calibrated, and a summary of the precision for that equipment.
7. A description of the analytical procedures used. If appropriate, reference to an ASTM, EPA or other procedure may be used. Otherwise, describe how the procedure is done, what is done to measure precision, accuracy, recovery, etc., as appropriate.
8. A description of how data are captured, recorded, and stored.
9. A description of the equations used and their solutions, including a reference to any software used for calculations and/or curve-fitting.

3. Appendix C is amended by revising section III.E to read as follows:

*E. Multiple Zone Concentration Measurements (Procedure 5)*

Procedure 5 is the concentration measurement method that can be used to determine the $f_{bio}$ for units that are not thoroughly mixed and thus have multiple zones of mixing. As with the other procedures, proper determination of $f_{bio}$ must be made on a system as it would exist under the rule. For purposes of this calculation, the biological unit must be divided [1] into zones with uniform characteristics within each zone. The number of zones that is used depends on the complexity of the unit. Reference 8, ''A Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones,'' is a source for further information concerning how to determine the number of zones that should be used for evaluating your unit. The following information on the biological unit must be available to use this procedure: (1) Basic unit variables such as inlet and recycle wastewater flow rates, type of agitation, and operating conditions; (2) measured representative organic compound concentrations in each zone and the inlet and outlet; and (3) estimated mass transfer coefficients for each zone.

The estimated mass transfer coefficient for each compound in each zone is obtained from Form II using the characteristics of each zone. A computer model may be used. If the Water7 model or the most recent update to this model is used, then use Form II–A to calculate KL. The TOXCHEM or BASTE model may also be used to calculate KL for the biological treatment unit, with the stipulations listed in procedure 304B. Compound concentration measurements for each zone are used in Form XIII to calculate the $f_{bio}$. A copy of Form XIII is completed for each of the compounds of concern treated in the biological unit.

4. Appendix C is amended by revising equation C–7 in section IV to read as follows:

IV. *Calculation of $f_{bio}$*

* * * * *

$$F_{bio} = \frac{\sum_{i=1}^{n}\left(f_{bio_i} x M_i\right)}{\sum_{i=1}^{n} M_i} \qquad \text{(Eqn. App. C-11)}$$

where:

M = compound specific average mass flow rate of the organic compounds in the wastewater (Mg/Yr)

n = number of organic compounds in the wastewater

* * * * *

5. Appendix C is amended by revising the references to read as follows:

1. Rajagopalan, S., R. van Compernolle, C.L. Meyer, M.L. Cano, and P.T. Sun. ''Comparison of methods for determining biodegradation kinetics of volatile organic compounds.'' Wat. Env. Res. 70: 291–298.

2. Ellis, T.G., D.S. Barbeau, B.F. Smets, C.P.L. Grady, Jr. 1996. Respirometric technique for determination of extant kinetic parameters describing biodegradation. Wat. Env. Res. 68: 917–926.

3. Pitter, P. and J. Chudoba. Biodegradability of Organic Substances in the Aquatic Environment. CRC Press, Boca Raton, FL. 1990.

4. Grady, C.P.L., B. Smets, and D. Barbeau. Variability in kinetic parameter estimates: A review of possible causes and a proposed terminology. Wat. Res. 30 (3), 742–748, 1996.

5. Eaton, A.D., *et al.* eds., Standard Methods for the Examination of Water and Wastewater, 19th Edition, American Public Health Association, Washington, DC, 1995.

6. Chudoba P., B. Capdeville, and J. Chudoba. Explanation of biological meaning of the So/Xo ratio in batch cultivation. Wat. Sci. Tech. 26 (3/4), 743–751, 1992.

7. Technical Support Document for Evaluation of Thoroughly Mixed Biological Treatment Units. November 1998.

8. Technical Support Document for the Evaluation of Aerobic Biological Treatment Units with Multiple Mixing Zones. July 1999.

9. Saterbak, A., M.L. Cano, M.P. Williams, M.E. Huot, I.A. Rhodes, R. van Compernolle, and C.C. Allen, 1999. Aerated draft tube reactor test for assessing non-speciated volatile organic compound (VOC) biodegradation in activated sludge. Proceedings of the Water Environment

[1] This is a mathematical division of the actual unit; not addition of physical barriers.

Federation 72nd Annual Conference and Exposition, New Orleans, LA, October 9–13.

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 156 and 165

**[OPP–2004–0049; FRL–7355–3]**

**RIN 2070–AB95**

## Standards for Pesticide Containers and Containment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; partial reopening of comment period.

**SUMMARY:** EPA is reopening the comment period for the following proposed rule to solicit public input on issues or technology relating to the proposed requirements that would not have been available or could not have been addressed in comments submitted during previous public comment opportunities. On February 11, 1994, EPA published a proposed rule in the **Federal Register** proposing container design and residue removal requirements for refillable and nonrefillable pesticide containers and standards for pesticide containment structures (59 FR 6712). Subsequently, EPA issued a supplemental notice in the **Federal Register** partially reopening the comment period on several specific issues (64 FR 56918, October 21, 1999). Because significant time has passed since the publication of the proposed rule and the supplemental notice, EPA believes it is appropriate to reopen the comment period prior to preparing a final rule. Specifically, EPA is reopening the comment period to obtain public input on the proposed requirements which would not have been available or could not have been addressed at the time of either the notice of proposed rulemaking in 1994 or the supplemental notice in 1999.

**DATES:** Comments, identified by docket ID number OPP–2004–0049, must be received on or before August 16, 2004.

**ADDRESSES:** Submit your comments, identified by docket ID number OPP–2004–0049, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.

• *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

• *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0049.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–-0001, Attention: Docket ID Number OPP–2004–0049.

• *Hand Delivery/carrier*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0049. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to docket ID number OPP–2004–0049. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7). For additional instructions, go to Unit I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Nancy Fitz, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7385; fax number: (703) 308–3259; e-mail address: fitz.nancy@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

The Agency included in the proposed rule and the supplemental notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under the **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials, including the paper-only docket for the proposed rule and the partial reopening of the comment period, through the docket facility (OPP–190001). A frequently updated electronic version of 40 CFR part 180 is

available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

**II. What Action is EPA taking?**

This document reopens the public comment period for the rulemaking titled ''Standards for Pesticide Containers and Containment,'' which was proposed on February 11, 1994 (59 FR 6712). In that document, EPA sought comment on proposed regulations for pesticide container design and residue removal and for containment structures at pesticide storage and container refilling operations. Because significant time has passed since the proposed rule in 1994 and a supplemental notice in 1999 (64 FR 56918, Oct. 21, 1999), EPA is hereby reopening the comment period for an additional 45 days. While EPA has attempted to stay current on developments in pesticide container and containment structure policies, regulations, technology and practices, the Agency believes that it is appropriate to solicit input from the regulated community, state regulators and others to ensure that we are fully aware of the current state of the pesticide container and containment universe before finalizing the pesticide container and containment regulations.

The Agency has reviewed and carefully considered all of the public comments submitted in response to the proposed rule and the supplemental notice. Accordingly, the Agency is not soliciting comments which are essentially repetitions of those comments or which could have been raised at the time of either of the previous notices. In addition, EPA will not consider submissions that are related solely to policies, regulations and pesticide market conditions and practices that existed in 1994 and 1999. Similarly, EPA is not interested in receiving restated comments about which pesticide products should be exempted from the pesticide container regulations.

EPA is soliciting public input on any policies, market practices, technology or other issues relating to this rule's requirements which would not have been available or could not have been addressed at the time of either the proposed rule in 1994 or the supplemental notice in 1999. Threeexamples of the types of issues which could be addressed in commentsto this notice are described below.

*A. State Containment Regulations*

Since the Agency proposed the bulk containment standards in 1994, 19 states have been implementing state containment regulations. Some states had their own containment regulations before 1994, and have modified and improved them over the years. These states (with the longest standing regulations) had the majority of the bulk storage facilities within their borders, and recognized the need for regulation to prevent pollution from bulk storage and refilling operations. The Agency has carefully considered all comments regarding containment that were submitted on the 1994 proposed requirements. The 1999 supplemental notice did not discuss changes to the proposed containment standards. However, the additional 10 years of experience in implementing containment regulations may have led to new suggestions, observations, problems, market practices or other data submissions by state regulators, registrants, dealers, commercial applicators, engineers, other businesses, or the public. For example, the additional experience in designing and building containment structures and inspecting, operating, and maintaining bulk storage and refilling facilities could have changed commenters' opinions about specific proposed containment requirements. As another example, EPA has received anecdotal reports that bulk storage on farms, which was very rare if not nonexistent when the regulations were proposed, is becoming more common and may present a risk to the environment. Comments and data on the proposed containment standards that could not have been anticipated in 1994 because the comments are based on the additional years of experience with state containment regulations are an example of comments that would be appropriate to submit.

*B. Pesticide Container Recycling*

EPA also believes that the experiences and results of pesticide container collection and recycling programs over the past decade could lead to new observations, data, and comments on the proposed container standards. The Ag Container Recycling Council (ACRC) is a non-profit organization that promotes and supports the collection and recycling of plastic pesticide containers in the United States. The collection and recycling programs conducted by the ACRC grew significantly during the past decade from the developmental stage when the proposed regulations were being developed in the early 1990's to collecting over 6.6 million pounds of plastic containers in each of the past few years. The ACRC, pesticide registrants, pesticide container recyclers, State extension agents and State and local regulators have had multiple years to observe end users' rinsing practices, the cleanliness of containers, the rate of rejecting containers and other container-related issues that could lead to comments on the proposed container requirements that are different from when the regulations were proposed.

*C. Plant-Incorporated Protectants*

The regulations for plant-incorporated protectants in 40 CFR parts 152 and 174 were finalized in the **Federal Register** on July 19, 2001 (66 FR 37771). A plant-incorporated protectant is a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. As explained in the preamble to the final rule for plant-incorporated protectants (66 FR 37774), ''[p]lant-incorporated protectants are primarily distinguished from other types of pesticides because they are intended to be produced and used in a living plant. This difference in use pattern dictates in some instances differences in approach.'' Plant-incorporated protectants are not sold and distributed in containers as distinct substances (e.g., liquids, solids or gels) like other pesticides; they are distributed as part of the seeds or plants. Therefore plant-incorporated protectants do not have containers like most pesticides.

EPA did not specifically mention plant-incorporated protectants in either the proposed rule or the supplemental notice because there were either no registrations for these products or they were uncommon at that time; these types of products are relatively new to the marketplace. In addition, the plant-incorporated protectant regulations in 40 CFR part 174 were finalized in 2001 after the container/containment proposed rule and supplemental notice were published. Comments relating to regulating the containers, container-related labeling or containment of plant-incorporated protectants, and other types of pesticides that may be in similar situations, are the kind of input that would be appropriate to submit in response to this notice.

**III. What is the Agency's Authority for Taking this Action?**

The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) sections 19(e) and (f) grant EPA broad authority to establish standards and procedures to assure the safe use, reuse, storage, and disposal of pesticide containers. FIFRA section 19(e) requires EPA to promulgate regulations for ''the design of pesticide containers that will promote

the safe storage and disposal of pesticides.'' The regulations must ensure, to the fullest extent practicable, that the containers:

1. Accommodate procedures used for removal of pesticides from the containers and rinsing of the containers.
2. Facilitate safe use of the containers, including elimination of splash and leakage.
3. Facilitate safe disposal of the containers.
4. Facilitate safe refill and reuse of the containers.

FIFRA section 19(f) requires EPA to promulgate regulations ''prescribing procedures and standards for the removal of pesticides from containers prior to disposal.'' The regulations may:

1. Specify, for each major type of pesticide container, procedures and standards for, at a minimum, triple rinsing or the equivalent degree of pesticide removal.
2. Specify procedures that can be implemented promptly and easily in various circumstances and conditions.
3. Provide for reusing, whenever practicable, or disposing of rinse water and residue.
4. Coordinate with requirements imposed under the Resource Conservation and Recovery Act (RCRA) for rinsing containers.

Section 19(f) provides that EPA, in its discretion, may exempt products intended solely for household use.

Section 19(h), titled ''Relationship to Solid Waste Disposal Act,'' specifies that nothing in section 19 shall diminish the authorities or requirements of RCRA. It also exempts certain antimicrobial pesticides from the container regulations:

> A household, industrial, or institutional antimicrobial product that is not subject to regulation under the Solid Waste Disposal Act ... shall not be subject to the provisions of subsections (a), (e), and (f), unless the Administrator determines that such product must be subject to such provisions to prevent an unreasonable adverse effect on the environment.

## IV. Do Any Statutory and Executive Order Reviews Apply to this Action?

This notice neither proposes nor takes final action regarding any substantive requirements and is procedural in nature. This notice merely opens up the docket for further comments on a rule that has already been proposed. Therefore, it is not subject to the statutory and executive order reviews generally applicable to proposed and final rules.

## List of Subjects in 40 CFR Parts 156 and 165

Environmental protection, Packaging and containers, Pesticides and pests.

Dated: June 2, 2004.

**Susan B. Hazen,**

*Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

[FR Doc. 04–14463 Filed 6–29–04; 8:45 am]

**BILLING CODE 6560–50–S**

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 170

**[OPP–2003–0169; FRL–7354–6]**

## Pesticide Worker Protection Standard; Glove Liners, and Chemical-Resistant Glove Requirements for Agricultural Pilots; Notification to the Secretary of Agriculture

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification to the Secretary of Agriculture.

**SUMMARY:** This document notifies the public that the Administrator of EPA has forwarded to the Secretary of Agriculture a draft final rule as required by section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). As described in the Agency's semi-annual Regulatory Agenda, the draft final rule would create greater flexibility in requirements of the 1992 Worker Protection Standard related to the use of gloves by workers and applicators.

**ADDRESSES:** EPA has established a docket for this action under Docket ID number OPP–2003–0169. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Donald Eckerman, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5062; e-mail address: *eckerman.donald@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. It simply announces the submission of a draft final rule to the United States Department of Agriculture (USDA) and does not otherwise affect any specific entities. This action may, however, be of particular interest to agricultural employers, including employers in farms as well as nursery, forestry, or greenhouse establishments, who are subject to the Worker Protection Standards. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Copies of this Document and Other Related Information?*

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. Please note that the draft final rule is not currently publicly available. It will only become publicly available when the final rule is signed, at which time it will publish in the **Federal Register**. A frequently updated electronic version of 40 CFR part 170 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

## II. What Action is EPA Taking?

Section 25(a)(2) of FIFRA requires the Administrator to provide the Secretary of Agriculture with a copy of any final regulation at least 30 days before signing it for publication in the **Federal Register**. The draft final rule is not available to the public until after it has been signed by EPA. If the Secretary comments in writing regarding the draft final rule within 15 days after receiving it, the Administrator shall include the comments of the Secretary, if requested by the Secretary, and the Administrator's response to those comments in the final rule when published in the **Federal Register**. If the Secretary does not comment in writing within 15 days after receiving the draft final rule, the Administrator may sign the final rule for publication in the **Federal Register** anytime after the 15–day period.

### III. Do Any Statutory and Executive Order Reviews Apply to this Notification?

No. This document is not a rule, it is merely a notification of submission to the Secretary of Agriculture. As such, none of the regulatory assessment requirements apply to this document.

### List of Subjects in 40 CFR Part 170

Environmental protection, Administrative practice and procedure, Labeling, Occupational safety and health, Pesticides and pests.

Dated: June 14, 2004.

**Anne E. Lindsay,**

*Director, Office of Pesticide Programs.*

[FR Doc. 04–14830 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–S

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to List the New England Cottontail as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the New England cottontail rabbit (*Sylvilagus transitionalis*) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that the listing of the New England cottontail may be warranted. Therefore, we are initiating a status review to determine if listing the species is warranted. To ensure that the review is comprehensive, we are soliciting information and data regarding this species.

**DATES:** The administrative finding announced in this document was made on June 2, 2004. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by August 30, 2004.

**ADDRESSES:** Data, information, comments, or questions concerning this petition and our finding should be submitted to the Field Supervisor (Attention: Endangered Species), New England Field Office, 70 Commercial Street, Suite 300, Concord, New Hampshire 03301. The petition, administrative finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Amaral, Endangered Species Specialist, at the New England Field Office (see **ADDRESSES** above), or at 603–223–2541.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4 (b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. We are to base this finding on all information available to us at the time the finding is made. To the maximum extent practicable, we are to make this finding within 90 days of the receipt of the petition, and to publish a notice of the finding promptly in the **Federal Register**. Our regulations at 50 CFR 424.14(b) state that for the purposes of petition findings, "'substantial information'' is that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted * * *.'' If we find that substantial information was presented, we are required to promptly commence a review of the status of the involved species, if one has not already been initiated under our internal candidate assessment process. After completing the status review, we will issue an additional finding (the 12-month finding) determining whether listing is, in fact, warranted.

Based on our regulations at 50 CFR 424.14(b)(2), in making a 90-day finding as to whether a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, we are to consider whether such petition—

(1) Clearly indicates the administrative measure recommended and gives the scientific and any common names of the species involved;

(2) Contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species;

(3) Provides information regarding the status of the species over all or a significant portion of its range; and

(4) Is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps.

On August 30, 2000, we received a petition dated August 29, 2000, requesting that we list the New England cottontail (*Sylvilagus transitionalis*) as a threatened or endangered species, and that critical habitat be designated ''within a reasonable period of time following the listing.'' The petition, submitted by the Biodiversity Legal Foundation, Conservation Action Project, Endangered Small Animals Conservation Fund, and Defenders of Wildlife, was clearly identified as a petition for a rule, and contained the names, signatures, and addresses of the requesting parties. Included in the petition was supporting information regarding the species' taxonomy and ecology, historic and current distribution, present status, and potential causes of decline. We acknowledged receipt of the petition in a letter to Mr. D. C. Jasper Carlton, dated September 14, 2000. In this letter, we also advised the petitioners that due to funding constraints in fiscal year (FY) 2000, we would not be able to begin processing the petition in a timely manner. Those constraints persisted into FY 2001.

On December 19, 2000, Defenders of Wildlife sent a Notice of Intent to sue the Service for violating the Act by failing to make a timely 90-day finding on the petition to list the New England cottontail. On May 14, 2002, we advised the Defenders of Wildlife that we would begin action on the petition in FY 2002. This notice announces and summarizes our 90-day finding for the petition to list the New England cottontail.

### Biology and Distribution

Sometimes called the gray rabbit, brush rabbit, wood hare, or coony, the New England cottontail is a medium-sized cottontail rabbit that may reach 1,000 grams (g) (2.2 pounds (lbs)) in weight. Dorsal portions of its body are buff to ocher in color, and the back is overlain with distinct black hair (Chapman and Ceballos 1990). The ears are short and rounded, and have a distinct black edge. There is a distinct black spot between the ears.

A New England cottontail in the hand usually can be distinguished from two sympatric lagomorphs (lagomorphs are a suborder of mammals that includes rabbits, hares, and pikas), the eastern cottontail (*Sylvilagus floridanus*) and the snowshoe hare (*Lepus americanus*), by several features, including fur color, ear length, body mass, presence of the black spot between the ears, absence of a white spot on the forehead, and the

black line on the anterior edge of the ears (Litvaitis *et al.* 1991). Pelage characteristics, however, are not 100 percent reliable in distinguishing between the visually similar New England and eastern cottontails (Chapman and Ceballos 1990), and the two species are difficult to tell apart in the field. Cranial differences, however, are a highly reliable means of distinguishing the two cottontail species (Chapman and Morgan 1973).

The New England cottontail was formally described in 1894 (Bangs 1894 in Litvaitis and Johnson 2002). Until the early 1990s, the species was considered to occur in a mosaic pattern from southeastern New England, south along the Appalachian Mountains to Alabama (Hall 1981). However, Ruedas *et al.* (1989) and others questioned the taxonomic status of S. transitionalis because they found evidence of two distinct chromosomal races within its geographic range. Chapman *et al.* (1992) conducted a review of the systematics and biogeography of the species and reported finding clear evidence for two morphometrically distinct taxa within what had conventionally been regarded as a single species. Accordingly, Chapman *et al.* (1992) defined a new species, the Appalachian cottontail (*S. obscurus*), with a range from west of the Hudson River, New York south along the Appalachian Mountains through Pennsylvania, Maryland, West Virginia, Virginia, Tennessee, North Carolina, South Carolina, Georgia, and Alabama. Chapman *et al.* (1992) defined the New England cottontail (*S. transitionalis*) as that species east of the Hudson River, New York, north through Vermont, Connecticut, Rhode Island, Massachusetts, New Hampshire, and southern Maine.

In addition to the morphometric and genetic differences reported by researchers, the two species also occupy somewhat different habitats. The Appalachian cottontail is generally an inhabitant of ericaceous vegetation zones (areas dominated by plants in the heath family) associated with higher elevations and mountain balds, while the New England cottontail occurs at lower elevations nearer the coastline, in forested or disturbed habitats with a dense understory.

Not all biologists concur with the taxonomic separation proposed by Chapman *et al.* (1992); see, for example, Litvaitis *et al.* (1997). However, the change in taxonomy and nomenclature proposed by Chapman is included in the Smithsonian Institution's book on North American mammals (Chapman in Wilson and Ruff, eds., 1999). Jones *et al.* (1997), in the revised checklist of North American mammals, also recognizes both species as valid. The Service currently accepts the taxonomic separation of *S. transitionalis* and *S. obscurus.*

Pursuant to the definitions in section 3 of the Act, ''the term species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' In order for a species to be considered as a listable entity under the Act, it must meet the above definition. The Service agrees with the petitioners that the New England cottontail qualifies as a listable entity under the Act based on the definition of species. We base this conclusion on two arguments. First, we believe there is general acceptance of the *S. transitionalis* / *S. obscurus taxonomy* put forth by Chapman *et al.* (1992) as noted above. Second, we believe that the New England cottontail within its range in the Northeast (east of the Hudson River, New York) would warrant listing consideration as a distinct vertebrate population segment in the event that the taxonomy of these species is further revised. Accordingly, and consistent with the species as described in the petition, in this finding we are considering only the New England cottontail (*S. transitionalis*), as defined and with the range as described by Chapman *et al.* (1992). Consistent with Chapman *et al.* (1992) and other references (Chapman and Ceballos 1990, Hall 1981), no subspecies of the New England cottontail are recognized.

The New England cottontail is the only endemic cottontail in New England (Probert and Litvaitis 1996). Because the New England cottontail was not formally described until 1894 (Bangs 1894), there are few comprehensive reports on the historic range of the species (Litvaitis and Johnson 2002). However, it is believed that during early European settlement, New England cottontails occurred in a more or less continuous distribution from eastern New York (including Long Island) through Connecticut, statewide in Massachusetts (Cardoza in litt. 1999), Rhode Island, southern Vermont at least to Rutland, New Hampshire south of the White Mountains (Jackson 1922 in Jackson 1973), and four counties in southern Maine (Couse and Allen 1877 in Litvaitis and Johnson 2002).

Presently, the range of the New England cottontail appears to be limited to relatively small patches of suitable habitat from eastern New York, to several counties in Connecticut, western and possibly northern Rhode Island, only a few locations in eastern Massachusetts and in the Berkshire Mountains, several southern counties in New Hampshire, and two southern coastal counties in Maine (Litvaitis and Johnson 2002). The species has not been reported from Vermont since 1990 and may be extirpated there (Litvaitis 1993a; Litvaitis *et al.* 2002). Litvaitis and Johnson (2002) report that, since 1960, the region occupied by the New England cottontail has declined by approximately 75 percent.

The eastern cottontail has been introduced into much of the range of the New England cottontail. The historical range of the eastern cottontail extended northeast only as far as the lower Hudson Valley, and possibly extreme western Connecticut (Goodwin 1935 in Chapman and Stauffer 1981). Large-scale introductions of eastern cottontails to Connecticut (Dalke 1942, in Chapman and Stauffer 1981), Rhode Island (Johnston 1972), Massachusetts (Nelson 1909, in Johnston 1972) and possibly Vermont (C. M. Kilpatrick, in litt. 2002) have firmly established the eastern cottontail in all of New England, except Maine. Introductions usually have been conducted by States and private hunting clubs. The eastern cottontail is both larger (1,300 g (2.9 lb)) and more fecund than the New England cottontail.

Fay and Chandler (1955) documented the extension of the range of introduced eastern cottontails in Massachusetts, and recorded that *S. floridanus* had replaced the native New England cottontail in many places. Linkkila (1971) reported the disappearance of *S. transitionalis* throughout much of the northeastern United States. Johnston (1972) described the replacement over a 40 to 50 year period of *S. transitionalis* by *S. floridanus* as the predominant cottontail in much of southern New England.

Despite the widespread introductions of eastern cottontails into the range of the New England cottontail, the two species are not hybridizing. Wilson (1981) conducted a genetic study of the two species in five of the New England States and found that the New England cottontail has maintained its genetic identity in the face of eastern cottontail range expansion.

The New England cottontail is considered an early successional forest species, where disturbance occurring as a result of timber harvest, hurricanes and other wind storms, or beaver activity maintains areas of suitable habitat. Historically, fires set by Native Americans, a practice continued by early European colonists, also set back forest succession and maintained areas of suitable habitat (Bromley 1935; Cronon 1983). Suitable habitat for the

species can be found in both forest and shrub lands, provided there is dense understory growth where both food and cover are found in close proximity. New England cottontail habitats include native shrublands, beaver flowages, old fields, and early successional forests (Barbour and Litvaitis 1993). In southern New England, however, this cottontail may also occur in more stable forests where laurel (Kalmia sp.) provides a dense understory. Like other cottontails, the New England cottontail is an herbivore and feeds on a wide variety of woody and herbaceous plants.

There is considerable overlap between habitats used by eastern and New England cottontails. In general, however, eastern cottontails are associated with plants indicative of open land such as old fields and meadows, whereas New England cottontails are associated with forest plant species (Eabry 1968).

**Status Concerns**

The status of the New England cottontail has been of concern to biologists and natural resource agencies for nearly five decades. Reductions in the range of the New England cottontail were first reported by Fay and Chandler (1955) and subsequently by Linkkila (1971) and Johnston (1972). In 1979, Chapman and Stauffer suggested to the International Union for the Conservation of Nature (IUCN) Lagomorph Specialist Group that the species be listed in the category ''Special Concern'' (Chapman and Stauffer 1981). In 1989, we placed the New England cottontail in category 2 of the Animal Notice of Review (54 FR 553). We no longer maintain a list of category 2 candidate species, but at the time, category 2 was defined as including species for which we had some information indicating that the taxa may be under threat, but not enough information was available to determine if they warranted Federal listing and the preparation of a proposed rule.

On the basis of the research and other information noted above, concern for the status of the New England cottontail was well documented even prior to the revision of the taxon by Chapman *et al.* (1992). The separation of the taxon into two species with reduced and allopatric (separate) ranges resulted in increased concern for the New England cottontail, which was recognized as being restricted to east of the Hudson River, New York, and New England. In 1999, a committee composed of 13 State endangered species and wildlife diversity program coordinators included the New England cottontail among 26 declining species most in need of conservation attention in the northeast region (Therres 1999). This committee described the New England cottontail as warranting ''federal endangered or threatened species listing consideration, including prelisting status reviews.''

**Conservation Status**

Under section 4(a) of the Act, we may list a species on the basis of any of five factors, as follows: ''(A) the present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; (E) other natural or manmade factors affecting its continued existence.'' The petitioners contend that four of the five factors (A, B, D, and E) are applicable to the New England cottontail (see below). A brief discussion of how each of the five listing factors applies to the New England cottontail follows.

In regard to factor A, the petitioners cite loss of habitat to urban and suburban development as a major threat to the New England cottontail. Further, the petitioners note that this species requires thicket habitat frequently associated with early seral stages of forest regeneration after a disturbance such as timber harvest, fire, or beaver activity. They note that an increasingly urbanized landscape, with many small, partially-forested residential parcels is not conducive to timber harvesting, fire, or other disturbance regimes that would maintain and/or regenerate habitat for the species.

Information currently available indicates that loss of habitat to these and other causes appears to be a significant threat to the status of this species. Litvaitis (1993b) considered habitat succession to be the most important cause of habitat loss for this species. As agricultural land in the Northeast was abandoned after the Civil War, forest succession led to a period where habitat conditions were highly favorable for early successional or thicket-dependent species such as the New England cottontail. However, as forests matured and forest canopy closed, the habitats entered a mid-successional stage and were no longer suitable for these early successional species (Brooks and Birch 1988). Further, Litvaitis *et al.* (1999) reported that remaining shrub-dominated and early successional habitats in the Northeast continue to decline in both coverage and suitability. U.S. Forest Service inventories reveal that in New Hampshire and New York, the extent of forest in the seedling/sapling stage (thickets favorable to the New England cottontail) has declined by about 50 percent in the past three decades (Askins 1998; Litvaitis *et al.* 1999). In Maine, young forest stands in the two southern counties that still support populations of the New England cottontail declined even more sharply, from about 38 percent in 1971 to 11 percent in 1995 (Litvaitis *et al.* 2002).

In addition to habitat succession, development has also contributed to direct and more permanent loss and fragmentation of habitat for the species. The three southern New England states, Connecticut (>700 inhabitants per square mile), Rhode Island (>1,000 inhabitants per square mile), and Massachusetts (>800 inhabitants per square mile), which comprise the center of the New England cottontail's range, are among the most densely populated areas in the United States (U.S. Census Bureau 2000). Early successional habitats that once supported New England cottontails have been converted to a variety of uses which make them unsuitable for the species. Among shrub-dominated plant communities, which sometimes support New England cottontail populations, scrub oak and pitch pine barrens have been heavily degraded by development (Patterson 2002). These areas are rapidly being lost to uses such as airport development, roadways, sand and gravel mining, industrial parks, residential development, and retail development. Litvaitis *et al.* (1999) conclude that shrub-dominated and early successional habitats may be the most altered and among the most rapidly declining communities in the Northeast.

The fragmentation of remaining suitable habitats into smaller patches separated by roads, residential, and other development can have profound effects on the occupancy and persistence of New England cottontail populations in relatively small patches. Barbour and Litvaitis (1993) found that New England cottontails occupying small patches of habitat (less than or equal to 2.5 hectares (ha) or about 6 acres) were predominantly males, had lower body mass, consumed lower quality forage, and had to feed farther from protective cover than rabbits in larger patches (greater than or equal to 5 ha or slightly more than 12 acres). This study also demonstrated that New England cottontails in the smaller patches had only half the survival rate of those in the larger patches due to increased mortality from predation. Barbour and Litvaitis (1993) concluded that local populations of New England cottontails may be vulnerable to

extinction if large patches of habitat are not maintained.

Although there are no reliable estimates for historic or current population numbers of New England cottontails, the reduction in the amount of suitable habitat and the range of the species, as well as the effects of competition and predation, are believed to have resulted in a concomitant reduction in numbers.

In regard to factor B, the petitioners contend that while anecdotal evidence implies that hunting pressure on the New England cottontail (and rabbits in general) is not severe, ''any hunting, in a population reduced to remnants as the NE cottontail is, is too much.''

Our review of information for this 90-day finding indicates there is presently little hunting pressure on New England cottontails. All of the State wildlife agencies within the range of the New England cottontail regard it as a small game animal and allow hunting with specific season and bag restrictions. Most States report fewer rabbit and other small game hunters today than in earlier decades (U.S. DOI and U.S. DOC 1985, 1991, 1996, 2001), and the New England cottontail is not the rabbit species preferred by most small game hunters because of its smaller size and behavior. New England cottontails forage within or close to dense cover (Smith and Litvaitis 2000), and typically hold in safe areas when disturbed. They are therefore not as easily run by hounds and taken by hunters as eastern cottontails or snowshoe hares. Research shows that New England cottontails are more vulnerable to mortality from predation in smaller patches of habitat than in larger ones (Barbour and Litvaitis 1993). This may hold true for hunting mortality as well, because rabbits on small patches must venture farther from shelter to feed and have less escape cover in which to hide, but this has not been demonstrated.

The petitioners also assert that rabbits may still be regarded as pests and killed indiscriminately by farmers, but provided no objective information to support that assertion. In our review of available information, we did not find evidence either to support or refute this claim. However, because of differences in habitat preference of the two cottontail species, most farmers and homeowners are more likely to encounter eastern cottontails, which occur in the more open habitats of farms and residential lawns, than New England cottontails. Whether either species is killed indiscriminately by farmers, however, is an assertion that lacks supporting information in the petition. Thus, on the basis of available information, current human hunting pressure does not appear to be a significant mortality factor for the New England cottontail.

The petitioners speculate that hunting pressure on the New England cottontail earlier in the century (*e.g.*, 1930s) led to declining numbers of rabbits, and in response to reduced hunting opportunity, States and hunting clubs then introduced large numbers of eastern cottontails, with ''disastrous'' results. The Service agrees that the introduction and establishment of eastern cottontail populations in the Northeast for the purpose of providing small game hunting opportunities has been deleterious to the New England cottontail. However, available evidence suggests that habitat loss, through forest maturation and other causes (Jackson 1973; Brooks and Birch 1988; Litvaitis *et al.* 1999), rather than hunting pressure, was the primary reason for the decline of New England cottontail populations in the mid-20th century.

With regard to disease (factor C), the petitioners cited one reference that suggested disease could be a factor in the decline of the New England cottontail, but stated that no specifics were provided. In our review of available information, we found little evidence to suggest that disease is a limiting factor for this species. Cottontail rabbits are known to contract a number of different diseases, such as tularemia, and are afflicted with both ecto-parasites such as ticks, mites and fleas, and endo-parasites such as tapeworms, and nematodes (Eabry 1968). Chapman and Ceballos (1990) do not identify disease as an important factor in the dynamics of cottontail populations. Rather, they state that habitat is key to cottontail abundance and that populations are regulated through other causes of mortality and dispersal. Further, they note that escape cover is an essential habitat requirement, suggesting that mortality from predation is an important population regulation mechanism.

With regard to predation, the petitioners discussed its importance as a mortality factor in the section, ''life history and ecology of the New England cottontail,'' but did not refer to predation as a threat to the species in their review of the five listing factors (Carlton *et al.* 2000). Available information indicates that predation is likely a significant cause of mortality for New England cottontails and that both mammalian and avian predators are important. Because female New England cottontails are capable of producing 24 young annually (Chapman and Ceballos 1990), the species has the potential to be abundant were it not for mortality and other factors affecting population growth. Litvaitis *et al.* (1984) noted that New England cottontails were a major prey of bobcats (*Felis rufus*) in New Hampshire during the 1950s. Presently, coyotes (*Canis latrans*) and red foxes (*Vulpes vulpes*) are believed to be the major predators of the New England cottontail in New Hampshire (Barbour and Litvaitis 1993; Brown and Litvaitis 1995). Among avian predators known or suspected to take cottontails are several species of owls (Smith 1997, in Smith and Litvaitis 1999) and red-tailed hawks (*Buteo jamaicensus*) (Bent 1961). Lastly, anecdotal evidence and at least one study (Walter *et al.* 2001) indicate that cottontails are also killed by domestic dogs and cats.

Available evidence suggests that habitat fragmentation has exacerbated predation rates and reduced New England cottontail survival in several ways. Populations of generalist carnivores have increased with forest fragmentation (Oehler and Litvaitis 1996), and supplemental food resources associated with human dwellings (*e.g.*, trash, bird feeders, fruiting shrubs) may lead to ''spillover'' predation on cottontails (Oksanen *et al.* 1992, in Brown and Litvaitis 1995).

Studies have shown that, as landscapes become fragmented, New England cottontails become increasingly vulnerable to predation, because habitat quantity and quality are reduced (less forage and escape cover) (Smith and Litvaitis 2000). A study by Villafuerte *et al.* (1997) demonstrated that the abundance of food and the risk of predation are very influential in determining the persistence of small- and medium-sized vertebrates such as the New England cottontail. As food in the most secure areas is depleted, rabbits are forced to utilize lower quality forage or feed farther from cover where the risk of predation is greater. This study found that rabbits on small patches were ''on the lowest nutritional plane'' and as a result, were killed at twice the rate (and were killed sooner) than rabbits on larger habitat patches. Villafuerte *et al.* (1997) concluded that forage limitations imposed by habitat fragmentation affect the viability of local populations of New England cottontails by influencing their vulnerability to predation. Rabbits on larger patches were less vulnerable; therefore, they concluded that large patches of habitat are essential for sustaining populations of this species in a human-altered landscape. Smith and Litvaitis (2000) report that because eastern cottontails appear to have the ability to forage farther from cover and detect predators

sooner than New England cottontails, eastern cottontails will likely persist while populations of New England cottontails will continue to decline.

In regard to factor D, the petitioners cite the inability of State wildlife agencies to adequately monitor the status of the New England cottontail within their respective jurisdictions as a threat to the species. We note that the lack of monitoring is not a threat to a species *per se* but agree that adequate monitoring is important in order to promptly detect and respond to a decline in a species' status.

Conducting research on the status of this species is relatively difficult and expensive because New England cottontails are labor intensive to capture, and identifying them in the field is seldom possible due to their general similarity to the eastern cottontail. Also, because the habitat conditions that support New England cottontail populations change over time with plant succession (*e.g.*, forest maturation), status surveys (even presence/absence surveys) need to be repeated periodically. Many States, such as Massachusetts, Rhode Island, and Connecticut, have attempted to monitor the status of the New England cottontail through voluntary hunter and public submittal of specimens. While these data fall short of providing a comprehensive review of the status of the species in a particular state, they are nonetheless useful in demonstrating abundance relative to eastern cottontails, locations of occupied habitats, and trends in frequency of occurrence over time.

All seven State wildlife agencies within the northeastern area have the authority to control the hunting of New England cottontails through the setting of hunting and trapping seasons and bag limits. However, most northeastern States cannot presently restrict hunting of New England cottontails without also reducing hunting opportunities for eastern cottontails and, to a lesser extent, snowshoe hares. This is because these species are visually similar in the field and they co-occur on the landscape, sometimes within the same or adjacent habitat patches. In Maine, where the only cottontail is the New England cottontail, the state has limited hunters to one cottontail per day and two in possession (Maine Hunting and Trapping Laws and Rules 2003).

While States have legal authority to address the mortality of New England cottontails from hunting and trapping, there are only limited regulatory mechanisms available to address the loss of habitat. New England cottontails occur on sites with dense understory vegetation, including native shrublands, beaver flowages, old fields, and early successional forests (Barbour and Litvaitis 1993). In Connecticut, Walter *et al.* (2001) reported that most current New England cottontail collection records are associated with sites that contain or are adjacent to riparian vegetation, such as borders of lakes, swamps, and rivers. However, the New England cottontail is primarily an upland, terrestrial species that occurs along the margins of these wetland types. This suggests that Federal and State laws that provide protection to shorelands and wetlands may offer some protection to a small portion of New England cottontail habitat (see also the discussion of factor A regarding habitat loss).

Several areas that have persistent populations of New England cottontails are on lands protected by Federal or State ownership and some are being managed for early successional species. However, in our review of information available for this 90-day finding, we were unable to determine the number and location of large patches of occupied New England cottontail habitat which occur on State and Federal conservation lands. Quantifying this information will be an important component of the status review.

In regard to factor E, the petitioners address the adverse effects of eastern cottontail introductions. On the basis of available information, we would agree that the introduction and spread of eastern cottontails has been a factor in reducing the occurrence of the New England cottontail within its historic range. Tens of thousands of individuals of four or five different subspecies of *S. floridanus* were introduced to the Northeast, beginning on Nantucket Island, Massachusetts, in 1899 (Johnston 1972), and continuing elsewhere in Massachusetts, Connecticut, New Hampshire, and Rhode Island until the 1960s. In States where researchers and State wildlife agencies reported the New England cottontail had been the predominant or the only cottontail encountered during the early- to mid-1900s, by the latter half of the century the eastern cottontail had become by far the most common rabbit (Johnston 1972; Tracy 1995; Cardoza, in litt. 1999). Maine, where the eastern cottontail is not known to occur, is the only exception to this pattern. In summary, Johnston (1972) reported that this occupation of new areas by *S. floridanus* seemed to be at the expense of *S. transitionalis.*

Although the precise mechanism explaining how eastern cottontails displace New England cottontails is not known, it is well established that as the range of the eastern cottontail expanded, that of the indigenous New England cottontail declined. Probert and Litvaitis (1996) found that eastern cottontails, though larger, were not physically dominant over New England cottontails. Rather, they believe that eastern cottontails are able to exploit a broader set of ecological conditions and, through more efficient or rapid use of available resources, they have been able to replace New England cottontails in many habitats. Eastern cottontails appear capable of occupying a wider range of available habitat types and can occupy disturbance patches earlier than New England cottontails. Once established, the highly fecund eastern cottontails are not readily displaced by the New England cottontails.

Our review of available information indicates there are other natural and man-made factors that may be affecting the status of the New England cottontail. Winter severity, measured by persistence of snow cover, is believed to affect New England cottontail survival. Villafuerte *et al.* (1997) found that snow cover reduces the availability of high-quality foods, and likely results in rabbits becoming weakened nutritionally. In a weakened state, rabbits are more vulnerable to predation. Brown and Litvaitis (1995) found that during winters with prolonged snow cover, a greater proportion of the cottontails in their study were killed by predators. Litvaitis and Johnston (2002) speculate that snow cover may explain the largely coastal distribution of this species in the Northeast (generally less snow falls and persists in coastal versus interior areas) and may be an important factor defining the northern limit of its range. The preceding studies suggest that during winters with heavy snowfall, New England cottontail numbers will be reduced, and the combined effects of snowfall and habitat fragmentation will affect the persistence of populations in smaller patches.

State wildlife agencies report that road kills are an important source for obtaining specimens of rabbits, including the New England cottontail. Road-killed rabbits were second only to hunting mortality as a source for obtaining cottontail specimens in an ongoing distributional study of eastern and New England cottontails in Connecticut (Walter *et al.* 2001). The degree to which New England cottontail populations are affected by vehicular mortality is unknown, but roads may be an important limitation for dispersing individuals.

Litvaitis and Johnson (2002) note that cottontails are often found in habitats that have invasive plant species, such as honeysuckle (*Lonicera* spp.). Whether exotic plant species have a positive or negative effect on the New England cottontail is presently unknown.

## Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. On the basis of our review, we find that the petition presents substantial information indicating that listing the New England cottontail may be warranted. The main threat to the species appears to be loss of habitat through forest succession, fragmentation, and conversion to other uses. This loss of habitat has contributed to a reduction in the range of the species and a reduction in numbers. Ongoing competition with eastern cottontails that have been introduced into areas that are outside their native range also appears to be having a negative impact on the New England cottontail.

We have reviewed the available information to determine if the existing and foreseeable threats pose an emergency. We have determined that an emergency listing is not warranted at this time, because many scattered occurrences of the New England cottontail are still known to occur across its range, and some are on protected lands. However, if at any time we determine that emergency listing of the New England cottontail is warranted, we will seek to initiate an emergency listing.

The petitioners also requested that critical habitat be designated for this subspecies. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the New England cottontail is warranted, we will address the designation of critical habitat in the subsequent proposed rule or as funding allows.

## Public Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on the New England cottontail. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the New England cottontail. We are seeking information regarding historic and current status and distribution, the species' biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES** section). Our practice is to make comments and materials provided, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your submission. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

## References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor (see **ADDRESSES** section).

## Author

The primary author of this document is Michael J. Amaral, New England Field Office (see **ADDRESSES** section).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 2, 2004.

**Marshall Jones,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 04–14610 Filed 6–29–04; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

Vol. 69, No. 125

Wednesday, June 30, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Request for Comment; Notice of Intent To Prepare an Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Forest Service invites comments and suggestions on the scope of the proposed Environmental Impact Statement and management plan for the most effective management of 8.5 miles of the Gold Camp Road. This is a historic Forest Service road that crosses national forest lands southwest of Colorado Springs, Colorado. This 8.5-mile segment of road has been partially closed since the collapse of one of the tunnels. The objective of the management plan is to best accommodate public use and access to national forest lands and nearby private in-holdings while maintaining public safety and the historic character of the road.

**DATES:** Comments concerning this notice should be received in writing August 16, 2004.

**ADDRESSES:** Comments concerning this notice should be addressed to Gold Camp Road Project, Pike National Forests Forest Service, USDA, 601 South Weber Street, Colorado Springs, CO, 80903. Comments also may be submitted via facsimile to (719) 477–4233 or e-mail to *www.fs.fed.us/r2/psicc/pp* follow the link to the comment page.

The public may inspect comments received at Pikes Peak Ranger District, 601 South Weber Street, Colorado Springs, CO. Visitors are encouraged to call (719) 477–4203 to facilitate entry to the building.

**FOR FURTHER INFORMATION CONTACT:** Frank Landis, Supervisory Outdoor Recreation Planner, Pikes Peak Ranger District, at (719) 477–4203.

**SUPPLEMENTARY INFORMATION:**

#### Estimated Dates for Filing

The draft Environmental Impact Statement (EIS) is expected to be filed with the Environmental Protection Agency and available for public review October/November, 2004. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. Comments received on the draft EIS will be analyzed and considered in preparation of the final EIS, expected in June 2005. A Record of Decision will also be issued and published at that time along with the publication of a Notice of Availability of the final EIS in the **Federal Register**.

#### Reviewers Obligation To Comment

The Forest Service believes that, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statements may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when the Forest Service can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

The scoping process will include public meetings and interaction with federal, state, and local officials. Information regarding the place and time of the public scoping meetings will be announced in area media, as well as posted on the Forest Service Pike and San Isabel National Forests Internet site at *http://www.fs.fed.us./r2/psicc.* Public meetings will be held once the draft management plan and environmental impact statement are available for review.

Preliminary issues include the following:

- Impacts to recreational use, as well as the scenic resources associated with the area.
- Impacts to the historic character of the road and tunnels and its listing status on the National Register of Historic Places.
- Impacts to public health and safety.
- Impacts to water resources.
- Impacts to existing infrastructure (road capacities).
- Impacts to terrestrial and aquatic habitats and species.

#### The Purpose and Need for Action

Gold Camp Road has a long history of use in the area. In 1901, the travel way was a railroad from Colorado Springs, Colorado, to the gold fields of Cripple Creek, Colorado. In 1922, the railway was sold and the route was converted to a vehicular road when auto-tourism in the Pikes Peak region was just beginning. From 1924 to the 1930s, the road was a private toll road and it became a free highway and was known in 1939 as the Gold Camp Road. In the mid-1940s, ownership of the 25+ mile road was deeded to the Forest Service. The road was open to the public until the late 1980s. In 1988, a partial collapse of Tunnel #3 forced closure of an 8.5-mile section of the road.

From 1988 to 1990, the Forest Service initiated a process to repair the collapsed tunnel. In June 1991, the Forest Service submitted the project through the Forest Service Capital Investment Program (CIP). The Forest Service started implementing the decision to repair the tunnel. In the meantime, non-motorized recreation use

such as bicycles, hikers, horseback, has increased in number and began to use the closed section of the road. In 1994, the Forest Service blocked Tunnel #3 as a safety measure while waiting for funding to repair the tunnel. In 1999, the entire road was listed in the National Register of Historic Places. In 2000, a lawsuit was filed by several plaintiffs requesting that a new analysis be conducted. In October 2000, the Forest Service withdrew the 1990 decision and decided to initiate a new process to evaluate the project. This current planning process will develop management alternatives for the project, which will be evaluated in an Environmental Impact Statement.

**Nature of Decision To Be Made**

The decision to be made by the Forest Service is which management plan to approve for the Gold Camp Road to best meet the project's objectives and the applicable regulatory and policy requirements. Project alternatives include the No Action Alternative, which in effect would result in continued closure of the 8.5 miles of road.

**Responsible Official**

The Responsible Official is the Forest Supervisor, Pike and San Isabel National Forests, Forest Service, USDA.

**Use of Comments**

Comments received in response to this notice, including names and addresses, when provided, will become a matter of the public record and will be available for public inspection and copying.

All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215. Upon completion of the Draft Plan/EIS the document will be provided to the public for review and comment. Comments and FS responses will be addressed and contained in the Final Plan/EIS.

Dated: June 22, 2004.

**Robert Leaverton,**

*Forest Supervisor.*

[FR Doc. 04–14553 Filed 6–29–04; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Rock Creek Integrated Management Project

**AGENCY:** Forest Service, USDA, and Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement (EIS).

**SUMMARY:** Between 2002 and 2003, Mountain Pine Beetle (MPB) activity in the drought-stressed Gore Pass Geographic Area increased 20-fold. A multidisciplinary, focused assessment was completed that identified the probability of a large-scale, high intensity beetle epidemic and fires that will threaten hydrologic flows, timber, wildlife habitats, developed recreation sites, administrative sites, the transportation system, heritage sites, off-site urban development, and other values. The interdisciplinary team identified potential management actions using prevention, suppression, and salvage strategies to reduce the beetle infestations and minimize adverse effects to resources.

This project is an ''authorized project'' under Title I of the Healthy Forests Restoration Act (HFRA). We will be using expedited procedures authorized by this act to complete project planning and decision-making. Use of this new authority requires an emphasis on collaboration with local communities and a determination that an epidemic exists by consulting with forest health specialists.

**DATES:** Comments concerning the scope of the analysis must be received by August 16, 2004. The draft EIS is expected December 2004 and the final EIS is expected April 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- *Web site: http://www.fs.fed.us/r2/mbr/projects* under Environmental Analysis and Forest Health. Follow the instructions for submitting comments on the Web site.
- *E-mail: r2_mbr_vis@FSNOTES.* Include ''Rock Creek'' in the subject line of the message.
- *Fax:* (970) 870–2284.
- *Mail of Hand Delivery:* Joanne Sanfilippo, Environmental Coordinator, Medicine Bow—Routt National Forests, 925 Weiss Drive, Steamboat Springs, Colorado 80487.

**FOR FURTHER INFORMATION CONTACT:** Joanne Sanfilippo (970–870–2210) or Andy Cadenhead (970–870–2220), Medicine Bow—Routt National Forests, 925 Weiss Drive, Steamboat Springs, Colorado 80487.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

Insect epidemics are one of the natural processes in forested landscapes. Some uses of the forest are compromised by tree mortality resulting from insect attacks. Recreation, wood product production, scenery, wildlife habitats and water resources are all adversely affected by large scale insect epidemics and the subsequent increased risk of these areas to large high intensity wildlife.

The purpose of the Proposed Action is to reduce the size and intensity of an existing and imminent MPB epidemic, and to reduce the future risk of large-scale high intensity wildfires within the Rock Creek Analysis Area.

There is a need to:

1. Reduce the susceptibility of the lodgepole stands within the analysis area to MPB mortality,
2. Actively suppress the ongoing MPB epidemic to limit mature tree mortality,
3. Salvage and reforest areas quickly after the MPB mortality,
4. Relocate and/or decommission segments of the road system that are likely to cause adverse impacts to stream networks,
5. Reduce fuel loading associated with beetle killed trees,
6. Create defensible fire zones around the Lynx and Gore Pass areas,
7. Reduce anticipated mature tree mortality in Threatened, Endangered, and Sensitive wildlife species habitats.

**Proposed Action**

Prevention methods identified involve spraying, forest thinning, and creating changes to existing stand tree species and age distributions. Suppression techniques involve removing, burning, or peeling beetle-infested trees; along with the use of pheromones to redirect beetles into or out of specific areas. Salvage actions are intended to capture the value of dead and dying trees, to remove mistletoe-infested trees to protect stand regeneration, and to reduce concentrations of dead and dying trees that increase the potential for large-scale high intensity fires. Road construction is needed to provide access to treatment areas outside of roadless areas. Road repair and decommissioning will correct existing or anticipated erosion and water flow problems likely exacerbated by increased water flows resulting from beetle-induced tree mortality.

**Lead and Cooperating Agencies**

The Medicine Bow—Routt National Forests is the lead agency. The Glenwood Springs Field Office of the Bureau of Land Management is the cooperating agency for the Rock Creek Integrated Management Project.

**Responsible Official**

The responsible officials are Mary Peterson, Forest Supervisor, Medicine Bow—Routt National Forests, 2468 Jackson Street, Laramie, Wyoming 82070–6535 and Jamie Connell, Area Manager, Glenwood Springs Field Office, 50629 Hwys 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81602.

**Nature of Decision To Be Made**

The decision will be whether to treat timberstands affected by or likely to be affected by the MPB epidemic. If the decision is to treat timberstands, the type, distribution, and priority of treatments is decided with consideration for resource protection for watersheds, recreation and administrative sites, scenery, and wildlife habitat.

**Scoping Process**

The Forest Service has listed the project in the Schedule of Proposed Actions that is posted on the Web and mailed to parties interested in Medicine Bow—Routt National Forests projects. A scoping letter describing the project has been mailed to interested parties. The Forest Service will also respond to information requests about the project and hold open house public meetings and field trips.

**Electronic Access and Filing**

All future documents and information on the Rock Creek Integrated Management Project will be posted at *www.fs.fed.us/r2/mbr/projects* under ''Forest Health.'' You may submit comments and data by sending electronic mail (E-mail) to *r2_mbr_mvis@FSNOTES* and including ''Rock Creek'' in the subject line of the message.

When submitting comments please include your full name and address. Submit comments in Microsoft Word 2000 file format or as an ASCII file avoiding the use of special characters and any form of encryption.

**Comment Requested**

This notice of intent is part of the scoping process which guides the development of the EIS.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft EIS will be prepared for comment. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions [*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)]. Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. (**Authority**: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

**Healthy Forests Restoration Act Predecisional Review (Objection) Process**

HFRA [Section 105(a)] replaces the USDA Forest Service's administrative appeals process with an objection process that occurs before the decision approving authorized fuel-reduction projects under the act. Participation in the predecisional review process is limited to individuals and organizations who have submitted specific written comments related to the proposed authorized hazardous-fuel-reduction project during the opportunity for public comment provided when an environmental (EA) or EIS is being prepared for the project [Section 105(a)(3), 36 CFR 218.6].

Written objections, including any attachments, must be filed with the reviewing officer within 30 days after the publication date of the legal notice of the EA or final EIS in the newspaper of record [Section 218.4(b)]. It is the responsibility of the objectors to ensure that their objection is received in a timely manner.

Dated: June 3, 2004.

**Mary H. Peterson,**

*Forest Supervisor, Medicine Bow-Routt National Forests, USDA Forest Service.*

Dated: June 14, 2004.

**Jamie Connell,**

*Area Manager, Glenwood Springs Field Office, USDI Bureau of Land Management.*

[FR Doc. 04–14841 Filed 6–29–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Wrangell-Petersburg Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 6 p.m. until 8 p.m. on Thursday, July 15, 2004, in Petersburg, Alaska. The purpose of this meeting is to discuss and potentially recommend for funding the publication and distribution of a RAC newsletter and/or the commitment of RAC funds to support miscellaneous administrative functions.

**DATES:** The meeting will be held commencing at 6 p.m. on Thursday, July 15, 2004. It is anticipated that the meeting will adjourn by 8 p.m.

**ADDRESSES:** The meeting will be held at the Petersburg Ranger District office conference room, Federal Building, 12 North Nordic Drive, Petersburg, Alaska. Committee members from outside Petersburg will participate in the meeting via teleconference.

**FOR FURTHER INFORMATION CONTACT:** Chip Weber, Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *cweber@fs.fed.us* or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us*. Contact either of

these individuals for teleconference information. For further information on RAC history, operations, and the application process, a Web site is available at *http://www.fs.fed.us/r10/ro/payments*.

**SUPPLEMENTARY INFORMATION:** This meeting will focus on the discussion and potential recommendation for funding of the costs of the publication and distribution of a RAC newsletter and/or the commitment of RAC funds to support miscellaneous administrative functions. The meeting is open to the public. Teleconference capability is available (committee members from outside of Petersburg will participate via teleconference).

Dated: June 23, 2004.

**Forrest Cole,**

*Forest Supervisor.*

[FR Doc. 04–14779 Filed 6–29–04; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Evaluating Applications and Issuing Easements for Certain Water Development Facilities on National Forest System Lands That Qualify Under the Act of October 27, 1986

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of issuance of agency interim directive.

**SUMMARY:** The Forest Service is issuing an interim directive to guide its employees in evaluating applications and issuing permanent easements for certain water development facilities on National Forest System lands that qualify under the Act of October 27, 1986 (also known as the ''Colorado Ditch Bill''). The interim directive supplements internal agency direction in Forest Service Manual chapter 2720 to provide clarity and specificity in agency policy in order to process applications and issue permanent easements authorized under the Colorado Ditch Bill in a consistent and efficient manner.

**DATES:** This interim directive is effective July 30, 2004.

**ADDRESSES:** This interim directive (ID 2720–2004–1) is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Single paper copies of the ID are also available by contacting Robert Cunningham, Lands Staff (Mail Stop 1124), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1124 (telephone 202–205–2494).

**FOR FURTHER INFORMATION CONTACT:** Robert Cunningham, Lands Staff (202—205–2494).

**SUPPLEMENTARY INFORMATION:** The Forest Service is issuing an interim directive (ID) to Forest Service Manual (FSM) chapter 2720 to guide its employees in the review and evaluation of applications for easements for certain qualifying water development facilities on National Forest System (NFS) lands, and in the establishment of terms and conditions for inclusion in these easements. This interim directive to FSM 2720 is issued as ID number 2700–2004–1. The Act of October 27, 1986 (100 stat. 3047; commonly known as the ''Colorado Ditch Bill''), amended Title V of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1761) to authorize the Secretary of Agriculture to issue permanent easements without charge for certain water conveyance systems occupying NFS lands and used for agricultural irrigation or livestock watering purposes. Those easements have come to be known as ''Ditch Bill easements.'' The Colorado Ditch Bill included certain criteria that must be met for applicants and their facilities to qualify for the issuance of a Ditch Bill easement.

The Colorado Ditch Bill did not prescribe the issuance of a specific easement to qualified applicants, nor did it prescribe the manner in which a permanent easement is to be conditioned. Rather, the Colorado Ditch Bill was enacted as an amendment to Title V of the FLPMA, which directs that all rights-of-way authorizations issued pursuant to FLPMA be conditioned in a manner that is consistent with applicable laws and regulations and adequately protects lands and resources. Therefore, while the issuance of a Ditch Bill easement in response to a qualified application is mandated in the statute, the manner in which the easement may be conditioned to comply with applicable State and Federal law is left to the discretion of the authorized officer. The Colorado Ditch Bill also did not exempt the processing of Ditch Bill easement applications from procedures required by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). In the case of qualified Ditch Bill easement applications, the discretionary Federal action consists of identifying terms and conditions that may be needed in the easement to comply with applicable State and Federal law. The procedures conducted pursuant to NEPA provide the basis upon which a decision is made concerning those terms and conditions.

The Colorado Ditch Bill provided a window of just over 10 years within which entities could file an application for a Ditch Bill easement. That application window ended on December 31, 1996. The Forest Service received more than 2,500 applications for Ditch Bill easements, the bulk of which were submitted during the mid-1990s in the last several years of the 10-year application window. The Forest Service has issued approximately 600 easements in response to those applications. Approximately 1,800 applications remain unprocessed as Forest Service administrative units await the direction in this ID before they proceed in reviewing and processing those applications.

The decision to be made in reviewing and processing an application for a Ditch Bill easement is two-fold. First, the authorized officer must evaluate each application against the qualifying criteria established in the Colorado Ditch Bill. Second, those applications that meet all of the qualifying criteria are then further evaluated, pursuant to the provisions of NEPA, to determine the manner in which the easement may need to be conditioned to comply with other applicable laws and regulations.

In the late 1980s, internal agency policy was established to provide Forest Service officers with management direction in processing applications for and conditioning Ditch Bill easements. That policy was issued in the Forest Service Directive System FSM 2729. Minor revisions to that policy were made during the early and mid-1990s.

Beginning in the mid-1990s, as more and more western National Forests and their Ranger Districts started focusing on and responding to the large number of Ditch Bill easement applications they were receiving, internal questions started to emerge about existing policies and inconsistencies in applying agency policy and procedures to case-specific situations. The inconsistencies were in part attributable to the lack of understanding of the agency's limited discretion in responding to Ditch Bill easement applications, and inadequate agency direction at FSM 2729 concerning specific procedures to follow in evaluating applications, responding to assertions of outstanding rights that are included as part of a significant number of applications, evaluating the environmental effects of the ongoing operation and maintenance of qualifying facilities, and complying with the procedural requirements of laws such as NEPA and the Endangered Species Act of 1973 (ESA) (16 U.S.C.

1531 *et seq.*) in processing applications and conditioning easements. Compliance with the provisions of ESA is of particular concern in light of the fact that as many as half of the remaining applications may include facilities that occupy habitat of a listed species, pursuant to ESA. During the late 1990s the Forest Service also started to encounter inconsistencies in the procedures that authorized officers were using to identify and formally decide upon the terms and conditions to be included in a Ditch Bill easement.

The primary purposes of this ID are to (1) Supplement agency policy in a manner that provides greater clarity and understanding of the Forest Service's limited discretion in issuing easements for qualifying facilities, (2) identify specific options to consider and procedures to follow in complying with the provisions of the ESA, (3) ensure compliance with other existing laws and regulations governing these facilities and their use and occupancy of NFS lands, (4) recognize the rights of water users under State law, and (5) minimize impacts to the end use of water for agricultural irrigation and/or livestock watering purposes. The ID specifically:

1. Provides additional internal policy and procedures which direct the authorized officer to consult with Forest Service Water Rights and Boundary Management Specialists and, when needed, the Office of the General Counsel in evaluating evidence of a State-recognized water right and to ensure compliance with the qualifying criterion requiring the submittal of a recordable survey.

2. Establishes a series of water resources management policy statements for consideration in evaluating applications for and the conditioning of Ditch Bill easements that more clearly direct the authorized officer to recognize and respect the roles of the western States in appropriating and allocating water resources for beneficial uses and direct a greater degree of coordination and cooperation in seeking solutions to water needs and conflicts.

3. Provides clearer direction for requesting additional information from applicants when needed to evaluate the content of an application against the qualifying criteria.

4. Establishes procedures in responding to applicants who assert an outstanding statutory right to use and occupy NFS lands with their water development facility.

5. Provides additional direction to authorized officers when rejecting applications that do not qualify for a Ditch Bill easement.

6. Directs that all Ditch Bill easements include a provision that provide the authorized officer the authority to review and, if necessary, to modify or revise the terms and conditions of the Ditch Bill easement and/or an operation and maintenance plan that may be made a part of a Ditch Bill easement. Such a provision is required in existing Federal regulation for special use authorizations at 36 CFR 251.56(b)(1)(v). This provision shall not, as part of a periodic review of an easement's terms and conditions, authorize the Forest Service to administratively terminate or revoke the easement because the easement's permanency is granted by Federal law.

7. Provides more specific direction for complying with the provisions of NEPA and greatly expanded direction addressing procedures for complying with the requirements of ESA.

8. Provides direction for exploring a variety of approaches to meet the requirements of applicable Federal and State law in a manner that recognizes existing water rights and minimizes impacts to the applicant's end use of water for agricultural irrigation and/or livestock watering purposes.

9. Specifies that this ID does not prompt any revisions or replacements to Ditch Bill easements issued prior to the effective date of the ID and provides direction for addressing applications for and conditioning of Ditch Bill easements for water development facilities that are jointly used by others and that may already have been authorized by a Ditch Bill easement issued prior to the effective date of this ID.

Dated: June 24, 2004.

**Dale N. Bosworth,**

*Chief.*

[FR Doc. 04–14859 Filed 6–29–04; 8:45 am]

BILLING CODE 3410–11–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Rehabilitation of Floodwater Retarding Structure Nos. 7 and 13A of the Upper Brushy Creek Watershed, Williamson County, TX

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure (FRS) Nos. 7 and 13A of the Upper Brushy Creek Watershed, Williamson County, Texas.

**FOR FURTHER INFORMATION CONTACT:** Dr. Larry D. Butler, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, telephone (254) 742–9800.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Dr. Larry D. Butler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure Nos. 7 and 13A to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of the FRS will require the disturbance of 1.7 acres. FRS No. 7 will be rehabilitated by adding a 60-inch hooded inlet principal spillway and raising the dam height by 8 feet with a reinforced concrete parapet wall. The length of the dam will be extended 200 feet on the left abutment and 350 feet on the right abutment. FRS No. 13A will be rehabilitated by adding a 30-inch hooded inlet spillway and by raising the top of dam by 4 feet with a reinforced concrete parapet wall. The disturbed areas will be reestablished with bermudagrass. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (section 313, Public Law 106–472). Total project costs is estimated to be $4,201,400 of which $2,956,100 will be paid from the Small Watershed Rehabilitation funds and $1,245,300 from local funds.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during

the environmental assessment are on file and may be reviewed by contacting Dr. Larry D. Butler, State Conservationist, telephone (254) 742–9800.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: June 23, 2004.

**Larry D. Butler,**

*State Conservationist.*

[FR Doc. 04–14847 Filed 6–29–04; 8:45 am]

**BILLING CODE 3410–16–P**

## ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

### Notice of Meeting

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of meeting.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, July 13–14, 2004, at the times and location noted below.

**DATES:** The schedule of events is as follows:

**Tuesday, July 13, 2004**

10:30–Noon—Passenger Vessels Ad Hoc Committee (Closed)
1:30–3 p.m.—Passenger Vessels Ad Hoc Committee (Closed)
3–4—International Outreach Ad Hoc Committee
4–5:30—Technical Programs Committee

**Wednesday, July 14, 2004**

9:30–11 a.m.—Courthouse Access Ad Hoc Committee
11–Noon—Planning and Budget Committee
1:30–3 p.m.—Board Meeting

**ADDRESSES:** The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–0001 (voice) and (202) 272–0082 (TTY).

**SUPPLEMENTARY INFORMATION:** At the Board meeting, the Access Board will consider the following agenda items:

**Open Meeting**

- Approval of the May 12, 2004 Board Meeting Minutes.
- Ad Hoc Committee on International Outreach.
- Ad Hoc Committee on Courthouse Access.
- Technical Programs Committee.
- Planning and Budget Committee.

**Closed Meeting**

- Passenger Vessels Accessibility Guidelines.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

**James J. Raggio,**

*General Counsel.*

[FR Doc. 04–14862 Filed 6–29–04; 8:45 am]

**BILLING CODE 8150–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Procedure for Voluntary Self-Disclosure of Violations.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0058.

*Type of Request:* Extension of a currently approved collection of information.

*Burden:* 670 hours.

*Average Time Per Response:* 10 hours per response.

*Number of Respondents:* 67 respondents.

*Needs and Uses:* BIS codified its voluntary self-disclosure policy to increase public awareness of this policy and to provide the public with a good idea of BIS's likely response to a given disclosure. Voluntary self-disclosures allow BIS to conduct investigations of the disclosed incidents faster than would be the case if BIS had to detect the violations without such disclosures.

*Affected Public:* Individuals, businesses or other non-profit institutions.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: June 25, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–14835 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–DT–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration; BISNIS Finance Link

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the 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:** Written comments must be submitted on or before August 30, 2004.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Request for additional information or copies of the information collection instrument and instructions should be directed to: William Franklin, Office of Finance, Room 1800A, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230; Phone Number: (202) 482–3277.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The International Trade Administration's Business Information Service for the Newly Independent States (BISNIS) offers business intelligence and counseling to U.S. companies seeking to export or invest in the countries of the former Soviet Union. One of the essential components of BISNIS's services is assisting companies in locating suitable financing

for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all the requests for a variety of reasons. FinanceLink is an Internet-based service that facilitates contacts between exporters and finance providers. Exporters fill out a form giving relevant details about the desired transaction and submit it via the internet to BISNIS. BISNIS will in turn distribute the information collected to potential finance providers. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters, specifically in the more challenging market of the former Soviet Union.

**II. Method of Collection**

The information is collected via the Internet at: *http://www.bisnis.doc.gov/bisnis/finlin3.cfm.*

**III. Data**

*OMB Number:* XXXX–XXXX

*Form Number:* ITA–XX.

*Type of Review:* Regular Submission.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Response:* 10 minutes.

*Estimated total Annual Burden Hours:* 33 hours.

*Estimated Total Annual Costs:* $0.

**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 costs) of the proposed collection information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or 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: June 25, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–14836 Filed 6–29–04; 8:45 am]

BILLING CODE 3510–DA–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* Bureau of Industry and Security (BIS).

*Title:* Procedures for Acceptance or Rejection of Rated Order.

*Agency Form Number:* None.

*OMB Approval Number:* 0694–0092.

*Type of Request:* Extension of a currently approved collection of information.

*Burden:* 21,963 hours.

*Average Time Per Response:* 1 to 15 minutes per response.

*Number of Respondents:* 18,000 respondents.

*Needs and Uses:* Because timely delivery or performance is critical under the Defense Priorities Allocation System, the information is used by the customer who placed the rated order with a supplier to help track the status of the rated order from initial receipt by the supplier to its shipment or performance of the needed goods or services. It also would be used by the Department of Defense and its associated agencies, the Department of Energy, and the Department of Commerce, as part of the information required to provide assistance to the customer in the event that the supplier can not or will not make timely delivery or performance of the needed goods or services.

*Affected Public:* Individuals, businesses or other for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

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, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: June 25, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–14838 Filed 6–29–04; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### Census Bureau

### Youth Volunteering, Service, and Civic Engagement Survey

**ACTION:** Proposed collection; comment request.

**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:** Written comments must be submitted on or before August 30, 2004.

**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 Ken Kaplan, U.S. Census Bureau, FOB 3, Room 3351, Washington, DC 20233–8400 at (301) 763–3836.

**SUPPLEMENTARY INFORMATION**

**I. Abstract**

The purpose of this voluntary survey is to provide data on volunteering and civic engagement among American teenagers, 12 to 18 years of age. This population was last studied in 1995 by Independent Sector, which released a report subsequent to the study.

Since the Corporation for National and Community Service is the Federal agency responsible for providing national and community service opportunities for millions of Americans, conducting a study of a rarely evaluated segment of the volunteering population will be greatly informative of the work that the Corporation is doing across the country. For example, the Learn and Serve America programs are specifically targeted to providing volunteer opportunities and promoting a culture

of service in teens. This program focuses on youth and teens as an important community resource and provides young people with opportunities to serve America by connecting community service with academic learning, personal growth, and civic responsibility.

The teen volunteering segment is an important and often overlooked population but youth volunteers often continue their commitment to service as they grow older. The AmeriCorps programs provide service opportunities for Americans 17 and older. By understanding the unique needs and motivations of the teen population, we can better work to engage them currently, and as they age, in service to this country.

For the national sample, we will select a sample of households from expired Current Populations Survey rotations. We will obtain parental consent prior to interviewing the youths.

### II. Method of Collection

The information will be collected by telephone-only interviews in one of the Census Bureau's telephone centers. The data methodology will utilize computer-assisted telephone interviewing (CATI).

### III. Data

*OMB Number:* Not available.

*Form Number:* There will be no form number because it will be conducted by CATI.

*Type of Review:* New collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 3,300 respondents.

*Estimated Time per Response:* 25 minutes per response.

*Estimated Total Annual Burden Hours:* 1,375 hours.

*Estimated Total Annual Cost:* There is no cost to respondents other than their time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, 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 Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: June 24, 2004.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 04–14837 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

## Bureau of the Census

**[Docket Number 040616185–4185–01]**

## Notice of Data Sharing Activity

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice and request for public comment.

**SUMMARY:** The Bureau of the Census (Census Bureau) plans to provide certain business data collected in its 2002 Economic Census to the Bureau of Economic Analysis (BEA) for statistical purposes exclusively. In accordance with the requirement of section 524(d) of the Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), the Census Bureau is providing the opportunity for public comment on this data-sharing action. Through the use of these shared data, the BEA expects to improve the quality of data collected by the Census Bureau under the authority of Title 13 of the United States Code (U.S.C.), and collected by the BEA under the authority of the International Investment and Trade in Services Survey Act by identifying data-quality issues arising from reporting differences in the Census Bureau and BEA surveys. The Census Bureau and BEA will publish nonconfidential aggregate reports (public use) that have cleared the BEA and Census Bureau disclosure review.

**DATES:** Written comments must be submitted on or before August 30, 2004.

**ADDRESSES:** Please direct all written comments on this proposed program to the Director, U.S Census Bureau, 4700 Silver Hill Road, Washington, DC 20233–0100.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information on this proposed program should be directed to Mr. Julius Smith, Jr., Chief, Special Studies Branch, Manufacturing and Construction Division, U.S. Census Bureau, 4700 Silver Hill Road, Washington, DC 20233–6900, by phone at (301) 763–7662 or by fax at (301) 457–1318 or by e-mail at *julius.smith.jr@census.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The CIPSEA (Pub. L. 107–347, Subtitle V; 44 U.S.C. 3501 *et seq.*) and the International Investment and Trade in Services Survey Act (Pub. L. 94–472 as amended; 22 U.S.C. 3101–3108) allow the BEA and the Census Bureau to share certain business data for exclusively statistical purposes. Section 524(d) of the CIPSEA requires a **Federal Register** notice announcing the intent to share data (allowing 60 days for public comment).

Section 524(d) also requires us to provide information about the terms of the agreement for data sharing. For the purposes of this notice, the Census Bureau has decided to group these terms by three categories. The categories are as follows:

- Shared data.
- Statistical purposes for the shared data.
- Data access and confidentiality.

### Shared Data

The Census Bureau proposes to provide the BEA with data collected from the 2002 Economic Census and Business Register. The agreement also calls for the BEA to share with the Census Bureau data collected from the Foreign Direct Investment surveys. The BEA will issue a separate notice addressing this issue.

The BEA will use these data for statistical purposes exclusively. Through record linking, the BEA expects to improve the quality of data collected under the authority of Title 13 of the U.S.C, and the International Investment and Trade in Services Survey Act by identifying data-quality issues arising from reporting differences in the Census Bureau and the BEA surveys.

### Statistical Purposes for the Shared Data

The data collected from the 2002 Economic Census and Business Register are used to estimate employment, payroll, and receipt data of U.S. companies. Statistics from the census are published in separate data publications. All data are collected under Sections 131 and 224 of Title 13 of the U.S.C.

**Data Access and Confidentiality**

Title 13 of the U.S.C. protects the confidentiality of these data. The data may be seen only by persons sworn to uphold the confidentiality of the information. Access to the shared data will be restricted to specifically authorized personnel and will be provided for statistical purposes only. All BEA employees with access to these data will become Census Bureau Special Sworn Employees—meaning that they, under penalty of law, must uphold the data's confidentiality. To further safeguard the confidentiality of the data, the Census Bureau has conducted an Information Technology Security Review of the BEA. The results of this project are subject to disclosure review. Disclosure review is a process conducted to verify that the data to be released do not reveal any confidential information.

Dated: June 24, 2004.

**Hermann Habermann,**

*Deputy Director, Bureau of the Census.*

[FR Doc. 04–14819 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

**SUMMARY:** The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

**EFFECTIVE DATE:** June 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Polyester Staple Fiber from the Republic of Korea.

*Initiation of Reviews:* In accordance with 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 May 31, 2005.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceedings** | |
| Belgium: | |
| Stainless Steel Plate in Coils, A–423–808 | 5/1/03–4/30/04. |
| Ugine & ALZ Belgium | |
| Brazil: | |
| Frozen Concentrated Orange Juice, A–351–605 | 5/1/03–4/30/04. |
| Citrovita Agro-Industrial Ltda/Cambuhy MC Industrial Ltda/Cambuhy Citrus Comercial e Exportadora | |
| Branco Peres Citrus S.A | |
| Canada: | |
| Certain Softwood Lumber, A–122–838 | 5/1/03–4/30/04. |
| 2 by 4 Lumber Sales Ltd | |
| 9027–7971 Quebec Inc. (Scierie Marcel Dumont) | |
| 9098–5573 Quebec Inc. (K.C.B. International) | |
| A. L. Stuckless & Sons Limited | |
| Abitibi-Consolidated Company of Canada | |
| Abitibi-Consolidated Inc | |
| Abitibi-LP Engineered Wood Inc | |
| Age Cedar Products | |
| AJ Forest Products Ltd | |
| Alexandre Cote Ltee. | |
| Allmac Lumber Sales Ltd | |
| Allmar International | |
| Alpa Lumber Mills Inc | |
| American Bayridge Corporation | |
| Anderson Wholesale, Inc | |
| Apex Forest Products, Inc | |
| Apollo Forest Products Limited | |
| Aquila Cedar Products Ltd | |
| Arbutus Manufacturing Limited | |
| Armand Duhamel & Fils Inc | |
| Ashley Colter (1961) Limited | |
| Aspen Planers Ltd | |
| Atikokan Forest Products Ltd | |
| Atlantic Pressure Treating Ltd | |
| Atlantic Warehousing Limited | |
| Atlas Lumber (Alberta) Ltd | |
| AWL Forest Products | |
| Bakerview Forest Products Inc | |
| Bardeaux et Cedres St-Honore Inc. (Bardeaux et Cedres) | |

| | Period to be reviewed |
|---|---|
| Barrett Lumber Company | |
| Barrette-Chapais Ltee | |
| Bathurst Lumber (Division of UPM-Kymmene Miramichi Inc.) | |
| Bay Forest Products Ltd | |
| Beaubois Coaticook Inc | |
| Blackville Lumber (Division of UPM-Kymmene Miramichi Inc.) | |
| Blanchette et Blanchette Inc | |
| Bloomfield Lumber Limited | |
| Bois Cobodex (1995) Inc | |
| Bois Daaquam Inc | |
| Bois De L'Est F.B. Inc | |
| Bois Granval G.D.S. Inc | |
| Bois Kheops Inc | |
| Bois Marsoui G.D.S. Inc | |
| Bois Neos Inc | |
| Bois Nor Que Wood Inc | |
| Boisaco Inc | |
| Boscus Canada Inc | |
| Boucher Forest Products Ltd | |
| Bowater Incorporated | |
| Bridgeside Forest Industries, Ltd | |
| Bridgeside Higa Forest Industries Ltd | |
| Brittainia Lumber Company Limited | |
| Brouwer Excavating Ltd | |
| Brunswick Valley Lumber | |
| Buchanan Distribution Inc | |
| Buchanan Lumber | |
| Buchanan Lumber Sales Inc | |
| Buchanan Northern Hardwoods, Inc | |
| Busque & Laflamme Inc | |
| Byrnexco Inc | |
| C.E. Harrison & Son Ltd | |
| Caledon Log Homes (FEWO) | |
| Caledonia Forest Products Ltd | |
| Cambie Cedar Products Ltd | |
| Canadian Lumber Company Ltd | |
| Cando Contracting Ltd | |
| Canex International Lumber Sales Ltd | |
| Canfor Corporation | |
| CanWel Building Materials Ltd | |
| CanWel Distribution Ltd | |
| Cape Cod Wood Siding Inc | |
| Cardinal Lumber Manufacturing & Sales Inc | |
| Careau Bois Inc | |
| Carrier & Begin Inc | |
| Carrier Forest Products Ltd | |
| Carrier Lumber Ltd | |
| Carson Lake Lumber | |
| Cattermole Timber | |
| Cedarland Forest Products Ltd | |
| Cedrico Lumber Inc. (Bois D'Oeuvre Cedrcio Inc.) | |
| Central Cedar, Ltd | |
| Centurion Lumber Manufacturing (1983) Ltd | |
| Chaleur Sawmills | |
| Chasyn Wood Technologies Inc | |
| Cheminis Lumber Inc | |
| Cheslatta Forest Products Ltd | |
| Chisholm's (Roslin) Ltd | |
| Choicewood Products Inc | |
| City Lumber Sales and Services Limited | |
| Clair Industrial Dev. Corp. Ltd | |
| Clermond Hamel Ltee | |
| Coast Clear Wood Ltd | |
| Coast Forest & Lumber Association | |
| Colonial Fence Mfg. Ltd | |
| Columbia Mills Ltd | |
| Comeau Lumber Limited | |
| Commonwealth Plywood Company Ltd | |
| Cooper Creek Cedar Ltd | |
| Cottles Island Lumber Co. Ltd | |
| Council of Forest Industries | |
| Cowichan Lumber Ltd | |
| Crystal Forest Industries Ltd | |

| | Period to be reviewed |
|---|---|
| Curley Cedar Post & Rail | |
| Cushman Lumber Company Inc | |
| D.S. McFall Holdings Ltd | |
| Dakeryn Industries Ltd | |
| Delco Forest Products | |
| Delta Cedar Products | |
| Devlin Timber Company (1992) Limited | |
| Devon Lumber Co. Ltd | |
| Doman Forest Products Limited | |
| Doman Industries Limited | |
| Doman Western Lumber Ltd | |
| Domexport Inc | |
| Domtar Inc | |
| Downie Timber Ltd | |
| Dubreuil Forest Products Limited | |
| Duluth Timber Company | |
| Dunkley Lumber Ltd | |
| E. Tremblay Et. Fils Ltee | |
| Eacan Timber Canada Ltd | |
| Eacan Timber Limited | |
| Eacan Timber USA Ltd | |
| East Fraser Fiber Co. Ltd | |
| Eastwood Forest Products Inc | |
| Ed Bobocel Lumber 1993 Ltd | |
| Edwin Blaikie Lumber Ltd | |
| Elmira Wood Products Limited | |
| Elmsdale Lumber Company Ltd | |
| ER Probyn Export Ltd | |
| Evergreen Empire Mills Incorporated | |
| Excel Forest Products | |
| F.L. Bodogh Lumber Co. Ltd | |
| Falcon Lumber Limited | |
| Faulkner Wood Specialties Limited | |
| Federated Co-operatives Limited | |
| Fenclo Ltee | |
| Finmac Lumber Limited | |
| Fontaine Inc., J.A. and its affiliates Fontaine et fils Inc., Bois Fontaine Inc., Gestion Natanis Inc., Les Placements Jean-Paul Fontaine Ltee | |
| Forstex Industries Inc | |
| Forwest Wood Specialties Inc | |
| Fraser Pacific Forest Products Inc | |
| Fraser Pacific Lumber Company | |
| Fraser Papers Inc | |
| Fraser Pulp Chips Ltd | |
| Frasierview Cedar Products Ltd | |
| Frontier Mills Inc | |
| G.D.S. Valoribois Inc | |
| Gestofor Inc | |
| Gilbert Smith Forest Products Ltd | |
| Gogama Forest Products | |
| Goldwood Industries Ltd | |
| Gorman Bros. Lumber Ltd | |
| Great Lakes MSR Lumber Ltd | |
| Great West Timber Limited | |
| Greenwood Forest Products | |
| Groupe Lebel | |
| H.A. Fawcett & Son Limited | |
| H.J. Crabbe & Sons Ltd | |
| Haida Forest Products Ltd | |
| Hainesville Sawmill Ltd | |
| Harrison's Home Building Centers | |
| Harry Freeman & Son Ltd | |
| Hefler Forest Products Ltd | |
| Hi-Knoll Cedar Inc | |
| Hilmoe Forest Products Ltd | |
| Hoeg Brothers Lumber Ltd | |
| Holdright Lumber Products Ltd | |
| Hudson Mitchell & Sons Lumber Inc | |
| Hughes Lumber Specialties Inc | |
| Hyak Specialty Wood Products Ltd | |
| Industries G.D.S. Inc | |
| Industries Perron Inc | |
| Interior Joinery Ltd | |

| | Period to be reviewed |
|---|---|
| International Forest Products Ltd | |
| Isidore Roy Limited | |
| Ivor Forest Products Ltd | |
| J.A. Turner & Sons (1987) Limited | |
| J.D. Irving, Ltd | |
| J.S. Jones Timber Ltd | |
| Jackpine Engineered Wood Products | |
| Jackpine Forest Products Ltd | |
| Jackpine Group of Companies | |
| Jamestown Lumber Company Limited | |
| Jasco Forest Products Ltd | |
| Jeffery Hanson | |
| Julimar Lumber Co. Limited | |
| Kenora Forest Products Ltd | |
| Kent Trusses Ltd | |
| Kenwood Lumber Ltd | |
| Kispiox Forest Products | |
| Kitwanga Lumber Co. Ltd | |
| Kruger, Inc | |
| La Crete Sawmills Ltd | |
| Lakeburn Lumber Limited | |
| Lakeland Mills Ltd | |
| Landmark Structural Lumber | |
| Landmark Truss & Lumber Inc | |
| Langely Timber Company Ltd | |
| Langevin Forest Products, Inc | |
| Lattes Waska Laths Inc | |
| Lawsons Lumber Company Ltd | |
| Lecours Lumber Co. Limited | |
| Ledwidge Lumber Co., Ltd | |
| Leggett & Platt (B.C.) Ltd | |
| Leggett & Platt Inc | |
| Leggett & Platt Ltd | |
| Les Bois d'Oeuvre Beaudoin & Gauthier Inc | |
| Les Bois S&P Grondin Inc | |
| Les Chantiers Chibougamau Ltee | |
| Les Produits Forestiers D. G. Ltee | |
| Les Produits Forestiers Dube Inc | |
| Les Produits Forestiers F.B.M. Inc | |
| Les Produits Forestiers Latierre | |
| Les Produits Forestiers Maxibois Inc | |
| Les Produits Forestiers Miradas Inc. (Miradas Forest Products Inc.) | |
| Les Scieries Du Lac St-Jean Inc | |
| Les Scieries Jocelyn Lavoie Inc | |
| Leslie Forest Products Ltd | |
| Lignum Ltd | |
| Lindsay Lumber Ltd | |
| Liskeard Lumber Limited | |
| Littles Lumber Ltd | |
| Lonestar Lumber Inc | |
| Long Lake Forest Products Inc | |
| LP Canada Ltd | |
| LP Engineered Wood Products Ltd | |
| Lulumco Inc | |
| Lyle Forest Products Ltd | |
| M & G Higgins Lumber Ltd | |
| M.L. Wilkins & Son Ltd | |
| MacTara Limited | |
| Maibec Industries Inc. (Industries Maibec Inc.) | |
| Manitou Forest Products Ltd | |
| Maple Creek Saw Mills Inc | |
| Marcel Lauzon Inc | |
| Marwood Inc | |
| Marwood Ltd | |
| Materiaux Blanchet Inc | |
| Max Meilleur et Fils Ltee | |
| McCorquindale Holdings Ltd | |
| McKenzie Forest Products Inc | |
| McNutt Lumber Company Ltd | |
| Mercury Manufacturing Inc | |
| Meunier Lumber Company Ltd | |
| MF Bernard Inc | |
| Mid America Lumber | |

| | Period to be reviewed |
|---|---|
| Mid Valley Lumber Specialties Ltd | |
| Midway Lumber Mills Ltd | |
| Mill & Timber Products Ltd | |
| Millar Western Forest Products Ltd | |
| Millco Wood Products Ltd | |
| Miramichi Lumber Products | |
| Mobilier Rustique (Beauce) Inc | |
| Monterra Lumber Mills Limited | |
| Mountain View Specialty Reload Inc | |
| Murray A Reeves Forestry Limited | |
| Murray Bros. Lumber Company Limited | |
| N.F. Douglas Lumber Limited | |
| Nechako Lumber Co., Ltd | |
| Newcastle Lumber Co. Inc | |
| Nexfor Inc | |
| Nexfor Norbord | |
| Nicholson and Cates Limited | |
| Nickel Lake Lumber | |
| Norbord Industries Inc | |
| Norbord Juniper and Norbord's sawmills at La Sarre Senneterre Quebec | |
| NorSask Forest Products Inc | |
| North American Forest Products | |
| North American Forest Products Ltd. (Division Belanger) | |
| North Atlantic Lumber Inc | |
| North Enderby Distribution Ltd. (N.E. Distribution) | |
| North Enderby Timber Ltd | |
| North Pacific | |
| North Shore Timber Ltd | |
| North Star Wholesale Lumber Ltd | |
| Northchip Ltd | |
| Northern Sawmills Inc | |
| Olav Haavaldsrud Timber Company Limited | |
| Olympic Industries Inc | |
| Optibois Inc | |
| P.A. Lumber & Planning Limited | |
| Pacific Lumber Company | |
| Pacific Lumber Remanufacturing Inc | |
| Pacific Northern Rail Contractors Corp | |
| Pacific Specialty Wood Products Ltd. (formerly Clearwood Industries Ltd.) | |
| Pallan Timber Products Ltd | |
| Palliser Lumber Sales Ltd | |
| Paragon Ventures Ltd. (Vernon Kiln and Millwork, Ltd. And 582912 BC, Ltd.) | |
| Parallel Wood Products Ltd | |
| Pastway Planning Limited | |
| Pat Power Forest Products Corporation | |
| Patrick Lumber Company | |
| Paul Valle Inc | |
| Paul Vallee | |
| Peak Forest Products Ltd | |
| Pharlap Forest Products Inc | |
| Pheonix Forest Products Inc | |
| Pope & Talbot, Inc | |
| Porcupine Wood Products Ltd | |
| Portbec Forest Products Ltd.(Les Produits Forestiers Portbec Ltee,) | |
| Portelance Lumber Capreol Ltd | |
| Power Wood Corp | |
| Precibois Inc | |
| Preparabois (2003) Inc | |
| Prime Lumber Limited | |
| Pro Lumber Inc | |
| Produits Forestiers La Tuque Inc | |
| Produits Forestiers Petit Paris Inc | |
| Produits Forestiers Temrex | |
| Promobois G.D.S. Inc | |
| R. Fryer Forest Products Limited | |
| Raintree Forest Products Inc | |
| Raintree Lumber Specialties Ltd | |
| Ramco Lumber Ltd | |
| Redtree Cedar Products Ltd | |
| Redwood Value Added Products Inc | |
| Rembos Inc | |
| Rene Bernard Inc | |
| Ridgewood Forest Products Ltd | |

| | Period to be reviewed |
|---|---|
| Rielly Industrial Lumber Inc | |
| Riverside Forest Products Limited | |
| Rocam Lumber Inc. (Bois Rocam Inc.) | |
| Rojac Cedar Products Inc | |
| Rojac Enterprises Inc | |
| Roland Boulanger & Cie Ltee | |
| Russell White Lumber Limited | |
| Sauder Moldings, Inc. (Ferndale) | |
| Sauder Industries Limited | |
| Scierie A&M St-Pierre Inc | |
| Scierie Adrien Arseneault Ltee | |
| Scierie Alexandre Lemay & Fils Inc | |
| Scierie Chaleur | |
| Scierie Dion et Fils Inc | |
| Scierie Gauthier Ltee | |
| Scierie La Patrie, Inc | |
| Scierie Landrienne Inc | |
| Scierie Lapointe & Roy Ltee | |
| Scierie Leduc, Division of Stadacona Inc | |
| Scierie Nord-Sud Inc. (North-South Sawmill Inc.) | |
| Scierie P.S.E. Inc | |
| Scierie St. Elzear Inc | |
| Scierie Tech Inc | |
| Scieries du Lac St. Jean Inc | |
| Selkirk Specialty Wood Ltd | |
| Sexton Lumber | |
| Seycove Forest Products Limited | |
| Seymour Creek Cedar Products Ltd | |
| Shawood Lumber Inc | |
| Sigurdson Bros. Logging Company Ltd | |
| Sinclar Enterprises Ltd | |
| Slocan Forest Products Limited | |
| Societe en Commandite Scierie Opitciwan | |
| Solid Wood Products Inc | |
| South Beach Trading Inc | |
| South River Planing Mills Inc | |
| South-East Forest Products Ltd | |
| Specialties G.D.S. Inc | |
| Spray Lake Sawmills (1980) Ltd | |
| Spruce Forest Products Ltd | |
| Spruce Products Ltd | |
| St. Anthony Lathing Ltd | |
| Stuart Lake Lumber Co. Ltd | |
| Sunbury Cedar Sales Ltd | |
| SWP Industries Inc | |
| Sylvanex Lumber Products Inc | |
| T.P. Downey & Sons Ltd | |
| Tall Tree Lumber Company | |
| Tarpin Lumber Incorporated | |
| Taylor Lumber Company Ltd | |
| Teal-Jones Group | |
| Teeda Corp | |
| Tembec Inc | |
| Terminal Forest Products Ltd | |
| TFL Forest Ltd | |
| The Pas Lumber Company Ltd | |
| TimberWorld Forest Products Inc | |
| T'loh Forest Products Limited | |
| Tolko Industries Ltd | |
| Top Quality Lumber Ltd | |
| Treeline Wood Products Ltd | |
| Triad Forest Products | |
| Twin Rivers Cedar Products Ltd | |
| Tyee Timber Products Ltd | |
| Uniforet Inc | |
| Usine Sartigan Inc | |
| Usine St. Alphonse, Inc | |
| Vancouver Specialty Cedar Products | |
| Vanderhoof Specialty Wood Products | |
| Vandermeer Forest Products (Canada) Ltd | |
| Vanderwell Contractors (1971) Ltd | |
| Vanport Canada, Co | |
| Vernon Kiln and Millwork, Ltd | |

| | Period to be reviewed |
|---|---|
| W.C. Edwards Lumber | |
| W.I. Woodtone Industries Inc | |
| Welco Lumber Corporation | |
| Weldwood of Canada Ltd | |
| Wentworth Lumber Ltd | |
| Werenham Forest Products | |
| West Bay Forest Products & Manufacturing Ltd | |
| West Can Rail Ltd | |
| West Chilcotin Forest Products Ltd | |
| West Fraser Mills Ltd | |
| West Hastings Lumber Products | |
| Western Commercial Millwork Inc | |
| Weston Forest Corp | |
| West-Wood Industries | |
| Weyerhaeuser Company | |
| White Spruce Forst Products Ltd | |
| Wilfrid Paquet & Fils Ltee | |
| Wilkerson Forest Products Ltd | |
| Williams Brothers Limited | |
| Winnipeg Forest Products, Inc | |
| Woodko Enterprises, Ltd | |
| Woodland Forest Products Ltd | |
| Woodline Forest Products Ltd | |
| Woodtone Industries Inc | |
| Woodwise Lumber Ltd | |
| Wynndel Box & Lumber Co. Ltd | |
| Zelensky Bros. Forest Products | |
| Republic of Korea: | |
| Certain Polyester Staple Fiber, A–580–839 | 5/1/03–4/30/04. |
| Huvis Corporation | |
| Saehan Industries, Inc | |
| Taiwan: | |
| Certain Circular Welded Carbon Steel Pipe and Tubes, A–583–008 | 5/1/03–4/30/04. |
| Yieh Phui Enterprise Co., Ltd | |
| Polyester Staple Fiber, A–583–833 | 5/1/03–4/30/04. |
| Far Eastern Textile Ltd | |
| Stainless Steel Plate in Coils, A–583–830 | 5/1/03–4/30/04. |
| Ta Chen Stainless Pipe Co., Ltd | |
| Yieh United Steel Corporation | |
| China Steel Corporation | |
| Tang Eng Iron Works | |
| PFP Taiwan Co., Ltd | |
| Yieh Loong Enterprise Co., Ltd | |
| Yieh Trading Co | |
| Goang Jau Shing Enterprise Co., Ltd | |
| Yieh Mau Corporation | |
| Chien Shing Stainless Co., Ltd | |
| East Tack Enterprise Co., Ltd | |
| Shing Shong Ta Metal Ind. Co., Ltd | |
| Sinkang Industries, Ltd | |
| Chang Mien Industries Co., Ltd | |
| Chain Chin Industrial Co., Ltd | |
| Turkey: | |
| Certain Welded Carbon Steel Pipe and Tube, A–489–501 | 5/1/03–4/30/04. |
| Yucel Boru ve Profil Endustri A.S | |
| Cayirova Boru Sanayi ve Ticaret A.S./affiliates of Yucelboru Ihracat, Ithalat ve Pazarlama A.S. and the Borusan Group | |

| Antifriction bearings proceedings and firms | Period/class or kind |
|---|---|
| France: | |
| A–427–801 | 5/1/03–4/30/04. |
| SKF France S.A | Ball and Spherical. |
| SNR Roulements | Ball. |
| Weber Kugellager Int | Ball. |
| Germany: | |
| A–428–802 | 5/1/03–4/30/04. |
| Gabreuder Reinfort GmbH & Co., KG | Ball. |
| FAG/INA-Schaeffler KG | Ball. |
| Paul Mueller Industrie GmbH & Co., KG | Ball. |
| SKF GmbH | Ball. |

| Antifriction bearings proceedings and firms | Period/class or kind |
|---|---|
| Weber Kugellager Int | Ball. |
| Italy: | |
| A–475–201 | 5/1/03–4/30/04. |
| FAG Italia S.p.A | Ball. |
| SKF Industrie S.p.A | Ball. |
| Weber Kugellager Int | Ball. |
| Japan: | |
| A–588–804 | 5/1/03–4/30/04. |
| Asahi Seiko Co. Ltd | Ball. |
| Koyo Seiko Co., Ltd | Ball. |
| Nachi-Fujikoshi Corporation | Ball. |
| Nankai Seiko (SMT) | Ball. |
| Nippon Pillow Block Sales Co., Ltd | Ball. |
| NSK Ltd | Ball. |
| NTN Corporation | Ball. |
| Osaka Pump Co. Ltd | Ball. |
| Sapporo Precision Bearings Inc | Ball. |
| Takeshita Seiko Co., Ltd | Ball. |
| Singapore: | |
| A–599–801 | 5/1/03–4/30/04. |
| NMB/Pelmec | Ball. |
| U.K.: | |
| A–412–801 | 5/1/03–4/30/04. |
| NSK Bearings Europe | Ball. |
| SKF Aeroengine Bearings UK (formerly known as Aeorengine Bearings UK or NSK Aerospace) | Ball. |
| Barden Corp | Ball. |
| FAG (U.K.) Limited | Ball. |

| | Period to be reviewed |
|---|---|
| **Countervailing Duty Proceedings** | |
| Canada: Certain Softwood Lumber, C–122–839 | 4/1/03–3/31/04 |
| Suspension Agreements: None. | |

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: June 25, 2004.

**Holly A. Kuga,**

*Senior Office Director, Office 4 for Import Administration.*

[FR Doc. 04–14856 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–865]**

### Postponement of Preliminary Determination of Antidumping Duty Investigation: Outboard Engines From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of outboard engines from Japan until no later than August 5, 2004. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act).

**EFFECTIVE DATE:** June 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** James Kemp at (202) 482–5346 or Shane Subler at (202) 482–0189, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

#### Postponement of Due Date for Preliminary Determination

On January 28, 2004, the Department initiated an antidumping duty investigation of outboard engines from Japan. *See Notice of Initiation of Antidumping Duty Investigation: Outboard Engines from Japan,* 69 FR 5316 (February 4, 2004). Section 733(b) of the Act requires the Department to make a preliminary determination no later than 140 days after the date of initiation. On April 30, 2004, the petitioner [1] made a timely request pursuant to 19 CFR 351.205(e) for a 30-day postponement of the preliminary determination until July 16, 2004. The

[1] The petitioner in this investigation is Mercury Marine, a division of Brunswick Corporation.

Department granted this request in full. *See Postponement of Preliminary Determination of Antidumping Duty Investigation: Outboard Engines from Japan,* 69 FR 29922 (May 26, 2004).

On June 22, 2004, the petitioner made an additional request to extend the preliminary deadline 20 days beyond the July 16 deadline. The petitioner requested this postponement of the preliminary determination because it believes additional time is necessary to allow it and the Department to analyze fully the respondent's [2] supplemental questionnaire responses and other materials submitted in this investigation. The respondent's supplemental questionnaire responses are due on July 6, 2004. The 20-day extension will provide the petitioner and the Department with this additional time.

For the reasons identified by the petitioner, and because there are no compelling reasons to deny the request, we are postponing the preliminary determination under section 733(c)(1)(A) of the Act. Therefore, the preliminary determination is now due no later than August 5, 2004. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination. This notice is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: June 24, 2004.

**Jeffrey May,**

*Deputy Assistant Secretary for Import Administration, Group I.*

[FR Doc. 04–14855 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–DS–P**

[2] The respondent in this investigation is Yamaha Motor Company, Ltd., Yamaha Marine Company, Ltd., and Yamaha Motor Corporation, U.S.A. (collectively Yamaha).

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[Docket No. 0306021411–4191–08; I.D. 062404A]**

**RIN 0648–ZB55**

## Availability of Grant Funds for Fiscal Year 2005

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Omnibus notice announcing the availability of grant funds for Fiscal Year 2005.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) announces the availability of grant funds for Fiscal Year 2005. The purpose of this notice is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings, and it contains the information about those programs required to be published in the **Federal Register**. This omnibus notice is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of NOAA's discretionary funds for its various programs. It should be noted that additional program initiatives unanticipated at the time of the publication of this notice may be announced through both subsequent **Federal Register** notices and the NOAA Web site. These announcements will also be available through Grants.gov.

**DATES:** Proposals must be received by the date and time indicated under each program listing in the **SUPPLEMENTARY INFORMATION** section.

**ADDRESSES:** Proposals must be submitted to the addresses listed in the **SUPPLEMENTARY INFORMATION** section for each program. The FR notices may be found on the NOAA Web site at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML.* The e-mail for Grants.gov is *http:www.grants.gov.*

**FOR FURTHER INFORMATION CONTACT:** For a copy of the full funding opportunity announcement and/or application kit, please contact the person listed as the information contact under each program.

**SUPPLEMENTARY INFORMATION:** This omnibus notice describes funding opportunities for the following NOAA discretionary grant programs:

### NOAA Project Competitions

*National Environmental Satellite, Data, and Information Service*

1. Research in Satellite Data Assimilation for Numerical and Climate Prediction Models

*National Marine Fisheries Service*

1. Chesapeake Bay Watershed Education & Training (B–WET) Program
2. General Coral Reef Conservation
3. Projects To Improve or Amend Coral Reef Fishery Management Plans
4. North Atlantic Right Whale Research Programs
5. John H. Prescott Marine Mammal Rescue Assistance Grant Program
6. Community-based Habitat Restoration Projects

*National Ocean Service*

1. State and Territory Coral Reef Management
2. State and Territory Coral Reef Ecosystem Monitoring
3. International Coral Reef Conservation
4. FY2005 Coastal Services Center Environmental Characterization
5. FY2005 Coastal Services Center Remote Sensing for Coastal Management
6. FY2005 Coastal Services Center Application of Spatial Technology for Coastal Management
7. FY2005 Coastal Services Center Integrated Ocean Observing Systems
8. Monitoring and Event Response for Harmful Algal Blooms (MERHAB)
9. Bay Watershed Education & Training (B–WET) Program, Monterey Bay Watershed
10. Bay Watershed Education & Training (B–WET) Program, Hawaiian Islands
11. Coastal Hypoxia Research Program (CHRP)
12. SLR 2005—Ecological Effects of Sea Level Rise
13. National Estuarine Research Reserves System FY2005 Land Acquisition and Construction
14. Geodetic Science and Applied Research (GSAR) Program

*Oceans and Atmospheric Research*

1. Sea Grant B The Oyster Disease Research Program
2. Sea Grant B The Gulf of Mexico Oyster Industry Program
3. NOAA Office of Ocean Exploration Announcement of Opportunity, FY 2005
4. Joint Hurricane Testbed (JHT) Opportunities for Transfer of Research and Technology into Tropical Cyclone Analysis and Forecast Operations
5. NOAA Educational Partnership Program with Minority Serving Institutions: Environmental Entrepreneurship Program
6. NOAA Climate Transition Program for FY 2005

### NOAA Fellowship, Scholarship and Internship Programs

*National Ocean Service*

1. Dr. Nancy Foster Scholarship Program; Financial Assistance for Graduate Students
2. National Estuarine Research Reserve (NERR) Graduate Research Fellowship Program (GRF)

*Oceans and Atmospheric Research*

1. GradFell 2005—NMFS/Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics
2. Sea Grant—Industry Fellowship Program

### Electronic Access

The full funding announcement for each program is available via the Grants.gov Web site: *http://www.grants.gov.* These announcements will also be available at the NOAA Web site *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified below. On October 1, 2004, you will be able to access, download and submit electronic grant applications for NOAA Programs in this announcement at *http://www.grants.gov.* The closing dates will be the same as for the paper

submissions noted in this announcement. NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Getting started with Grants.gov is easy! Go to *www.Grants.gov.* There are two key features on the site: Find Grant Opportunities and Apply for Grants. Everything else on the site is designed to support these two features and your use of them. While you can begin searching for grant opportunities for which you would like to apply immediately, it is recommended that you complete the remaining Get Started steps sooner rather than later, so that when you find an opportunity for which you would like to apply, you are ready to go.

*Get Started Step 1B Find Grant Opportunity for Which You Would Like To Apply*

Start your search for Federal government-wide grant opportunities and register to receive automatic e-mail notifications of new grant opportunities or any modifications to grant opportunities as they are posted to the site by clicking the Find Grant Opportunities tab at the top of the page.

*Get Started Step 2B Register With Central Contractor Registry (CCR)*

Your organization will also need to be registered with Central Contractor Registry. You can register with them online. This will take about 30 minutes. You should receive your CCR registration within 3 business days. Important: You must have a DUNS number from Dun & Bradstreet before you register with CCR. Many organizations already have a DUNS number. To determine if your organization already has a DUNS number or to obtain a DUNS number, contact Dun & Bradstreet at 1–866–705–5711. This will take about 10 minutes and is free of charge. Be sure to complete the Marketing Partner ID (MPIN) and Electronic Business Primary Point of Contact fields during the CCR registration process. These are mandatory fields that are required when submitting grant applications through Grants.gov.

*Get Started Step 3B Register With the Credential Provider*

You must register with a Credential Provider to receive a username and password. This will be required to securely submit your grant application.

*Get Started Step 4B Register With Grants.gov*

The final step in the Get Started process is to register with Grants.gov. This will be required to submit grant applications on behalf of your organization. After you have completed the registration process, you will receive e-mail notification confirming that you are able to submit applications through Grants.gov.

*Get Started Step 5B Log on to Grants.gov*

After you have registered with Grants.gov, you can log on to Grants.gov to verify if you have registered successfully, to check application status, and to update information in your applicant profile, such as your name, telephone number, e-mail address, and title. In the future, you will have the ability to determine if you are authorized to submit applications through Grants.gov on behalf of your organization.

**Evaluation Criteria and Selection Procedures**

NOAA standardized the evaluation and selection process for its competitive assistance programs. All proposals submitted in response to this notice shall be evaluated and selected in accordance with the following procedures. There are two sets of evaluation criteria and selection procedures, one for project proposals, and the other for fellowship, scholarship, and internship programs. These evaluation criteria and selection procedures apply to all of the programs included below.

**Proposal Review and Selection Process for Projects**

Some programs may include a pre-application process which provides an initial review and feedback to the applicants that have responded to a call for letters of intent or pre-proposals; however, not all programs will include such a process. If a pre-application process is used by a program, it shall be described in the Summary Description and the deadline shall be provided in the Application Deadline section. Upon receipt of a full application by NOAA, an initial administrative review is conducted to determine compliance with requirements and completeness of the application. Merit review is conducted by mail reviewers and/or peer panel reviewers. Each reviewer will individually evaluate and rank proposals using the evaluation criteria provided below. A minimum of three merit reviewers per proposal is required. The merit reviewer's ratings are used to produce a rank order of the proposals. The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the mail and/or panel review(s) and selection factors listed below. The Selecting Official selects proposals after considering the mail and/or peer panel review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final recommendations for award to the Grants Officer who is authorized to obligate the funds.

**Evaluation Criteria for Projects**

1. *Importance and/or relevance and applicability of proposed project to the program goals:* This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities.
2. *Technical/scientific merit:* This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.
3. *Overall qualifications of applicants:* This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.
4. *Project costs:* The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.
5. *Outreach and education:* NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

**Selection Factors for Projects**

The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. A program officer may first make recommendations to the Selecting Official applying the selection factors below. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
a. Geographically.
b. By type of institutions.

c. By type of partners.
d. By research areas.
e. By project types.

3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.

4. Program priorities and policy factors.

5. Applicant's prior award performance.

6. Partnerships and/or Participation of targeted groups.

7. Adequacy of information necessary for NOAA staff to make a NEPA determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

**Proposal Review and Selection Process for NOAA Fellowship, Scholarship and Internship Programs**

Some programs may include a pre-application process which provides an initial review and feedback to the applicants that have responded to a call for letters of intent or pre-proposals; however not all programs will include such a process. If a pre-application process is used by a program, it shall be described in the Summary Description and the deadline shall be provided in the Application Deadline section. An initial administrative review of full applications is conducted to determine compliance with requirements and completeness of applications. A merit review is conducted to individually evaluate, score, and rank applications using the evaluation criteria. A second merit review may be conducted on the applicants that meet the program's threshold (based on scores from the first merit review) to make selections using the selection factors provided below. The Program Officer may conduct a review of the rank order and make recommendations to the Selecting Official based on the panel ratings and the selection factors listed below. The Selecting Official considers merit reviews and recommendations. The Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Selecting Official makes final recommendations for award to the Grants Officer who is authorized to obligate the funds.

**Evaluation Criteria for Fellowship/ Scholarships/Internships**

1. Academic record and statement of career goals and objectives of student
2. Quality of project and applicability to program priorities
3. Recommendations and/or endorsements of student
4. Additional relevant experience related to diversity of education; extra-curricular activities; honors and awards; interpersonal, written, and oral communications skills
5. Financial need of student

1. Selection Factors for Fellowship/ Scholarships/Internships

Balance/Distribution of funds:
a. Across academic disciplines
b. By types of institutions
c. Geographically

2. Availability of funds
3. Program-specific objectives
4. Degree in scientific area and type of degree sought

**NOAA Project Competitions**

*National Environmental Satellite, Data, and Information Service*

1. Research in Satellite Data Assimilation for Numerical and Climate Prediction Models

*Summary Description:* The NOAA/ NESDIS Joint Center for Satellite Data Assimilation (JCSDA) announces the availability of Federal assistance for research in the area of satellite data assimilation in numerical weather and climate prediction models. The goal of the JCSDA is to accelerate the use of observations from earth-orbiting satellites in operational numerical prediction models for the purpose of improving weather forecasts, improving seasonal to interannual climate forecasts, and increasing the physical accuracy of climate data sets. The advanced instruments of current and planned NOAA, NASA, DOD, and international agency satellite missions will provide large volumes of data on atmospheric, oceanic, and land surface conditions with accuracies and spatial resolutions never before achieved. The JCSDA will strive to realize the maximum benefit of its investment in space as part of an advanced global observing system. Funded proposals will help accelerate the use of satellite data from both operational and experimental spacecraft in operational and product driven weather and climate prediction environments; advance data assimilation science including radiative transfer models; improve numerical weather prediction model physics to increase information extraction; characterize the error covariances related to forecast models, radiative transfer models, and satellite observations; and utilize satellite-derived products of aerosols, ozone and trace gases for air quality forecasts. This Federal Funding Opportunity is being managed by NOAA on behalf of the JCSDA. Applicants are encouraged to submit a Letter of Intent (LOI) describing the proposed work and its relevance to targeted priority project areas. The purpose of the LOI process is to provide information to potential applicants on the relevance of their proposed project to JCSDA and the likelihood of it being funded in advance of preparing a full proposal.

*Funding Availability:* Total funding available is anticipated to be approximately $1 million. Individual annual awards in the form of grants or cooperative agreements are expected to range from $50,000 to $150,000, although greater amounts may be awarded. It is anticipated that 6–8 awards will be made.

*Statutory Authority:* Statutory authorities for this program are provided under 15 U.S.C. 313, 49 U.S.C. 44720(b); 15 U.S.C. 29071 *et seq.*

*CFDA:* 11.440, Environmental Sciences, Applications, Data, and Education.

*Preapplication/Application Deadline:* Letters of Intent must be received by the National Environmental Satellite, Data, and Information Service (NESDIS) , no later than 5 p.m., Eastern daylight time on August 2, 2004, and full proposals must be received no later than 5 p.m., eastern daylight time on October 1, 2004.

*Address for Submitting Letters of Intent and Proposals:* NOAA/NESDIS Joint Center for Satellite Data Assimilation, 5200 Auth Road, Room 808, Camp Springs, MD 20746–4304, (301) 763–8172.

*Information Contacts:* Fuzhong Weng, JCSDA, NOAA/NESDIS, 5200 Auth Road, Room 808, Camp Springs, Maryland 20746, or by phone at (301) 763–8172, or fax to (301) 763–8149, or via internet at *fuzhong.weng@noaa.gov* or Kathy LeFevre, NOAA/NESDIS, 5200 Auth Road, Room 701, Camp Springs, Maryland 20746, or by phone at (301) 763–8127x103, or fax to (301) 763–8108, or via Internet at *kathy.lefevre@noaa.gov*.

*Eligibility:* Eligible applicants are institutions of higher education, other non profits, commercial organizations, international organizations, State, local and Indian tribal governments and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other. Joint proposals involving Federal and external investigators are encouraged.

**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. The only exception to this is governmental research

facilities for awards issued under the authority of 49 U.S.C. 44720(b). 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.

*Eligibility:* Eligible applicants are Federal agencies, institutions of higher education, other non-profits, commercial organizations, State, local and Indian tribal governments.

Cost Sharing or Matching Requirements: None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*National Marine Fisheries Service (NMFS)*

1. Chesapeake Bay Watershed Education & Training (B–WET) Program

*Summary Description:* The Chesapeake Bay Watershed Education & Training (B-WET) Program 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 entire Chesapeake Bay watershed. Funded projects assist in meeting the Stewardship and Community Engagement goals of the Chesapeake 2000 Agreement. Projects support organizations that provide students ''meaningful'' Chesapeake Bay or stream outdoor experiences and teachers professional development opportunities in the area of environmental education related to the Chesapeake Bay watershed.

*Funding Availability:* This solicitation announces that approximately $2.2M may be available in FY 2005 in award amounts to be determined by the proposals and available funds. Applicants are hereby given notice that funds have not yet been appropriated for this program. About $1.1M will be for proposals that provide opportunities for students (K through 12) to participate in a ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience. About $1.1M will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers within the Chesapeake Bay Watershed. Approximately 10% of the amount available will be awarded to smaller, community-based organizations that work at a local level to provide environmental education programs. The NCBO anticipates that typical project awards for ''Meaningful'' Bay or Stream Outdoor Experiences and Professional Development in the Area of Environmental Education for Teachers will range from $10,000 to $100,000. Proposals will be considered for funds greater than the specified ranges, however, no recipient will be awarded funding that exceeds 10% of the funding available.

*Statutory Authority:* 16 U.S.C. 661, 15 U.S.C. 1540.

*CFDA:* 11.457 Chesapeake Bay Studies, Education.

*Application Deadline:* Proposals must be received by NMFS no later than 5 p.m., local time, October 18, 2004.

*Address for Submitting Proposals:* NOAA Chesapeake Bay Office; Education Coordinator; 410 Severn Avenue, Suite 107A; Annapolis, MD 21403.

*Information Contacts:* Shannon Sprague: (410) 267–5664 or *shannon.sprague@noaa.gov*.

*Eligibility:* Eligible applicants for both areas of interest (*i.e.*, ''Meaningful'' Chesapeake Bay or Stream Outdoor Experience and Professional Development in the Area of Environmental Education for Teachers Within the Chesapeake Bay Watershed) are K through 12 public and independent schools and school systems, institutions of higher education, nonprofit organizations, State or local government agencies, interstate agencies, and Indian tribal governments in the Chesapeake Bay watershed. 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 NCBO encourages proposals involving any of the above institutions.

*Cost Sharing Requirements:* Encouraged, but not required.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. General Coral Reef Conservation

*Summary Description:* The General Coral Reef Conservation (GCRC) program is soliciting proposals to support conservation projects for coral reef ecosystems of the United States and the Freely Associated States in the Pacific (Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia). This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef conservation projects that: (1) Help preserve, sustain and restore the condition of coral reef ecosystems, (2) promote the wise management and sustainable use of coral reef resources, (3) increase public knowledge and awareness of coral reef ecosystems and issues regarding their conservation and (4) develop sound scientific information on the condition of coral reef ecosystems and the threats to such ecosystems. Projects must address one of the following 8 categories as identified by the U.S. Coral Reef Task Force: monitoring and assessment activities; socio-economic and resource valuation; Marine Protected Areas and associated management activities; coral reef fisheries management; reducing pollution; coral reef restoration; public education and outreach activities; and local action strategy implementation. Applications for research activities will not be eligible under this category. Interested applicants must submit a pre-application of up to 20 pages that includes a cover sheet, project summary, narrative project description and narrative budget summary. Federal forms do not need to be submitted with the pre-application.

*Funding Availability:* This solicitation announces that approximately $600,000 may be available in FY 2005 under the GCRC, of which up to $200,000 may be used to address local action strategies. NMFS anticipates that approximately 15 grants will be awarded with these funds, with individual awards ranging from a minimum of $15,000 to a maximum of $50,000. Funding will be subject to the availability of Federal appropriations.

*Statutory Authority:* 16 U.S.C. 6403.

*CFDA:* 11.463 Habitat Conservation.

*Pre-Application/Final Application Deadline:* Applicants are strongly encouraged to submit their pre-application electronically to coral.grants@noaa.gov. Pre-applications are due to NOAA by 11:59 p.m., Eastern Time, on December 10, 2004. Final applications are due to NOAA by 11:59 p.m., Eastern Time on March 4, 2005. Proposals received after these deadlines will not be accepted.

*Address for Submitting Proposals:* Pre-applications should be submitted by electronic mail to *coral.grants@noaa.gov,* or surface mail to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910.

*Information Contacts:* Andy Bruckner, Office of Habitat Conservation, F/HC1, Room 15836, NOAA Fisheries, 1315 East West Highway, Silver Spring, MD 20910, phone (301) 713–3459 extension 190, e-mail at *andy.bruckner@noaa.gov.*

*Eligibility:* Eligible applicants include institutions of higher education, non-profit organizations, commercial organizations, Freely Associated State government agencies and local and Indian tribal governments. U.S. State, Territory, and Commonwealth government agencies are not eligible under this program. Federal agencies are eligible under this program; however, such applications will be a low priority unless they are an essential part of a cooperative project with other eligible educational or non-governmental institutions.

*Cost Sharing Requirements:* Any coral conservation project funded under this program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support. 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. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement. In the case of a waiver request, the applicant must provide a detailed justification explaining the need for the waiver.

*Intergovernmental Review:* Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

3. Projects to Improve or Amend Coral Reef Fishery Management Plans

*Summary Description:* The objectives of this program are to support programs and projects established by the Regional Fishery Management Councils to conserve and manage coral reef fishery resources by reducing the adverse impacts of fishing and other extractive uses on coral reefs and associated ecosystems, and incorporating conservation and sustainable management measures into existing or new Federal fishery management plans (FMPs). Projects must address one of the following 9 categories: (1) Identification, mapping and characterization of EFH, HAPCs, and spawning populations; (2) monitoring reef fish stocks; (3) efforts to reduce overfishing of coral reef resources; (4) identification and reduction of adverse effects of fishing and fishing gear; (5) elimination of destructive and habitat-damaging fishing practices; (6) assessment of the adequacy of current coral reef fishing regulations; (7) education and outreach efforts to recreational and commercial fishers; (8) ecosystem-scale studies and inclusion of ecosystem approaches and principals into coral reef FMPs; and (9) reduction of overexploitation of reef organisms for the aquarium trade. Priority will be given to proposals for coral reef activities in the Council's jurisdiction, although complementary activities of high conservation value within State waters that are fully coordinated with appropriate state, territory or commonwealth management authorities are also acceptable. This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef conservation projects and is not intended to support normal Council activities or responsibilities and will support up to a maximum of one full-time equivalent working exclusively on Council coral reef conservation activities. Interested applicants must submit a pre-application of up to 20 pages that includes a cover sheet, project summary, narrative project description and narrative budget summary. Federal forms do not need to be submitted with the pre-application. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submittal of a final application and required Federal financial assistance forms.

*Funding Availability:* NMFS may provide approximately $1,050,000 in funding in FY 2005. In order to ensure regional balance, a maximum of $525,000 may be available for activities in the Western Pacific, and a maximum of $525,000 may be available for activities in the South Atlantic, Gulf of Mexico, and Caribbean. Funding will be subject to the availability of federal appropriations.

*Statutory Authority:* 16 U.S.C. 6403.

*CFDA:* 11.441 Regional Fishery Management Councils.

*Pre-Application/Final Application Deadline:* Applicants are strongly encouraged to submit their pre-application electronically to *coral.grants@noaa.gov.* Pre-applications are due to NOAA by 11:59 p.m., Eastern Time, on December 10, 2004. Final applications are due to NOAA by 11:59 p.m., Eastern Time on March 4, 2005. Proposals received after these deadlines will not be accepted.

*Address for Submitting Proposals:* Applicants are strongly encouraged to submit pre-applications electronically to *coral.grants@noaa.gov.* Pre-applications should be submitted by electronic mail to *coral.grants@noaa.gov,* or surface mail to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910.

*Information Contacts:* Andy Bruckner, Office of Habitat Conservation, F/HC1, Room 15836, NOAA Fisheries, 1315 East West Highway, Silver Spring, MD 20910, phone (301) 713–3459 extension 190, e-mail at *andy.bruckner@noaa.gov*.

*Eligibility:* Applicants are limited to the Western Pacific Regional Fishery Management Council, South Atlantic Fishery Management Council, Gulf of Mexico Fishery Management Council, and Caribbean Fishery Management Council.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

4. North Atlantic Right Whale Research Programs

*Summary Description:* In FY 2005, the National Marine Fisheries Service (NMFS) will solicit applications for Federal assistance under the North Atlantic Right Whale Research Grant Program (RWRGP). Under the RWRGP, NMFS will provide financial assistance to eligible researchers working within waters inhabited by North Atlantic right whales and submitting applications pertaining only to this species. Applications must fall within at least one of the following 10 categories: (1) Detection and tracking of right whales; (2) Behavior of right whales in relation to ships; (3) Relationships between vessel speed, size or design with whale collisions; (4) Modeling of ship traffic along the Atlantic coast; (5) Population monitoring and assessment studies; (6) Reproduction, health and genetic studies; (7) Development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) Habitat quality studies including food quality and pollutant levels; (9) Development of fishing gear to minimize entanglement risk; and (10) Any other work relevant

to the recovery of North Atlantic right whales.

*Funding Availability:* Approximately $2.0M, depending on appropriations. It is anticipated that up to 20 awards will be made. Although there are no restrictions on amount, the awards may range from $65,000 to $1 million.

*Statutory Authority:* 16 U.S.C. 1380.

*CFDA:* 11.472, Unallied Science Program.

*Application Deadline:* The application package must be received or postmarked by 5 p.m. (local time) August 30, 2004.

*Address for Submitting Proposals:* NOAA/NMFS Right Whale Research Grants Program, Protected Species Branch, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, e-mail: *rightwhalegrants@noaa.gov*.

*Information Contacts:* Dr. Phillip J. Clapham, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, (508) 495–2316, e-mail: *rightwhalegrants@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.

*Cost Sharing Requirements:* No cost sharing is required under this program.

*Intergovernmental Review:* Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. John H. Prescott Marine Mammal Rescue Assistance Grant Program

*Summary Description:* NMFS is inviting eligible marine mammal stranding network participants to submit proposals to fund the recovery or treatment (*i.e.*, rescue and rehabilitation) of live stranded marine mammals, data collection from living or dead stranded marine mammals for scientific research regarding marine mammal health, and facility operations directly related to the recovery or treatment of stranded marine mammals and collection of data from living or dead stranded marine mammals. The Prescott Grant Program is administered through the NMFS Marine Mammal Health and Stranding Response Program (MMHSRP). It is NMFS's intent to also reserve a portion of funds to make emergency assistance available for catastrophic stranding events throughout the year on an as-needed basis. It is anticipated that awards funded through the Prescott Grant Program will facilitate achievement of the MMHSRP goals and objectives by providing financial assistance to eligible stranding network participants. Proposals selected for funding through this solicitation will be implemented through either a cooperative agreement or interagency transfer.

*Funding Availability:* Funding of up to $3,700,000 is expected to be available in FY 2005. The maximum Federal award for each grant cannot exceed $100,000, as stated in the legislative language (16 U.S.C. 1421f–1). Applicants are hereby given notice that these funds have not yet been appropriated for this program and therefore exact dollar amounts cannot be given.

*Statutory Authority:* The Marine Mammal Rescue Assistance Act of 2000 amended the Marine Mammal Protection Act (MMPA) to establish the John H. Prescott Marine Mammal Rescue Assistance Grant Program (16 U.S.C. 1421f–1).

*CFDA:* 11.439 Marine Mammal Data Program.

*Application Deadline:* Applications for funding under the Prescott program must be received or postmarked by August 16, 2004.

*Address for Submitting Proposals:* Applications should be sent to: NOAA/NMFS/Office of Protected Resources, Marine Mammal Health and Stranding Response Program, Attn: Michelle Ordono, 1315 East-West Highway, Room 12604, Silver Spring, MD 20910–3283, phone (301) 713–2322 ext 177.

*Information Contacts:* Janet Whaley, Michelle Ordono, or Sarah Wilkin at (301) 713–2322, by fax at (301) 713–0376, or by e-mail at *Janet.Whaley@noaa.gov*, *Michelle.Ordono@noaa.gov*, or *Sarah.Wilkin@noaa.gov*.

*Eligibility:* There are 5 categories of eligible stranding network participants that may apply for funds under this Program: (1) Letter of Agreement (LOA) holders; (2) LOA designee organizations; (3) researchers; (4) official Northwest Region participants; and, (5) State, local, eligible Federal government employees or tribal employees or personnel. In order for these organizations and individuals to apply for award funds under the Prescott Grant Program, they must meet eligibility criteria specific to their category of participation.

*Cost Sharing Requirements:* All proposals submitted must provide a minimum non-Federal cost share of 25 percent of the total budget (*i.e.*, .25 x total project costs ''total non-Federal share).

*Intergovernmental Review:* Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

6. Community-based Habitat Restoration Projects

*Summary Description:* NMFS is inviting the public to submit proposals for available funding to implement grass-roots habitat restoration projects that will benefit living marine resources, including anadromous fish, under the NOAA Community-based Restoration Program (CRP). Projects funded through the CRP will be expected to have strong on-the-ground habitat restoration components that provide educational and social benefits for people and their communities in addition to long-term ecological habitat improvements for NOAA trust resources. Proposals selected for funding through this solicitation will be implemented through a cooperative agreement.

*Funding Availability:* Funding of up to $3,000,000 is expected to be available for community-based habitat restoration projects in FY 2005. The NOAA Restoration Center (RC) anticipates that typical project awards will range from $50,000 to $200,000.

*Statutory Authority:* The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661, as amended by the Reorganization Plan No. 4 of 1970, to provide grants or cooperative agreements for fisheries habitat restoration.

*CFDA:* 11.463 Habitat Conservation.

*Application Deadline:* Applications for project funding under the CRP must be received or postmarked by September 15, 2004.

*Address for Submitting Proposals:* Send applications to Christopher D. Doley, Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; attn: CRP Project Applications.

*Information Contacts:* Robin Bruckner or Melanie Gange at (301) 713–0174, or by fax at (301) 713–0184, or by e-mail at *Robin.Bruckner@noaa.gov* or *Melanie.Gange@noaa.gov*.

*Eligibility:* Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial (for profit) organizations, organizations under the jurisdiction of foreign governments, international organizations, State, local and Indian tribal governments. Applications from Federal agencies or employees of federal agencies will not be considered.

*Cost Sharing Requirements:* 1:1 non-Federal match is encouraged, but applicants with less than 1:1 match will not be disqualified. The nature of the contribution (cash versus in-kind) and the amount/value will be considered in the review process.

*Intergovernmental Review:* Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*National Ocean Service (NOS)*

1. State and Territory Coral Reef Management

*Summary Description:* This program is soliciting proposals to support comprehensive projects for the conservation and management of coral reefs and associated fisheries in the jurisdictions of Puerto Rico, the U.S. Virgin Islands, Florida, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands and American Samoa. Funding will also support jurisdictional participation in national coral reef planning activities, such as U.S. Coral Reef Task Force meetings. This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef conservation projects. NOS will accept pre-applications for peer review. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submittal of a final application, including required Federal financial assistance forms, to NOS.

*Funding Availability:* Approximately $2,100,000 may be available in FY 2005 to support awards under this program. Each eligible jurisdiction can apply for a maximum of $400,000. Funding is subject to the availability of federal appropriations. In addition to the approximately $2,100,000 that may be available, NOAA may make available additional funds to each jurisdiction, pending appropriations, to support the implementation of activities developed in Local Action Strategies for priority threat areas. The amount of funding awarded to each jurisdiction will be subject to the eligibility and evaluation requirements described in this announcement.

*Statutory Authority:* 16 U.S.C. 6403.

*CFDA:* 11.419, Coastal Zone Management Program.

*Pre-Application/Final Application Deadline:* Pre-applications are due to NOAA by 11:59 p.m., Eastern Time, on December 10, 2004. Final applications are due to NOAA by 11:59 p.m., Eastern Time on March 4, 2005.

Address for Submitting pre-applications: Pre-applications should be submitted by electronic mail to *coral.grants@noaa.gov*, or surface mail to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910.

*Information Contacts:* Jonathan Kelsey, 1305 East West Highway, 11th Floor, N/ORM3, Silver Spring, MD 20910, phone (301) 713–3155 extension 230, e-mail at *jonathan.kelsey@noaa.gov.*

*Eligibility:* Eligible applicants are the governor-appointed point of contact agencies for coral reef coordination in each of the jurisdictions of American Samoa, Florida, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Puerto Rico, and U.S. Virgin Islands.

*Cost Sharing Requirements:* Any coral conservation project funded under this program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement. The Program shall waive any requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. State and Territory Coral Reef Ecosystem Monitoring

*Summary Description:* National Ocean Service, National Centers for Coastal and Ocean Science (NCCOS), is soliciting proposals from eligible applicants to support a nationally coordinated, comprehensive, long-term monitoring program to assess the condition of U.S. coral reef ecosystems and evaluate the efficacy of coral reef ecosystem management. This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef conservation projects. NOS will accept pre-applications for peer review. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submittal of a final application, including required Federal financial assistance forms, to NOS.

*Funding Availability:* NCCOS may provide approximately $1,000,000 in funding for FY 2005 to support coral reef monitoring activities under this program. FY 2005 awards to Puerto Rico, Florida, U.S. Virgin Islands, Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are expected to range from $50,000 to $130,000. FY 2005 awards to the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands are expected to range from $10,000 to $20,000 per year. Funding will be subject to the availability of Federal appropriations.

*Statutory Authority:* 16 U.S.C. 6403.

*CFDA:* 11.426, Financial Assistance for National Centers for Coastal Ocean Science.

*Pre-Application/Final Application Deadline:* Pre-applications are due to NOAA by 11:59 p.m., Eastern Time, on December 10, 2004. Final applications are due to NOAA by 11:59 p.m., Eastern Time on March 4, 2005.

*Address for Submitting Proposals:* Pre-applications should be submitted by electronic mail to *coral.grants@noaa.gov,* or surface mail to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA National Ocean Service, 1305 East West Highway, Silver Spring, MD 20910.

*Information Contacts:* John Christensen, 1305 East West Highway, 9th Floor, N/SCI1, Silver Spring, MD 20910, phone (301) 713–3028 extension 153, e-mail at *john.christensen@noaa.gov.*

*Eligibility:* Eligible applicants are limited to the natural resource management agency in each U.S. State, Territory, or Freely Associated State, with jurisdiction over coral reefs, as designated by the respective governors or other applicable senior jurisdictional official. NOAA is requesting proposals from Puerto Rico, Florida, U.S. Virgin Islands, Hawaii, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of Palau, and Republic of the Marshall Islands.

*Cost Sharing Requirements:* Any coral conservation project funded under this

program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement. The Program shall waive any requirement for local matching funds for any project under $200,000 (including in-kind contribution) to the governments of Insular Areas, defined as the jurisdictions of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

3. International Coral Reef Conservation

*Summary Description:* This program supports four project categories in non-U.S. sites: (1) Promoting of Watershed Management in the Wider Caribbean, Brazil, and Bermuda, (2) enhancing management effectiveness of Marine Protected Areas, (3) encouraging regional approaches to further No-Take Marine Reserves in the Wider Caribbean, Brazil, Bermuda, and Southeast Asia, and (4) promoting socio-economic monitoring in coral reef management in the Wider Caribbean, Brazil, Bermuda, East Africa, South Pacific, and Southeast Asia. This program is part of the NOAA Coral Reef Conservation Grant Program under the Coral Reef Conservation Act of 2000 which provides matching grants of financial assistance for coral reef conservation projects. NOS will accept pre-applications for peer review. Selected applicants may be asked to revise award objectives, work plans or budgets prior to submittal of a final application, including required Federal financial assistance forms, to NOS.

*Funding Availability:* Approximately $400,000 may be available in FY 2005 to support grants and cooperative agreements under this program. Approximately $75,000–$100,000 may be allocated to each of the four project categories listed below, with the following award ranges: a. Watershed Management: $30,000–$40,000, b. Management Effectiveness: (1) Single site projects: $20,000–$40,000, (2) Regional capacity building projects: $80,000, c. Marine Reserves: $25,000–$40,000, and d. Socio-economic monitoring: $15,000–$25,000. Funding will be subject to the availability of federal appropriations.

*Statutory Authority:* 16 U.S.C. 6403.

*CFDA:* 11.463 Habitat Conservation.

*Pre-Application/Final Application Deadline:* Pre-applications are due to NOAA by 11:59 p.m., Eastern Time, on December 10, 2004. Final applications are due to NOAA by 11:59 p.m., Eastern Time on March 4, 2005.

*Address for Submitting Proposals:* Pre-applications should be submitted by electronic mail to *coral.grants@noaa.gov,* or surface mail to David Kennedy, NOAA Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, Room 10102, NOAA Contact(s): Arthur Paterson, 1315 East West Highway, 5th Floor, Room 5627, Silver Spring, MD 20910, phone (301) 713–3078 extension 217, e-mail at *Arthur.E.Paterson@noaa.gov.*

*Eligibility:* Eligible applicants include all international, governmental, and non-governmental organizations. The proposed work must be conducted at a non-U.S. site and eligible countries are defined as follows. The Wider Caribbean includes the 37 States and territories that border the marine environment of the Gulf of Mexico, the Caribbean Sea, and the areas of the Atlantic Ocean adjacent thereto, and Brazil and Bermuda, but excluding areas under U.S. jurisdiction. The South Pacific Region includes South Pacific Regional Environment Program's 19 Pacific island countries and territories, including the Federated States of Micronesia, Republic of Palau, and the Republic of the Marshall Islands, but excluding U.S. territories and four developed country members. Southeast Asia Region includes Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam. East Africa includes Kenya, Mozambique, Tanzania, and South Africa. Eligibility criteria is also contingent upon whether activities undertaken with respect to the application would be consistent with any applicable conditions or restrictions imposed by the U.S. government.

*Cost Sharing Requirements:* Any coral conservation project funded under this program requires a 1:1 match. Matching funds must be from non-Federal sources and can include in-kind contributions and other non-cash support. The NOAA Administrator may waive all or part of the matching requirement if the Administrator determines that the project meets the following two requirements: (1) No reasonable means are available through which an applicant can meet the matching requirement, and (2) The probable benefit of such project outweighs the public interest in such matching requirement.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

4. FY2005 Coastal Services Center Landscape Characterization and Restoration Program

*Summary Description:* NOS is soliciting projects for the Coastal Services Center (CSC) Landscape Characterization and Restoration (LCR) program, with an anticipated start date of March 1, 2005. The Centers LCR program seeks proposals for a two-year cooperative agreement under which a cooperator and the Center will jointly develop an environmental characterization of a coastal estuary, watershed, or special management area located entirely or in part within California, Oregon, Washington, Alaska, Hawaii, Pacific U.S. Island Territories, or the Commonwealth of the Northern Mariana Islands.

*Funding Availability:* Total anticipated funding for a two year project is estimated to be $300,000 and no more than one award is expected.

*Statutory Authority:* 16 U.S.C. 1456c and 33 U.S.C. 1442.

*CFDA:* 11.473, Coastal Services Center.

*Application Deadline:* Proposals must be received by 5 p.m. EDT, October 1, 2004.

*Address for Submitting Proposals:* Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413 to the attention of Pae Wilber, room 234B.

*Information Contacts:* For administrative questions, contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405–2413, or by phone at (843) 740–1222, or by fax (843) 740–1232, or via Internet at *Violet.Legette@noaa.gov.* For technical questions, contact Pace Wilber, NOAA CSC; 2234 South Hobson Avenue, Room 234B; Charleston, South Carolina 29405–2413, or by phone at (843) 740–1235, or by fax (843) 740–1315, or via Internet at *Pace.Wilber@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and State, local and Indian tribal governments. Federal

agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. FY2005 Coastal Services Center Remote Sensing for Coastal Management

*Summary Description:* NOS is soliciting projects for the Coastal Services Center (CSC) Coastal Remote Sensing (CRS) program, with an anticipated start date of March 1, 2005. CRS is seeking proposals on applications of remotely sensed coastal spatial data to support coastal resource management decision-making and to help resolve coastal issues. The Centers goal is to aid coastal resource managers while promoting the use of remote sensing technologies and innovations. The Center seeks proposals for a two year cooperative agreement under which the Center will acquire commercial remote sensing imagery and/or products to the identified issue. The cooperator must show how their management issue will benefit substantially by the inclusion of remotely sensed data.

*Funding Availability:* Total anticipated funding for a two year project is estimated to be $25,000 and no more than one award is expected.

*Statutory Authority:* 16 U.S.C. 1456c.

*CFDA:* 11.473, Coastal Services Center.

*Application Deadline:* Proposals must be received by 5 p.m. EDT, October 1, 2004.

*Address for Submitting Proposals:* Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413 to the attention of Kirk Waters, room 236B.

*Information Contacts:* For administrative questions, contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405–2413, or by phone at (843) 740–1222, or by fax (843) 740–1232, or via Internet at *Violet.Legette@noaa.gov.* For technical questions, contact Kirk Waters, NOAA CSC; 2234 South Hobson Avenue, Room 103; Charleston, South Carolina 29405–2413, or by phone at (843) 740–1227, or by fax (843) 740–1289, or via Internet at *Kirk.Waters@noaa.gov.*

*Eligibility:* Eligible applicants are State, local and Indian tribal governments, institutions of higher education, and other non-profits. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

6. FY2005 Coastal Services Center Application of Spatial Technology for Coastal Management

*Summary Description:* NOS is soliciting projects for the Coastal Services Center (CSC) Geographic Information System (GIS) Integration and Development (I&D) program, with an anticipated start date of April 1, 2005. THE GIS I&D program seeks proposals for a one to two year cooperative agreements under which cooperators and the Center will jointly develop technical projects related to the goal of the GIS I&D program, which is to provide relevant, easily accessible spatial data, tools, and support services to the coastal resource management community. A priority of the GIS I&D program is to fund state and local level coastal resource management organizations proposing geospatial solutions to issues related to coastal hazards, smart growth, marine protected areas, permitting systems, data access and distribution, Internet mapping, or spatial data standards and documentation.

*Funding Availability:* Funding is estimated to be $250,000. Typically the GIS I&D program funds two to three projects with awards ranging from about $50,000 to $125,000.

*Statutory Authority:* 33 U.S.C. 883a; 33 U.S.C. 883c; and 16 U.S.C. 1456c.

*CFDA:* 11.473, Coastal Services Center.

*Application Deadline:* Letters of Intent (LOI) must be received by 5 p.m. EDT, July 30,2004 and full proposals must be received by 5 p.m. EDT, October 1, 2004. LOIs are not mandatory.

*Address for Submitting Proposals:* Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413 to the attention of Hamilton Smillie, room 153.

*Information Contacts:* For administrative questions, contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405–2413, or by phone at (843) 740–1222, or by fax (843) 740–1232, or via Internet at *Violet.Legette@noaa.gov.* For technical questions, contact Hamilton Smillie, NOAA CSC; 2234 South Hobson Avenue, Room 153; Charleston, South Carolina 29405–2413, or by phone at (843) 740–1192, or by fax (843) 740–1315, or via internet at *Hamilton.Smillie@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, hospitals, other non-profits, commercial organizations, foreign government, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

7. FY2005 Coastal Services Center Integrated Ocean Observing Systems

*Summary Description:* NOS is soliciting projects for the Coastal Services Center (CSC) Director's Office (DO) program, with an anticipated start date of March 1, 2005. The DO program seeks proposals for projects that enhance the organization, implementation, and application of regional coastal ocean observing systems. Coastal ocean observing systems are meant to include the sensors, personnel, and data management that obtain, process and apply regular and sustained in-situ and/or remote observations of the physical, chemical, and biological environment of Great Lakes, estuaries, and the near shore ocean of the United States. Of particular interest is the coordination of such systems for management of coastal and ocean resources and for the benefit of coastal communities. This program has two funding priorities for FY05: (1) Projects that facilitate building partnerships and regional organizational structures for regional observing systems; these coordination projects will focus on work in up to four geographies B the Pacific Islands, the Northeastern US, the northern Gulf of Mexico, and the Caribbean Islands. (2) Projects that strengthen programmatic linkages between then Center, NOAA Estuarine Reserves Division, National Estuarine Research Reserves (NERR) and the establishment of regional observing systems.

*Funding Availability:* Total available funding under this announcement is expected to be between $200,000 and $1,000,000 dollars depending on congressional appropriation. The Center expects to award two to four grants of up to $100,000 for funding priority

number one and expects to award one to four grants of $50,000 to $500,000 for funding priority number two. Multiple year awards are expected from this announcement subject to availability of funding in fiscal years 2006 and 2007.

*Statutory Authority:* 16 U.S.C. 1456c and 33 U.S.C. 1442.

*CFDA:* 11.473, Coastal Services Center.

*Application Deadline:* Proposals must be received by 5 p.m. EDT, October 1, 2004.

*Address for Submitting Proposals:* Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413 to the attention of Paul Scholz, room 137.

*Information Contacts:* For administrative questions, contact Violet Legette, NOAA CSC; 2234 South Hobson Avenue, Room 218; Charleston, South Carolina 29405–2413, or by phone at (843) 740–1222, or by fax (843) 740–1232, or via Internet at *Violet.Legette@noaa.gov.* For technical questions, contact Paul Scholz, NOAA CSC; 2234 South Hobson Avenue, Room 137, Charleston, South Carolina 29405–2413, or by phone at (843) 740–1208 or by fax (843) 740–1313, or via Internet at *Paul.Scholz@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, non-profit and for-profit organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and State, local and Indian tribal governments. Organizations are encouraged to collaborate in development of multi-institutional proposals, however, funding for such a proposal must be awarded to a single (lead) entity that then has responsibility for administration and execution of any subawards. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners. **Note:** Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program is subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

8. Monitoring and Event Response for Harmful Algal Blooms (MERHAB)

*Summary Description:* NOS is soliciting projects for the Monitoring and Event Response for Harmful Algal Blooms (MERHAB) program within the Center for Sponsored Coastal Ocean Research/Coastal Ocean Program. Proposals are being requested for two types of research projects: MERHAB-targeted and MERHAB-regional. MERHAB-targeted proposals will incorporate tools, approaches and technologies from HAB research programs into existing harmful algal bloom (HAB) monitoring programs. MERHAB-regional proposals will create partnerships to enhance and sustain routine HAB monitoring capabilities and provide managers with timely information needed to mitigate HAB impacts on coastal communities. Funding is contingent upon the availability of Fiscal Year 2005 Federal appropriations.

*Funding Availability:* This solicitation announces that award amounts to be determined by the proposals and available funds typically not to exceed $100,000 per project per year with project durations from 1 to 3 years for targeted research projects and $600,000 per project per year with project durations from 3 to 5 years for regional research projects. It is anticipated that two to twelve total projects will be funded with no more than two being regional intensive projects. Support in out years is contingent upon fiscal availability of funds. It is anticipated that final recommendations for funding under this announcement will be made in early Calendar Year 2005, and that projects funded under this announcement will have a August 1, 2005, start date.

*Statutory Authority:* 16 U.S.C. 1442 and P.L. 105–383, title VI, Nov. 13, 1998, 112 Stat. 3447.

*CFDA:* 11.478 Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP).

*Application Deadline:* Proposals must be received by NCCOS/CSCOR/COP no later than 3 p.m., local time, December 1, 2004.

*Address for Submitting Proposals:* Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP), National Oceanic and Atmospheric Administration, (NOAA), 1305 East West Highway, Room 8243, SSMC Building 4, Silver Spring, MD 20910.

*Information Contacts:* Technical Information. Marc Suddleson, MERHAB 2005 Program Manager, NCCOS/CSCOR/COP, (301) 703–3338/ext 163, Internet: *Marc.Suddleson@noaa.gov*, Business Management Information. Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, (301) 713–3338/ext 155, Internet: *Leslie.McDonald@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, other non-profits, State, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

(1) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(2) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(3) NCCOS/CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(4) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

9. Bay Watershed Education & Training (B–WET) Program, Monterey Bay Watershed

*Summary Description:* The B-WET grant program 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 outdoor experiences for students and professional development opportunities for teachers in the area of environmental education.

*Funding Availability:* This solicitation announces that approximately $475,000 may be available in FY 2005 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 15 grants will be awarded with these funds. About $250,000 will be for proposals that provide opportunities for students to participate in a Meaningful Outdoor Experience. About $225,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers.

Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12-month award period and any continuation of the award period will depend on submission of a successful proposal subject to technical and panel reviews, adequate progress on previous award(s), and available funding to continue the award. The National Marine Sanctuary Program may continue funding existing grants that were funded in the previous application process. New grants will be awarded to continue these projects under this announcement pending successful review of a new application package, and adequate progress reports and/or site visits.

*Statutory Authority:* 16 U.S.C. 1440, 15 U.S.C. 1540.

*CFDA:* 11.429, Marine Sanctuary Program.

*Application Deadline:* Proposals must be received by 5 p.m. Pacific daylight savings time on October 15, 2004. Proposals will not be accepted before August 15, 2004.

*Address for Submitting Proposals:* Monterey Bay National Marine Sanctuary Office; 299 Foam Street, Monterey, CA 93940. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

*Information Contact:* Seaberry Nachbar, phone (831) 647–4201, fax (831) 647–4250, Internet at *seaberry.nachbar@noaa.gov.*

*Eligibility:* Eligible applicants for both areas of interest (Meaningful Outdoor Experiences and Professional Development in the Area of Environmental Education for Teachers) are K through 12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, State or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

*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 may not be considered 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.''

10. Bay Watershed Education & Training (B–WET) Program, Hawaiian Islands

*Summary Description:* The B–WET grant program 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 Hawaiian Islands. Funded projects provide ''meaningful'' outdoor experiences for students and professional development opportunities for teachers in the area of environmental education.

*Funding Availability:* This solicitation announces that approximately $400,000 may be available in FY 2005 in award amounts to be determined by the proposals and available funds. It is anticipated that approximately 10 grants will be awarded with these funds. About $200,000 will be for proposals that provide opportunities for students to participate in a ''Meaningful'' Outdoor Experience. About $200,000 will be for proposals that provide opportunities for Professional Development in the area of Environmental Education for Teachers. Proposals may be submitted for up to 3 years. However, funds will be made available for only a 12-month award period and any continuation of the award period will depend on submission of a successful proposal subject to technical and panel reviews, adequate progress on previous award(s), and available funding to continue the award. The NOAA Pacific Services Center may continue funding existing grants that were funded in the previous application process. New grants will be awarded to continue these projects under this announcement pending successful review of a new application package, and adequate progress reports and/or site visits.

*Statutory Authority:* 33 U.S.C. 883d, 15 U.S.C. 1540.

*CFDA:* 11.473, Coastal Services Center.

*Application Deadline:* Proposals must be received by 5 p.m. Hawaii standard time on October 15, 2004. Proposals will not be accepted before August 15, 2004.

*Address for Submitting Proposals:* NOAA Pacific Services Center office; 737 Bishop Street, Mauka Tower, Suite 2250, Honolulu, HI 96813–3212. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

*Information Contact:* Bill Thomas, NOAA Pacific Services Center office; (808) 532–3200, or via internet at *psc@noaa.gov.*

*Eligibility:* Eligible applicants for both areas of interest (Meaningful Outdoor Experiences and Professional Development in the Area of Environmental Education for Teachers) are K-through-12 public and independent schools and school systems, institutions of higher education, commercial and nonprofit organizations, State or local government agencies, and Indian tribal governments. Applicants that are not eligible are individuals and Federal agencies.

*Cost Sharing Requirements:* No cost sharing is required under this program, however, the Pacific Services Center strongly encourages applicants to share as much of the costs of the award as possible. Funds from other Federal awards may not be considered 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.''

11. Coastal Hypoxia Research Program (CHRP)

*Summary Description:* NOS is soliciting proposals for the Coastal Hypoxia Research Program (CHRP) within the Center for Sponsored Coastal Ocean Research/Coastal Ocean Program. Proposals are being requested for projects of 2 to 5 years in duration with the purpose of developing modeling tools and information which will be used by resource managers to assess alternative management strategies and make informed decisions regarding hypoxia in U.S. coastal ocean waters, estuaries and Great Lakes. It is anticipated that projects funded under this announcement will have a start date of June 1, 2005.

*Funding Availability:* Funding is contingent upon the availability of Federal appropriations. Individual award amounts will be determined by the proposals and available funds, with awards typically not to exceed $500,000 per project per year and with project durations from 2–5 years. It is anticipated that approximately 4–8 awards will be made.

*Statutory Authority:* 33 U.S.C. 1442.

*CFDA:* 11.478 Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP).

*Application Deadline:* Proposals must be received by NCCOS/CSCOR/COP no later than 3 p.m., local time, October 27, 2004.

*Address for Submitting Proposals:* Submit the original and 15 copies of your proposal to Attn. CHRP 2005, Center for Sponsored Coastal Ocean Research, Coastal Ocean Program (CSCOR/COP), National Oceanic and Atmospheric Administration, (NOAA), 1305 East West Highway, Room 8243, SSMC Building 4, Silver Spring, MD 20910.

*Information Contacts:* Technical Information. Kenric Osgood, CHRP 2005 Program Manager, NCCOS/CSCOR/COP, (301) 713–3338/ext 163, Internet: *Kenric.Osgood@noaa.gov.*

*Business Management Information.* Leslie McDonald, NCCOS/CSCOR/COP Grants Administrator, (301) 713–3338/ ext 155, Internet: *Leslie.McDonald@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

(1) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(2) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(3) NCCOS/CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(4) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

12. SLR 2005—Ecological Effects of Sea Level Rise

*Summary Description:* This announcement solicits proposals for projects of 2 to 3 years in duration with the purpose of developing maps and modeling tools that will be useful to coastal managers in their responses to coastal sea level rise. This will be a collaborative effort with the NOS Office of Coast Survey (OCS), National Geodetic Survey (NGS), and Center for Oceanographic Operational Products and Service (COOPS), who are developing a high-resolution digital elevation model (DEM) from recent airborne Lidar, coupled to a hydrodynamic model to predict the rise of mean water level due to oceanic sea level rise. Proposals must coordinate with the ongoing modeling being performed by NOS. The ultimate goal of the CSCOR study is to provide meaningful ecological data and understanding that can be combined with the DEM and hydrodynamic model to predict the ecological effects of projected sea level rise. The end result will be a model or models coupling the DEM and hydrodynamic model with ecological models to demonstrate the impact of projected sea level rise on critical natural resources. Given the relatively short time frame to produce results that are useable by managers, proposals are expected to apply primarily existing knowledge in a model framework to predict the ecological effects of sea level rise, although the collections of limited new data, with the goal of incorporating new information into these modeling efforts in a short time frame, may be justified.

*Funding Availability:* This solicitation announces that award amounts to be determined by the proposals and available funds typically will not exceed $300,000 per project per year with project durations from 2 to 3 years. It is anticipated that 3 to 5 projects will be funded. Support in out years is contingent upon the availability of funds.

*Statutory Authority:* 16 U.S.C. 1456c.

*CFDA:* 11.478, Coastal Ocean Program.

*Application Deadline:* Proposals must be received by NCCOS/CSCOR/COP no later than 3 p.m., local time. October 5, 2004.

*Address for Submitting Proposals:* Submit the original and 15 copies of your proposal to Attn. SLR2005, Center for Sponsored Coastal Ocean Research/ Coastal Ocean Program (N/SCI2), National Oceanic and Atmospheric Administration, 1305 East-West Highway, SSMC4, 8th Floor Station 8243, Silver Spring, MD 20910.

*Information Contacts:* Technical Information. Carol Auer, SLR2005 Program Manager, NCCOS/CSCOR, (301) 713–3338/ext.164, Internet: *Carol.auer@noaa.gov.* Business Management Information. Leslie McDonald, NCCOS/CSCOR Grants Administrator, (301) 713–3338/ext. 155, Internet: *Leslie.McDonald@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, other non-profits, state, local, Indian Tribal Governments, and Federal agencies that possess the statutory authority to receive financial assistance.

(1) Researchers must be employees of an eligible institution listed above; and proposals must be submitted through that institution. Non-Federal researchers should comply with their institutional requirements for proposal submission.

(2) Non-NOAA Federal applicants will be required to submit certifications or documentation showing that they have specific legal authority to receive funds from the Department of Commerce (DOC) for this research.

(3) NCCOS/CSCOR/COP will accept proposals that include foreign researchers as collaborators with a researcher, who has met the above stated eligibility requirements; and who also is an employee of an eligible institution listed above.

(4) Non-Federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements; they will be funded through grants either to their institutions or to joint institutes..

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

13. National Estuarine Research Reserves System FY2005 Land Acquisition and Construction Program

*Summary Description:* The Estuarine Reserves Division (ERD) of NOAA is soliciting proposals from the National Estuarine Research Reserve System (NERRS) for land acquisition and construction funding. The National Estuarine Research Reserve System consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each reserve within the system is chosen to represent different biogeographic regions and to include a variety of ecosystem types. Through the funding of designated reserve agencies and universities to undertake land acquisition and construction projects that support the NERRS purpose, NOAA will strengthen protection of key land and water areas; enhance long-term protection of the area for research and education; and provide for facility and exhibit construction.

*Funding Availability:* The ERD of NOAA announces the availability of funding for the NERRS for land acquisition and/or construction. The ERD anticipates that approximately $7.25 million, pending availability of funds, will be competitively awarded to

qualified National Estuarine Research Reserves that meet the funding priorities and selection criteria.

*Statutory Authority:* 16 U.S.C. 1461 (e)(1)(A)(i), (ii), and (iii).

*CFDA:* 11.420, Coastal Zone Management Estuarine Research Reserves.

*Application Deadline:* Proposals must be received by the Estuarine Reserves Division (ERD) no later than February 11, 2005.

*Address for Submitting Proposals:* NOAA/NOS; 1305 East-West Highway, Room 10509; Silver Spring, Maryland 20910.

*Information Contacts:* Doris Grimm, NOAA/NOS; 1355 East-West Highway, Room 10509; Silver Spring, Maryland 20910, or by phone at (301) 713–3155 ext. 107, or fax to (301) 713–4363, Internet at *doris.grimm@noaa.gov.*

*Eligibility:* Eligible applicants are coastal states in which the NERRs are located and are directed to the Reserves' lead State agencies or universities.

*Cost Sharing Requirements:* Matching requirements include 50 percent match of the total grant project for land acquisition and 30 percent match of the total grant project for construction.

*Intergovernmental Review:* Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

14. Geodetic Science and Applied Research (GSAR) Program

*Summary Description:* The GSAR Program represents an NOAA/NGS effort to conduct basic and applied research in the geodetic sciences that advances positioning operations and services in support of transportation and commerce on a national basis. This opportunity is focused on a specific problem: Analysis, and Methodology for Layered National Spatial Reference System Adjustment. There are at least 6 additional priorities that will be addressed in the future in the GSAR Program.

*Funding Availability:* One award of no more than $90,000 is expected to be made through this announcement, depending on availability of funds.

*Statutory Authority:* 33 U.S.C. 883d.

*CFDA:* 11.400, Applied Geodetic Research.

*Application Deadline:* Proposals must be received by the NGS no later than 5 p.m., EDT, July 30, 2004

*Address for Submitting Proposals:* Geodetic Services Division; NOAA National Geodetic Survey; N/NGS1; 1315 East-West Highway, Room 9356; Silver Spring, Maryland 20910–3282.

*Information Contacts:* Gilbert J. Mitchell: (301) 713–3228 ext. 114, or fax to (301) 713–4176, or via Internet at *Gilbert.Mitchell@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, State, local and Indian tribal governments and federally funded educational institutions such as the Naval Postgraduate School.

**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:* 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.''

*Ocean and Atmospheric Research (OAR)*

1. Sea Grant B The Oyster Disease Research Program

*Summary Description:* The National Sea Grant College Program (Sea Grant) within OAR is seeking proposals to participate in innovative research that provides technology and management strategies to combat oyster disease and bring about the restoration of oysters and the oyster industry in U.S. coastal areas. It is the goal of the Oyster Disease Research Program to improve the survivability of oysters in U.S. coastal waters and to improve technology for disease management and control.

*Funding Availability:* Approximately $2 million is available for the Oyster Disease Research Program in FY–2005 and a similar amount is expected, but not assured for FY–2006. Therefore, two-year proposals are being accepted. Funding will be on an annual basis, with renewal dependent upon satisfactory demonstration of progress and availability of funds. There is no limit on the budget for the proposals so that multiple partners can come together to address the significant issues that are identified under the Program Priorities for this competition. We anticipate making six to ten awards per year with an anticipated start date of June 1, 2005.

*Statutory Authority:* Statutory authority for this program is provided under: 33 U.S.C. 1121–1131.

*CFDA:* 11.417, Sea Grant Support.

*Preapplication/Application Deadline:* Applications must be received by 4 p.m. (local time) on August 27, 2004 for preliminary proposals and by 4 p.m. (local time) on November 16, 2004 for full proposals by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an applicant in a non-Sea Grant state]. Applications are to be forwarded to the NSGO by the state Sea Grant Programs and received by 4 p.m. EST on September 2, 2004 for preliminary proposals and by 4 p.m. EST November 23, 2004 for full proposals.

*Address for Submitting Proposals:* Prospective applicants living in Sea Grant states should submit their preliminary and full proposals to their state's Sea Grant program. The addresses of the state Sea Grant College Programs may be found at the following Internet Web site: (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Dr. James P. McVey at the NSGO (phone: (301) 713–2451; or e-mail: *jim.mcvey@noaa.gov*). Applications from non-Sea Grant states should send preliminary and full proposals to the NSGO. Applications submitted to the NSGO should be addressed to: NOAA National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG B Oyster Disease Research Program, 1315 East-West Highway, R/SG, Rm. 11732, Silver Spring, MD 20910 (telephone number for express mail applications is (301) 713–2445).

*Information Contacts:* Dr. James P. McVey, tel: (301) 713–2451; e-mail: *jim.mcvey@noaa.gov*, or any state Sea Grant Program.

*Eligibility:* Individuals, institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, foreign governments, and international organizations are eligible. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals. Those applicants submitting preliminary proposals by the preliminary proposal deadline that are not recommended by the pre-proposal review process would still be eligible to submit full proposals.

*Cost Sharing Requirements:* Applicants are required to provide one dollar for every two of Federal funds.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Sea Grant B The Gulf of Mexico Oyster Industry Program

*Summary Description:* The National Sea Grant College Program (Sea Grant) within OAR is seeking proposals to

participate in innovative research, outreach and demonstration to continue the Gulf of Mexico Oyster Industry Program. The goal of the Gulf Oyster Industry Program is to encourage multi-disciplinary research and extension projects that contribute directly to the efficiency and profitability of oyster-related businesses and to the safety of oyster products. Oyster businesses seek innovative solutions at all producing and processing levels, including: Production (landings), oyster disease diagnostics, harvesting, post-harvest treatment, processing, distribution, marketing, consumer education, and food safety.

*Funding Availability:* Approximately $1 million is available for the Gulf Oyster Industry Program in FY–2005 and a similar amount is expected, but not assured for FY–2006. Therefore, two-year proposals are being accepted. Funding will be on an annual basis, with renewal dependent upon satisfactory demonstration of progress and availability of funds. There is no limit on the budget for the proposals so that multiple partners can come together to address the significant issues that are identified under the Program Priorities for this competition. We anticipate making three to seven awards per year with an anticipated start date of June 1, 2005.

*Statutory Authority:* Statutory authority for this program is provided under: 33 U.S.C. 1121–1131.

*CFDA:* 11.417, Sea Grant Support

*Preapplication/Application Deadline:* Applications must be received by 4 p.m. (local time) on August 27, 2004 for preliminary proposals and by 4 p.m. (local time) on November 16, 2004 for full proposals by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an applicant in a non-Sea Grant state]. Applications are to be forwarded to the NSGO by the state Sea Grant Programs and received by 4 p.m. EST on September 2, 2004 for preliminary proposals and by 4 p.m. EST, November 23, 2004 for full proposals.

*Address for Submitting Proposals:* Prospective applicants living in Sea Grant states should submit their preliminary and full proposals to their state's Sea Grant program. The addresses of the state Sea Grant College Programs may be found at the following Internet Web site: (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Dr. James P. McVey at the NSGO (phone: (301) 713–2451; or e-mail: *jim.mcvey@noaa.gov*). Applications from non-Sea Grant states should send preliminary and full proposals to the NSGO. Applications submitted to the NSGO should be addressed to: NOAA National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG-Gulf Oyster Industry Program, 1315 East-West Highway, R/SG, Rm. 11732, Silver Spring, MD 20910 (telephone number for express mail applications is (301) 713–2445).

*Information Contacts:* Dr. James P. McVey, tel: (301) 713–2451; e-mail: *jim.mcvey@noaa.gov*, or any state Sea Grant Program.

*Eligibility:* Individuals, institutions of higher education, nonprofit organizations, commercial organizations, Federal, State, local and Indian tribal governments, foreign governments, and international organizations are eligible. Only those who submit preliminary proposals by the preliminary proposal deadline are eligible to submit full proposals. Those applicants submitting preliminary proposals by the preliminary proposal deadline that are not recommended by the pre-proposal review process would still be eligible to submit full proposals.

*Cost Sharing Requirements:* Applicants are required to provide one dollar for every two of Federal funds.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

3. NOAA Office of Ocean Exploration Announcement of Opportunity, FY 2005

*Summary Description:* The NOAA Office of Ocean Exploration (OE) is seeking pre-proposals and full proposals to support its mission to search, investigate, and document unknown and poorly known areas of the ocean and Great Lakes through interdisciplinary exploration, and to advance and disseminate knowledge of the ocean environment and its physical, chemical, biological, and historical resources. Successful OE proposals will be relatively high-risk, innovative and broad-based in terms of their approach and objectives. OE is soliciting proposals whose objectives fall within one of the four following categories: Deep Corals, the Arctic, Archaeology, and General Exploration.

*Funding Availability:* OE anticipates approximately $5,000,000, including shiptime costs, to be available to fund proposals accepted through this solicitation. Proposals funded through the FY04 Announcement of Opportunity, excluding shiptime or submersible costs, ranged from approximately $17,000 to $500,000 with an average of approximately $85,000. Proposals may be considered for funds greater than the range described here. It is expected that approximately 25 awards will be made through this solicitation, pending the availability of funds. Please note that several proposals submitted in response to the FY04 solicitation will also be considered in this year's pool of proposals for FY05 funding. The OE Director may hold over select proposals submitted for FY05 funding into FY06 to consider awarding out of the FY06 appropriation.

*Statutory Authority:* 33 U.S.C. 883d.

*CFDA:* 11.460, Special Oceanic and Atmospheric Projects.

*Application Deadline:* Applications for FY05 collaboration with OE will be accepted within four separate categories: Deep Corals, Arctic, Archaeology, and General Exploration. Pre-proposals are required only for the General Exploration category. Pre-proposals must be received by August 30, 2004. Full proposals are required for all categories. Full proposals must be received by October 12, 2004. To ensure that your application will be considered in FY05, it must be received by the dates listed above. However, depending on the availability of funds, the Office of Ocean Exploration may consider applications received after those dates. No e-mail and/or facsimile pre-proposals and/or proposals submissions will be accepted.

*Address for Submitting Applications:* Pre-proposals and proposals must be submitted to: Attn: Proposal Manager, NOAA Office of Ocean Exploration, 1315 East West Highway, SSMC III, 10th Floor, Silver Spring, Maryland 20910 (telephone number for express mail applications is (301) 713–9444).

*Information Contacts:* For further information contact the NOAA Office of Ocean Exploration at (301) 713–9444 or submit inquiries via e-mail to the Frequently Asked Questions address: *oar.oe.FAQ@noaa.gov.* E-mail inquiries should include the Principal Investigator's name in the subject heading.

*Eligibility:* Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, organizations under the jurisdiction of foreign governments, international organizations, State, local and Indian tribal governments. Applications from Federal agencies will be considered.

**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:* Though cost-sharing is not required, it is encouraged.

*Intergovernmental Review:* Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's web-site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

4. Joint Hurricane Testbed (JHT) Opportunities for Transfer of Research and Technology Into Tropical Cyclone Analysis and Forecast Operations

*Summary Description:* The Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), is soliciting preapplications (Letters of Intent) and full proposals under the United States Weather Research Program (USWRP) as administered by the USWRP Joint Hurricane Testbed (JHT). This notice describes opportunities and application procedures for the transfer of relevant research and technology advances into tropical cyclone analysis and forecast operations. This notice calls for researchers to submit proposals to test and evaluate, and modify if necessary, in a quasi-operational environment, their own scientific and technological research applications. Projects satisfying metrics for success and operational constraints may be selected for operational implementation by the operational center(s) after the completion of the JHT-funded work. The period of the award is from one up to two years.

*Funding Availability:* The estimate for total JHT funding that will be available in FY 2005 is $1,500,000, which will likely be used to fund 10–15 new projects. Award amounts for previous JHT grants have been mostly between $50,000 and $200,000 per year. A similar range is expected for this announcement. Funding of any JHT proposals is contingent upon availability of these funds. NOAA anticipates making awards under this program provided that funding for the USWRP is continued. Issuance of follow-on year awards, however, are subject to the future availability of funds. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs.

*Statutory Authority:* 49 U.S.C. 44720(b), 33 U.S.C. 883d.

*CFDA:* 11.431, Climate and Atmospheric Research.

*Preapplication and Application Deadlines:* Preapplications submitted by Principal Investigators (PIs) must be received at the Tropical Prediction Center/National Hurricane Center (TPC/NHC) in Miami, Florida (for addresses, see below under the heading: Addresses for Submitting Preapplications and Full Proposals) no later than 5 p.m. Eastern Daylight Time (EDT) July 30, 2004. TPC/NHC determines whether a preapplication has been submitted before the deadline by date and time stamping the applications as they are physically received in the TPC/NHC office. Preapplications received after the deadline will not be reviewed, but in such cases PIs are still permitted to submit a full proposal. Letters will be sent from NOAA, in response to each preapplication reviewed, no later than September 24, 2004. One signed original and two additional hard copies of both the full proposal and all additionally required forms must be received at TPC/NHC in Miami, Florida (for address, see below under the heading: Addresses for Submitting Preapplications and Proposals) no later than 5 p.m. Eastern Daylight Time (EDT) on October 29, 2004. TPC/NHC determines whether a complete application package has been submitted before the deadline by date and time stamping the packages as they are physically received in the TPC/NHC office. Complete proposal application packages received after the deadline will not be considered for funding.

*Addresses for Submitting Preapplications and Proposals:* All electronic submissions must be sent via e-mail to: *Jiann-Gwo.Jiing@noaa.gov.* All hard copy submissions must be sent to: Dr. Jiann-Gwo Jiing, Director, Joint Hurricane Testbed, Tropical Prediction Center, 11691 SW 17th Street, Miami, FL 33165, phone (305) 229–4443.

*Information Contacts:* Dr. Jiann-Gwo Jiing, Director, Joint Hurricane Testbed, Tropical Prediction Center, 11691 SW 17th Street, Miami, FL 33165, phone (305) 229–4443, or via e-mail at *Jiann-Gwo.Jiing@noaa.gov.*

*Eligibility:* Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; foreign governments; organizations under the jurisdiction of foreign governments; international organizations and State, local and Indian tribal governments; and Federal agencies. 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. 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 inter-agency 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. The only exception to this is governmental research facilities for awards issued under the authority of 49 U.S.C. 44720(b). 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:* None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

5. NOAA Educational Partnership Program With Minority Serving Institutions: Environmental Entrepreneurship Program

*Summary Description:* The Environmental Entrepreneurship Program is designed to strengthen the capacity of Minority Serving Institutions to foster student careers, entrepreneurship opportunities and advanced academic degrees in the sciences directly related to NOAA's mission. The sciences directly related to NOAA's mission include: Fisheries; coastal; ocean; climate; atmospheric; environmental sciences; and remote sensing technology. For the purposes of this program, Environmental Entrepreneurship is defined as a mechanism to provide student training in the application of NOAA sciences for the creation of business opportunities. This is achieved by Minority Serving Institutions establishing partnerships with NOAA, the academic community, and the public and private sectors to engage students in a complement of entrepreneurial training and technical skills in environmental sciences that will promote commerce and economic development.

*Funding Availability:* Subject to appropriations, approximately $6 million will be available for the Environmental Entrepreneurship Program competition in 2005. Proposals are limited to a total of $500,000 for a maximum of five years and approximately twelve proposals will be funded.

*Statutory Authority:* 15 U.S.C. 1540.

*CFDA:* 11.481 Educational Partnership Program with Minority Serving Institutions.

*Application Deadline:* Proposals must be received by 5 p.m. Eastern Daylight Savings time on October 29, 2004.

*Address for Submitting Applications:* NOAA EPP/MSI: Environmental Entrepreneurship Program, National Oceanic and Atmospheric Administration, Room 10725, SSMC3, 1315 East-West Highway, Silver Spring, MD 20910. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

*Information Contact:* Jewel G. Linzey, Program Manager, Environmental Entrepreneurship Program, (301) 713–9437 ext. 118, facsimile (301) 713–9465, e-mail *Jewel.Griffin-Linzey@noaa.gov.*

*Eligibility:* Minority Serving Institutions eligible to submit proposals include institutions of higher education are 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 notice): *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.* Proposals will not be accepted from non-profit organizations, foundations, auxiliary services or any other entity submitted on behalf of MSIs.

*Cost Sharing Requirements:* There is no cost-sharing requirement.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs''.

6. NOAA Climate Transition Program for FY 2005

*Summary Description:* The NOAA Climate Transitions Program (NCTP) is a new competitive research effort at NOAA designed to address the increasingly important challenge of providing a structured process for transitioning decision-maker relevant climate research into operational settings while setting the foundation for the next generation of applied climate research.

*Funding Availability:* There will be approximately $300,000 available for initial research projects funded under this new, peer-reviewed, grants program. It is anticipated that the cost of most funded projects will fall between $50,000 and $100,000 per year and that 3–6 awards will be issued. The awards will be grants and/or cooperative agreements with anticipated start dates of February 1, 2005.

*Statutory Authority:* 15 U.S.C. 2904.

*Catalog of Federal Domestic Assistance Number:* 11.431, Climate and Atmospheric Research.

*Application Deadline:* Proposals must be received at the Office of Global Programs no later than 5 p.m. Eastern Time, August 30, 2004.

*Address for Submitting Applications:* NOAA Office of Global Programs; Attn: Diane S. Brown, Grants Manager; 1100 Wayne Avenue, Suite 1210; Silver Spring, MD 20910–5603.

*Information Contacts:* Office of Global Programs Web site *http://www.ogp.noaa.gov.* Investigators may contact the NOAA program manager, Nancy Beller-Simms (*Nancy.Beller-Simms@noaa.gov,* Tel. (301) 427–2089, ext. 180, Fax (301) 427–2082). For general grants information, contact Diane S. Brown, Grants Manager, (*ogpgrants@noaa.gov,* (301) 427–2089, ext. 107, fax (301) 427–2222).

*Eligibility:* Eligible applicants are institutions of higher education; other nonprofits; commercial organizations; state, local and Indian tribal governments; and Federal agencies. Applications from non-Federal and Federal applicants will be competed against each other.

**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:* An award will not be made unless a recipient cost shares at least 5% of the cost of the project but no more than 50% of the cost of the project.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

**NOAA Fellowship/Scholarships/Internships Competitions**

*National Ocean Service (NOS)*

1. Dr. Nancy Foster Scholarship Program; Financial Assistance for Graduate Students

*Summary Description:* The National Oceanic and Atmospheric Administration (NOAA) is announcing funding availability for graduate students pursuing masters or doctoral level degrees in oceanography, marine biology, or maritime archaeology through the Dr. Nancy Foster Scholarship Program and is inviting applications for such scholarships. Approximately $128,000 will be available through this announcement for fiscal year 2005. It is expected that approximately four awards will be made, depending on the availability of funds. The intent of this program is to recognize outstanding scholarship and encourage independent graduate-level research in the above-mentioned fields.

*Statutory Authority:* 16 U.S.C. 1445c–1.

*CFDA:* 11.429 National Marine Sanctuary Program.

*Application Deadline:* Applications must be received between February 11, 2005 and April 15, 2005 no later than 5 p.m. Eastern Daylight Time.

*Address for Submitting Proposals:* Applications should be sent to the Dr. Nancy Foster Scholarship Program, Attention: Office of the Assistant Administrator, 13th Floor, National Ocean Service, 1305 East-West Highway, Silver Spring, MD 20910.

*Information Contacts:* Send your request for information to the Program Manager at the address shown above, by telephone (301) 713–3074, or by internet to *http://fosterscholars.noaa.gov.*

*Eligibility:* Only United States citizens currently pursuing or accepted to pursue a masters or doctoral level degree in oceanography, marine biology, or maritime archaeology, including the curation, preservation, and display of maritime artifacts, are eligible for an award under this scholarship program.

*Cost Sharing Requirements:* None.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. National Estuarine Research Reserve (NERR) Graduate Research Fellowship Program (GRF)

*Summary Description:* The Estuarine Reserves Division of NOAA is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. The Estuarine Reserves Division anticipates that 24 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one reserve. The National Estuarine Research Reserve Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with an opportunity to contribute to the research or monitoring program at a particular reserve site. Students are required to work with the research coordinator or reserve manager to develop a plan to participate in the research or monitoring program for up to 15 hours per week.

These management-related research projects will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues. Research projects must address one of the following scientific areas of support: non-point source pollution, biodiversity, invasive species, habitat restoration, sustaining resources in estuarine ecosystems, and socioeconomic research applicable to estuarine ecosystem management.

*Funding Availability:* The amount of the fellowship is anticipated to be $20,000; at least 30% of total project cost match is required by the applicant (*i.e.* $8,572 match for $20,000 in Federal funds for a total project cost of $28,572). Applicants may apply for one to three years of funding.

*Statutory Authority:* 16 U.S.C. 1461 (e)(1)(B) .

*CFDA:* 11.420 Coastal Zone Management.

*Application Deadline:* All applications must be received or postmarked by November 1, 2004.

*Address for Submitting Proposals:* NOAA's Estuarine Reserves Division; 1305 East-West Highway; SSMC4, Station 10500, N/ORM5; Silver Spring, MD 20912.

*Information Contact:* Erica Seiden, NOAA's Estuarine Reserves Division; 1305 East-West Highway; SSMC4, Station 10500, N/ORM5; Silver Spring, MD 20912, or by phone at (301) 713–3155 extension 172, or fax to (301) 713–4363, internet at *erica.seiden@noaa.gov* or *http://www.nerrs.noaa.gov/fellowship.* If Erica is unavailable, please contact Maurice Crawford at (301) 713–3155 ext. 165 or via e-mail at *maurice.crawford@noaa.gov.*

*Eligibility:* Institutions eligible to receive awards include institutions of higher education, other non-profits, commercial organizations, international organizations, State, local and Indian tribal governments. Minority students are encouraged to apply to eligible institutions.

*Cost Sharing Requirements:* Requested Federal funds must be matched by at least 30 percent of the TOTAL cost of the project, not a portion of only the Federal share, (*e.g.,* $8,572 match for $20,000 in Federal funds for a total project cost of $28,572).

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

*Ocean and Atmospheric Research*

1. GradFell 2005 C NMFS—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics

*Summary Description:* The National Sea Grant College Program (Sea Grant) within OAR is seeking applications for one of its fellowship programs to fulfill its broad educational responsibilities and to strengthen the collaboration between Sea Grant and NMFS. Fellows will work on thesis problems of public interest and relevance to NMFS and have summer internships at participating NMFS Science Centers or Laboratories under the guidance of NMFS mentors.

*Funding Availability:* The NMFS—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics expects to support up to six new Fellows for 2–3 years beginning in FY 2005. The award for each fellowship will be a cooperative agreement of $38,000 per year, with an anticipated start date of May 1, 2005.

*Statutory Authority:* 33 U.S.C. 1127(a).

*Catalog of Federal Domestic Assistance Number:* 11.417, Sea Grant Support.

*Application Deadline:* Applications must be received by 4 p.m. (local time) on November 16, 2004 by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an institution of higher education in a non-Sea Grant state]. Applications are due at the NSGO from state Sea Grant Programs by 4 p.m. EST on November 23, 2004.

Address for Submitting Applications: Applications from institutions of higher education in Sea Grant states must be submitted to the state Sea Grant Program. The addresses of the state Sea Grant College Programs may be found at the following Internet Web site: (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Ms. Nikola Garber at the National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2431 ext. 124; or e-mail: *nikola.garber@noaa.gov.* Applications from elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Applications submitted to the NSGO should be addressed to: National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG–NMFS Fellowship Competition, 1315 East-West Highway, R/SG, Rm 11732, Silver Spring, MD 20910 (telephone number for express mail applications is (301) 713–2445).

*Information Contact:* Ms. Nikola Garber, National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2431 ext. 124; e-mail: *nikola.garber@noaa.gov;* any state Sea Grant Program; or any participating NMFS facility.

*Eligibility:* Prospective Fellows must be United States citizens. At the time of application, prospective Population Dynamics Fellows must be admitted to a PhD degree program in population dynamics or a related field such as applied mathematics, statistics, or quantitative ecology at an institution of higher education in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a PhD degree program conditional on obtaining financial support such as this fellowship. At the time of application, prospective Marine Resource Economics Fellows must be in the process of completing at least two years of course work in a PhD degree program in natural resource economics or a related field at an institution of higher education in the United States or its territories. Applications must be submitted by the institution of higher education, which may be any such institution in the United States or its territories.

*Cost Sharing Requirements:* Required 50 percent match of the NSGO funds by the academic institution (*i.e.,* $6,333).

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

2. Sea Grant—Industry Fellowship Program

*Summary Description:* The National Sea Grant College Program (Sea Grant) within OAR is seeking applications for one of its fellowship programs to fulfill its broad educational responsibilities and to strengthen the collaboration between Sea Grant and industry. The Sea Grant—Industry Fellowship is available to graduate students enrolled in either MS or PhD degree programs in institutions of higher education in the United States and its territories, with required matching funds from private industrial sponsors. Industry Fellows will work on research and development projects on topics of interest to a particular industry/company. In a true partnership, the student, the faculty advisor, the Sea Grant College or institute, and the industry representative will work together, sharing research facilities and the cost of the activity.

*Funding Availability:* Sea Grant anticipates awarding a total of $300,000 (including matching funds) through this announcement by supporting up to five new Industry Fellows for two years beginning in FY 2005. The award for each Industry Fellowship, contingent upon the availability of Federal funds, will be in the form of a grant of up to $30,000 per year from Sea Grant with an anticipated start date of May 1, 2005.

*Statutory Authority:* 33 U.S.C. 1127(a).

*CFDA:* 11.417, Sea Grant Support.

*Application Deadline:* Applications must be received by 4 p.m. (local time) on November 16, 2004, by a state Sea Grant Program [or by the National Sea Grant Office (NSGO) in the case of an institution of higher education in a non-Sea Grant state]. Applications are to be forwarded to the NSGO by the state Sea Grant Programs and received by 4 p.m. (EST) on November 23, 2004.

*Address for Submitting Applications:* Applications from institutions of higher education in Sea Grant states must be submitted to the state Sea Grant Program. The addresses of the state Sea Grant College Programs may be found at the following Internet Web site: (*http://www.nsgo.seagrant.org/SGDirectors.html*) or may also be obtained by contacting Ms. Nikola Garber at the National Sea Grant College Program, 1315 East-West Highway, Silver Spring, MD 20910; tel: (301) 713–2431 ext. 124; or e-mail: *nikola.garber@noaa.gov.* Applications from elsewhere may be submitted either to the nearest state Sea Grant Program or directly to the NSGO. Applications submitted to the NSGO should be addressed to: NOAA National Sea Grant Office, Attn: Mrs. Geraldine Taylor, SG B Industry Fellowship Program, 1315 East-West Highway, R/SG, Rm. 11732, Silver Spring, MD 20910 (telephone number for express mail applications is (301) 713–2445).

*Information Contacts:* Ms. Nikola Garber, tel: (301) 713–2431 ext. 124; e-mail: *nikola.garber@noaa.gov,* or any state Sea Grant Program.

*Eligibility:* At the time of application, any prospective student, regardless of citizenship, must be admitted to a MS or PhD degree program at an institution of higher education in the United States or its territories, or submit a signed letter from the institution indicating provisional acceptance to a MS or PhD degree program conditional on obtaining financial support such as this fellowship. Applications must be submitted by the institution of higher education.

*Cost Sharing Requirements:* Required 50 percent match of the Federal funds by the industrial partner.

*Intergovernmental Review:* Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

**Limitation of Liability**

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2005 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

**Universal Identifier**

Applicants should be aware that, they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177B66178 for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet (*http://www.dunandbradstreet.com*).

**National Environmental Policy Act (NEPA)**

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/,* including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf,* and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*).

Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.,* the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application. 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 October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), 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 and 424A,424B, SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

**Executive Order 12866**

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

**Executive Order 13132 (Federalism)**

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

**Administrative Procedure Act/ Regulatory Flexibility Act**

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public

property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: June 24, 2004.

**Helen Hurcombe,**

*Director Acquisition and Grants Office, National Oceanic and Atmospheric Administration.*

[FR Doc. 04–14844 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–12–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 062304B]**

### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public committee meeting.

**SUMMARY:** The North Pacific Fishery Management Council's (Council) Steller Sea Lion Mitigation Committee will meet in Seattle, WA.

**DATES:** The meeting will be held on July 19, from 1 p.m. to 5 p.m., July 20 and July 21, 2004, from 8:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, Room 2039, Seattle, WA.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Bill Wilson, Council; telephone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The meeting will begin at 1 pm on Monday, July 19. The committee will discuss the following issues and develop recommendations for the Council to consider in October:

(1) Aleutian Islands Steller Sea Lion (SSL) Protection Measures, (2) Development of Analytical Tools for Evaluating Fishery/SSL Interactions, (3) Vessel Monitoring System requirements in Alaskan Groundfish Fisheries.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: June 25, 2004.

**Alan D. Risenhoover,**

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

[FR Doc. E4–1447 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061604D]**

### Atlantic Highly Migratory Species; Exempted Fishing Permits

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

**ACTION:** Notice of receipt of a request for exempted fishing permits; request for comments.

**SUMMARY:** NMFS announces the receipt of a request for exempted fishing permits (EFPs) for tuna purse seine vessels to transfer purse seine caught bluefin tuna (BFT) to a towed cage for the purposes of examining premature shedding of pop-up satellite tags, investigating alternative harvesting methods, and gathering information on how delayed landing of purse seine captured BFT impacts market prices. NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

**DATES:** Written comments on the proposed exempted fishing activity must be received no later than July 12, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

- Email: *ID061604D@noaa.gov*. Include in the subject line the following identifier: I.D. 061604D.
- Mail: Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Fax: (301)713–1917.

**FOR FURTHER INFORMATION CONTACT:** Heather Stirratt, phone: 301–713–2347; fax: 301–713–1917.

**SUPPLEMENTARY INFORMATION:** EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

Several operators of permitted Atlantic tuna purse seine vessels, a transfer vessel, and a holding vessel have requested exemptions from certain regulations applicable to the harvest and landing of BFT in order to conduct research on BFT in the Gulf of Maine area. Specifically, the permitted purse seine vessels propose to transfer BFT that they catch to a cage towed by the holding vessel, and tag the BFT with pop-up tags to investigate premature tag shedding. During the course of the tagging study, approximately 20 BFT may be harvested per day to investigate characteristics of tagging sites and tag retention, and to investigate the economic impact of delayed landings in the purse seine fishery. BFT would be harvested from the cage using experimental gears including a diver and/or electric speargun and would be transported to port via a transfer vessel. The holding and transfer vessels may not have Atlantic tunas permits, thus landings and other reporting procedures may need to be altered to account for the delayed harvesting operations. The applicants state that delayed landing of the harvested fish could enhance marketing opportunities and prices by coordinating landings with strong market activity. According to the applicants, these operations may benefit all U.S. commercial BFT fishing categories by improving scientific data available for BFT management and avoiding the market gluts experienced in recent years.

The applicants also request an exemption to allow permitted Atlantic tunas purse seine vessels participating in the experiment to exceed the 15–percent tolerance level for incidental catch of bluefin tuna between 73 and 81 inches (185 and 206 cm). In their request, the applicants state that the current 15 percent tolerance for fish below 81 inches (206 cm) could be a restrictive factor limiting the success of the experiment. The applicants note that

in recent years mixed schools of giant and large medium bluefin tuna have been prevalent, particularly early in the season, which is the time period proposed for the experiment. In the event that such conditions persist in 2004, the applicants believe that the experiment could potentially result in greater mortality to smaller fish necessitating relief from the tolerance level for the remainder of the season.

The regulations that would prohibit the proposed activities include requirements to use authorized gear (50 CFR 635.21); prohibition of BFT transfer at sea (50 CFR 635.29); vessel fishing permits (50 CFR 635.4); and prohibition of approaching within 100 feet of a purse seine vessel while gear is deployed (50 CFR 635.71). In addition, certain reporting requirements may be adjusted to allow for the delayed landing of purse seine harvested fish.

NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

**Authority:** 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: June 24, 2004.

**Alan D. Risenhoover,**

*Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04–14843 Filed 6–25–04; 2:58 pm]

**BILLING CODE 3510–22–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Amendment of Scope of Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

June 24, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner, Bureau of Customs and Border Protection, amending the scope of the import limit for Category 622-N.

**EFFECTIVE DATE:** July 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the Bureau of Customs and Border Protection Web site at http://www.cbp.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On January 10, 2003, the Governments of the United States and Belarus entered into a Memorandum of Understanding, which called for a sublimit on Category 622-N. As the United States and Belarus were not able to reach agreement on the terms of this sublimit, on March 5, 2004 the Chairman of CITA directed Customs and Border Protection to impose a sublimit on Category 622-N pending agreement with the Government of Belarus on its terms, noting that this sublimit might be revised if the Governments of the United States and Belarus reached agreement on the terms of the sublimit.

In a Memorandum of Understanding dated May 13, 2004, the Governments of the United States and Belarus agreed to the terms of the sublimit for Category 622-N. Effective on July 1, 2004, the interagency Committee for the Statistical Annotation of the Tariff Schedule amended the Harmonized Tariff Schedule of the United States (HTSUS) with respect to the statistical subheadings covered by Category 622-N.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs and Border Protection to amend the HTSUS subheadings covered by Category 622-N to implement the May 13, 2004 Memorandum of Understanding.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 69 FR 4926, published on February 2, 2004). See also 69 FR 10429, published on March 5, 2004.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

June 24, 2004.

Commissioner,
*Bureau of Customs and Border Protection, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 1, 2004, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain man-made fiber textile products in Category 622-N, produced or manufactured in Belarus and exported during the period which began on January 1, 2004 and extends through December 31, 2004.

To implement and monitor provisions of the Memorandum of Understanding (MOU) reached with the Government of Belarus dated May 13, 2004, you are directed, effective on July 1, 2004, to amend the restriction on Category 622-N set forth in the above-referenced directive by amending the Harmonized Tariff Schedule of the United States (HTSUS) numbers subject to Category 622-N as follows:

| HTSUS Change |
|---|
| Category 622-N |
| 7019.52.40.20 becomes 7019.52.40.21 |
| 7019.52.90.20 becomes 7019.52.90.21 |
| 7019.59.40.20 becomes 7019.59.40.21 |
| 7019.59.90.20 becomes 7019.59.90.21 |

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–14774 Filed 6–29–04; 8:45 am]

**BILLING CODE 3510–DR–S**

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 04–C0004]**

### GROUPE SEB USA f/k/a Krups North America, Inc., Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 11118.20. Published below is a provisionally-accepted Settlement Agreement with GROUPE SEB USA f/k/a Krups North America, Inc., containing a civil penalty of $500,000.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 15, 2004.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 04–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

**FOR FURTHER INFORMATION CONTACT:** Belinda V. Bell, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7592.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: June 23, 2004.

**Todd A. Stevenson,**

*Secretary.*

## Settlement Agreement and Order

1. This Settlement Agreement, made by and between the staff (''the staff'') of the U.S. Consumer Product Safety Commission (the ''Commission'') and Groupe SEB USA, formerly known as Krups North America, Inc., (''Krups'' or ''Respondent''), a corporation, in accordance with 16 CFR 118.20 of the Commission's procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), is a settlement of the staff allegations set forth below.

## The Parties

2. The Commission is an independent Federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. From 1976 to March 2002, Krups North America, Inc. (''Krups'') was a wholly owned subsidiary of Moulinex SA, a European corporation. Krups was an entity organized and existing under the laws of the State of Delaware, with its principal office located at 7 Reuten Drive, Cloister, New Jersey. In September 2001, Moulinex filed bankruptcy. During the bankruptcy proceedings certain assets, including Krups North America, were purchased by Groupe SEB, another European corporation. Up until December 2003, Krups maintained its operations in New Jersey. On December 15, 2003, it changed its corporate name to Groupe SEB USA and moved to 196 Boston Avenue, Medford, Massachusetts. Groupe SEB USA continues to sell Krups brand products.

## Staff Allegations

4. Section 15(b) of the CPSA, 15 U.S.C. 2064(b), requires a manufacturer of a consumer product distributed in commerce, *inter alia* who obtains information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

5. Between 1996 and 2000, Krups manufactured and distributed nationwide approximately 218,000 electric drip coffeemakers, sold under the Krups brand name, model numbers 398 and 405 (the ''coffeemakers'' or the ''product(s)'').

6. The coffee makers are ''consumer products'' and Krups is a ''manufacturer'' of ''consumer products'', which were ''distributed in commerce'' as those terms are defined in sections 3(a)(1)(4), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. The coffeemakers are defective because loose electrical components can overheat and ignite the adjacent plastic filer carriage, creating a risk of fire, serious injury and death.

8. Between July 1997 and June 2001, Krups received approximately 48 reports of the coffeemakers' electrical components overheating and igniting, causing incidents of smoking, melting or fires. Some of the fires caused extensive property damage.

9. Not until May 2001, after receiving notice that a consumer's home was destroyed as a result of a defective Krups coffeemaker, did Respondent submit an initial report to the Commission reporting the defective coffeemakers.

10. Although Krups had obtained sufficient information to reasonably support the conclusion that these coffeemakers contained defects which could create a substantial product hazard, or created an unreasonable risk of serious injury or death long before May 2001, it failed to timely report such information to the Commission as required by section 15(b) of the CPSA.

11. Respondent's failure to report to the Commission, as required by section 15(b) of the CPSA, was committed ''knowingly'', as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), and Krups is subject to civil penalties under section 20 of the CPSA.

## Response of Krups

12. Respondent denies the staff allegations in paragraphs 4 through 11, above. Respondent denies that it violated the CPSA.

13. At the time of the alleged notices of incidents and failure to report, Krups had no engineers on its staff and relied on its parent, Moulinex, for technical analysis and advice concerning the causes and consequences of the coffeemaker incidents. Moulinex advised Krups that the coffeemakers presented no danger of fire outside the coffeemaker.

14. Krups reasonably relied on the advice from Moulinex in concluding that a section 15(b) report was not required until agents of Krups investigated a fire involving one of the coffeemakers. Based on the advice of these agents, Krups decided that the problems with the coffemakers should be reported.

15. Although the current parent, Groupe SEB, was not involved in any of the decisions that led to the alleged reporting violation, it has agreed to enter into this Settlement Agreement to resolve these issues.

## Agreement of the Parties

16. The Consumer Product Safety Commission has jurisdiction over Respondent and the subject matter of this Settlement Agreement and Order under the CPSA, 15 U.S.C. 2051 *et seq.*

17. Respondent agrees to pay a civil penalty in the amount of five hundred thousand and no/dollars ($500,000.00), payable to the ''U.S. Treasury'' within twenty (20) calendar days of receiving service of the final Settlement Agreement and Order.

18. Respondent knowingly, voluntarily and completely waives any rights it may have in the above-captioned case (i) to the issuance of a Complaint in this matter; (ii) to a judicial hearing with respect to the staff allegations cited herein; (iii) to judicial review or other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to a determination as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (v) to a statement of findings of fact and conclusions of law with regard to the staff allegations; and (vi) to any claims under the Equal Access to Justice Act.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed in the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20. If the Commission does not receive any written requests not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

20. The Settlement Agreement and Order shall become effective upon its final acceptance by the Commission and service of the final Order upon Respondent.

21. Upon provisional acceptance by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

22. Respondent agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

23. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provisions shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Respondent determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

24. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

25. This Settlement Agreement and Order is binding upon Respondent, its parent and each of its assigns or successors.

26. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.*, and a violation of this Order may subject Respondent to appropriate legal action.

27. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

Dated: May 19, 2004.

GROUP SEB USA

By: Paul Pofcher,
*Executive Vice President.*

Michael A. Brown, Esquire,
*Respondent's Attorney.*

The U.S. Consumer Product Safety Commission

Alan H. Schoem,
*Director, Office of Compliance.*

Eric L. Stone,
*Director, Legal Division, Office of Compliance.*

By Belinda V. Bell,
*Trial Attorney, Legal Division, Office of Compliance.*

**Order**

Upon consideration of the Settlement Agreement between Groupe SEB USA, a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Groupe SEB, and it appearing that the Settlement Agreement is in the public interest, it is

*Ordered* that the Settlement Agreement be, and hereby is, accepted and it is

*Further Ordered* that Groupe SEB USA shall pay the United States Treasury a civil penalty in the amount of five hundred thousand and 00/100 dollars, ($500,000.00), payable within twenty (20) days of the service of the Final Order upon Groupe SEB USA. Upon the failure by Groupe SEB to deliver any payment in full to the Commission in accordance with the terms of the subject Settlement Agreement and Order, interest on the outstanding balance shall accure and be paid by Groupe SEB at the Federal legal rate of interest under the provisions of 28 U.S.C. 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 18th day of June, 2004.

By Order of the Commission.

Todd A. Stevenson,
*Secretary, Consumer Product Safety Commission.*

[FR Doc. 04–14681 Filed 6–29–04; 8:45 am]

**BILLING CODE 6355–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by July 30, 2004.

*Title, Forms, and OMB Number:* Department of Defense Security Agreement, Appendage to Department of Defense Security Agreement, Certificate Pertaining to Foreign Interests; DD Forms 441, 441–1 and SF Form 328; OMB Number 0704–0194.

*Type of Request:* Extension.

*Number of Respondents:* 3,070.

*Responses Per Respondent:* 2.

*Annual Responses:* 6,140.

*Average Burden Per Response:* 1.5 hours.

*Annual Burden Hours:* 9,108.

*Needs and Uses:* Executive Order 12829, ''National Industrial Security Program (NISP),'' stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring contractors, licensees, and grantees, who require or will require access to or will store classified information; for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in DoD 5200.22M, ''National Industrial Security Program Operating Manual (NISPOM).'' DD Form 441 is the initial contract between industry and the government. The DD Form 441–1 is used to extend the agreements to branch offices of the contractor. The SF Form 328 must be submitted to provide certification regarding elements of Foreign Ownership, Control or Influence (FOCI).

*Affected Public:* Business or Other For-Profit; Not-For-Profit Institutions; State, Local or Tribal Government.

*Frequency:* On Occasion.

*Respondents Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: June 24, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–14728 Filed 6–29–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** National Defense University; National Security Education Program, DoD.

**ACTION:** Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Vice President, National Defense University, announces the proposed

reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 of the proposed information collection; (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 collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 30, 2004.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Attn: Dr. Edmond J. Collier, Arlington, VA 22209–2248.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the National Security Education Program Office, at (703) 696–1991.

*Title; Associated Form; and OMB Number:* National Security Education Program (NSEP) Service Agreement for Scholarship and Fellowship Awards; DD Form 2752; OMB Number 0704–0368. National Security Education Program (NSEP) Service Agreement Report (SAR); DD Form 2753; OMB Number 0704–0368.

*Needs and Uses:* The information collection requirement is necessary to obtain verification that applicable scholarship and fellowship recipients are fulfilling service obligation mandated by the National Security Education Program Act of 1991, Title VIII of Public Law 102–183, as amended.

*Affected Public:* U.S. individuals or households; federal government agencies.

*Annual Burden Hours:* 300.

*Number of Respondents:* 300.

*Responses Per Respondent:* 2.

*Average Burden Per Response:* 30 minutes.

*Frequency:* Semi-annual.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are recipients of undergraduate scholarships and graduate fellowship assistance from the National Security Education Program (NSEP), established by the National Security Education Act of 1991. DD Form 2752 is the Service Agreement that award recipients sign in order to acknowledge their understanding of their service obligation, and agree to the obligation. DD Form 2753 is the Service Agreement Report Form on which the student provides an account of his or her work toward fulfilling the service obligation, or justifies a request for deferment. The forms supporting this information collection requirement represent the sole means of establishing a written agreement of the service obligation and progress reports toward fulfilling this obligation between students who receive NSEP undergraduate scholarships and graduate fellowship awards, the program office and the Department.

Dated: June 23, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–14729 Filed 6–29–04; 8:45 am]

BILLING CODE 5001–06–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by July 30, 2004.

*Title and OMB Number:* Request for Approval of Foreign Government Employment of Air Force Members; OMB Number 0701–0134.

*Type of Request:* Extension.

*Number of Respondents:* 212.

*Responses Per Respondent:* 1.

*Annual Responses:* 212.

*Average Burden Per Response:* 1 hour.

*Annual Burden Hours:* 212.

*Needs and Uses:* The information collection requirement is necessary to obtain the information needed by the Secretary of the Air Force and the Secretary of State on which to base a decision to approve a request to work for a foreign government. This approval is specified by title 37, United States Code, section 908. Respondents are Air Force retired members and certain Reserve members who have gained jobs with a foreign government. The information required, in the form of a letter, includes a detailed description of duty, name of employer, Social Security Number, and statements: specifying whether or not the employee will be compensated; declaring if employee will be required or plans to obtain foreign citizenship; declaring that the member will not be required to execute an oath of allegiance to the foreign government; verifying that the member understands that retired pay, equivalent to the amount received from the foreign government, may be withheld if he or she accepts employment with a foreign government before receiving approval. After verifying the status of the individual, the letter is forwarded to the Air Force Review Board for processing.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondents's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: June 23, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 04–14732 Filed 6–29–04; 8:45 am]

BILLING CODE 5001–06–M

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Defense Science Board (DSB) Task Force on Strategic Strike Skills will meet in closed session on September 15–16, 2004, at the Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess the future strategic strike force skills needs of the Department of Defense (DoD).

The mission of the DSB is to advise the Secretary of Defense and the Under

Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Last summer the DSB assessed DoD needs for future strategic strike forces. Assessed was the application of technology for non-nuclear weapons systems, communications, planning systems, and intelligence as well as the integration of strategic strike with active defenses as part of the new triad. This ''skills'' study will complement the previous strategic forces study by focusing on the people and the skills necessary to develop, maintain, plan, and successfully execute future strategic strike forces. At this meeting, the Task Force will: Assess current skills available, both nuclear and non-nuclear of current long-range strike forces; identify, assess and recommend new/modified/enhanced skill sets necessary for successful future strike force development, planning, and operations; and recommend a strategy for the successful evolution of the current skills to those required by future strike forces.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. app. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: June 23, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–14730 Filed 6–29–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** The Defense Science Board Task Force on High Performance Microchip Suppply will meet in closed session on August 19, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess the implications of the movement of manufacturing capability and design of high performance microchips and will address the Department of Defense's (DoD) ability to obtain radiation hardened microchips, the ability to produce limited quantities of special purpose microchips in a timely and secure manner, and the ability to produce microchips in a timely manner to meet emerging needs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Specifically, the Task Force will look at root causes associated with the migration of the manufacturing capability of high performance semiconductors; policies or technology investments that DoD, either alone or in conjunction with other U.S. government agencies, can pursue which will influence the migration of manufacturing to foreign shores; alternatives to the creation of trusted foundries based on U.S. territory; whether testing is a viable alternative and if so, the level of assurance testing will provide to guarantee that only intended functions are built into the microchip; alternative manufacturing techniques which may allow overseas fabrication of the microchips and subsequent interconnect development in the U.S.; and future technologies which the U.S. may invest in to replace the current microchip technology.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C.. app. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: June 23, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–14731 Filed 6–29–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### U.S. Court of Appeals for the Armed Forces Proposed Rule Changes; Change in Date

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense published an announcement U.S. Court of Appeals for the Armed Forces Proposed Rule Changes on June 15, 2004 (69 FR 33363). This notice adds a public comment period to read as follows:

**DATES:** Comments on the proposed changes must be received by July 15, 2004.

All other information remains unchanged.

Dated: June 24, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–14797 Filed 6–29–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, 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 August 30, 2004.

**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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, 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: June 23, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of the Chief Financial Officer

*Type of Review:* Extension.

*Title:* GEPA Section 427 Guidance for All Grant Applications.

*Frequency:* One-time.

*Affected Public:* State, local, or tribal Gov't, SEAs or LEAs (primary), Businesses or other for-profit, Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 21,200.

Burden Hours: 31,800.

*Abstract:* In compliance with Section 427 of the General Education Provisions Act, as amended by Public Law 103–282, all applicants for grant awards made by the U.S. Department of Education are required to describe in their applications the steps they propose to take to ensure equitable access to, and equitable participation in, the proposed grant activities conducted with federal funds. The Department has developed a single document that provides common guidance for all competitive and formula grant applicants.

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 2568. 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 the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@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. 04–14757 Filed 6–29–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 30, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 23, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Reinstatement.

*Title:* Case Service Report.

*Frequency:* Annually.

*Affected Public:* State, local, or tribal Gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 80.

Burden Hours: 3,600.

*Abstract:* As required by Sections 13, 101(a)(10), 106 and 626 of the Rehabilitation Act, the data are submitted annually by State VR agencies. The data contain personal and program-related characteristics, including economic outcomes of persons with disabilities whose case records are closed.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2484. 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 the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@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. 04–14758 Filed 6–29–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 30, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 23, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Office of Postsecondary Education

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Title:* Technological Innovation and Cooperation for Foreign Information Access.

*Frequency:* Annually.

*Affected Public:* Individuals or household (primary).

*Reporting and Recordkeeping Hour Burden:*

Responses: 813.

Burden Hours: 813.

*Abstract:* This collection is used to obtain the programmatic and budgetary information needed to evaluate applications and make funding decisions Without the information collected on this form the Department would not be able to make awards and disperse appropriated funds in accordance with the authorizing legislation.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2573. 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 the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe.Schubart@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. 04–14759 Filed 6–29–04; 8:45 am]

**BILLING CODE 4000–01–P**

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## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 30, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 25, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

### Institute of Education Sciences

*Type of Review:* New.

*Title:* Early Reading First National Evaluation.

*Frequency:* On Occasion.

*Affected Public:* Individuals or household; Businesses or other for-profit, Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 5,685.

Burden Hours: 2,256.

*Abstract:* The proposed data collection is necessary to complete the national evaluation of Early Reading First. The ERF national evaluation will use a regression discontinuity design, including a baseline and two follow-up assessment points, to determine the extent to which the additional funds and technical assistance given to ERF grantees change the instructional content and children's outcomes compared to the content and outcomes in the absence of ERF. The evaluation will also explore the extent to which variations in program quality and implementation are associated with differences in participant outcomes. The respondents for this research initiative include children, parents, teachers and preschool directors. The evaluation results will be used by policymakers to document ERF's effectiveness, understand best practices, and inform decisions about expansion.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2531. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington,

DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@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 directed to Kathy Axt at her e-mail address *Kathy.Axt@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. 04–14810 Filed 6–29–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, 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 August 30, 2004.

**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 Leader, Regulatory Information Management Group, Office of the Chief Information Officer, 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: June 25, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

**Office of Elementary and Secondary Education**

*Type of Review:* New.

*Title:* Improving Literacy Through School Libraries Program Final Grant Report.

*Frequency:* Annually.

*Affected Public:* State, local, or tribal gov't, SEAs or LEAs.

*Reporting and Recordkeeping Hour Burden:*

Responses: 100.

Burden Hours: 500.

*Abstract:* The Improving Literacy Through School Libraries Program Final Grant Report will be used by grantees at the end of the project period to show necessary data on the accomplishment of approved activities. The report will identify, by occupation and contributed time, key personnel. It will confirm the schools and the number of students served. It will show changes in school library access hours. School districts will show the differences between the number of ibrary resources and computers before and during the year of the award. The beneficiaries of professional development activities, if applicable, are also requested. The breakdown of grant expenditures per activity is also described. Important data on student reading achievement by school is also requested.

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 2564. 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 the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@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. 04–14811 Filed 6–29–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.358A]**

### Small, Rural School Achievement Program

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Notice announcing application deadline.

**SUMMARY:** Under the Small, Rural School Achievement (SRSA) Program, we award grants on a formula basis to eligible local educational agencies (LEAs) to address the unique needs of rural school districts. In this notice, we establish the deadline for submission of the fiscal year (FY) 2004 SRSA grant applications.

As discussed in this notice, some LEAs that are eligible for FY 2004 SRSA funds are considered already to have met the application requirement based on their previously submitted application and do not have to submit a new application to the Department to receive their FY 2004 SRSA grant awards.

**DATES:** *Application Deadline:* July 30, 2004, 4:30 p.m. eastern time.

**SUPPLEMENTARY INFORMATION:**

**Which LEAs Are Eligible for an Award Under the SRSA Program?**

An LEA is eligible for an award under the SRSA Program if—

(a) The total number of students in average daily attendance at all of the schools served by the LEA is fewer than 600; *or* each county in which a school served by the LEA is located has a total population density of fewer than 10 persons per square mile; *and*

(b) All of the schools served by the LEA are designated with a school locale code of 7 or 8 by the Department's National Center for Education Statistics; *or* the Secretary has determined, based on a demonstration by the LEA and

concurrence of the SEA, that the LEA is located in an area defined as rural by a governmental agency of the State.

The SRSA spreadsheets on the Department's Web site at *http://www.ed.gov/offices/OESE/reap.html* identify which LEAs meet these requirements and are eligible to participate in the SRSA program.

**Which Eligible LEAs Need Not Submit an Additional Application To Receive a FY 2004 SRSA Grant Award?**

Under the regulations in 34 CFR 75.104(a), the Secretary makes grants only to an eligible party that submits an application. Given the limited purpose served by an application under this program, the Secretary considers this requirement to be met if—

(1) The LEA received a FY 2003 SRSA grant award; *and*

(2) The LEA had drawn down at least 80 percent of its FY 2002 award by June 30, 2004, if it received a FY 2002 SRSA grant award.

In this circumstance, unless the LEA advises the Secretary by the application deadline that it is withdrawing its application, the Secretary deems the application that the LEA previously submitted to remain in effect for FY 2004 funding, and the LEA does not have to submit an additional application. All other eligible LEAs must submit a new application to receive a FY 2004 grant award.

We have provided on the Department's Web site at *http://www.ed.gov/offices/OESE/reap.html* a list of LEAs eligible for FY 2004 funds. The Web site also indicates which of these eligible LEAs must submit a new application to the Department to receive their FY 2004 SRSA grant award, and which eligible LEAs are considered already to have met the application requirement.

Eligible LEAs that must submit a new application in order to receive FY 2004 SRSA funding must do so electronically by the deadline established in this notice.

**Electronic Submission of Applications**

Unless it is listed on the Department's Web site as not required to submit a new application, an eligible LEA that seeks FY 2004 SRSA funding must submit an electronic application by July 30, 2004, 4:30 pm eastern time. Submission of an electronic application involves the use of the Department's Electronic Grant Application System (e-Application) available through the Department's e-GRANTS system.

You can access the electronic application for the SRSA Program at: *http://e-grants.ed.gov.*

Once you access this site, you will receive specific instructions regarding the information to include in your application.

The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight, Saturday (Washington, DC time). Please note that the system is unavailable on Sundays, and after 7 p.m. on Wednesdays for maintenance (Washington, DC time).

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Hitchcock. Telephone: (202) 401–0039 or via Internet: *reap@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

*Electronic Access to This Document:* You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll-free, at 1–888–293–6498; or in the Washington DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official version of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 7345–7345b.

Dated: June 24, 2004.

**Raymond J. Simon,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 04–14861 Filed 6–29–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Interagency Committee on Disability Research (ICDR)

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of public meetings and request for written comments.

**SUMMARY:** This notice describes the schedule and agenda of two forthcoming meetings of the Interagency Committee on Disability Research (ICDR). Notice of these meetings are intended to inform members of the general public of their opportunity to attend the meetings and provide comment. During the public meetings and through the submission of written comments, we encourage individuals with disabilities, including persons who represent service providers, service provider organizations, disability and rehabilitation research and policy groups, and representatives of advocacy organizations with specialized knowledge and experience, to suggest specific ways to improve future research for individuals with disabilities. We are also interested in hearing from individuals concerning how well the existing Federal research programs are responding to the changing needs of individuals with disabilities. We are interested in comments covering a range of areas, including but not limited to employment, community life, education, technology and health. Your information will be used by the ICDR in its deliberations; however, we cannot respond individually to your comments. The meetings will be open and accessible to the general public.

**SUPPLEMENTARY INFORMATION:** The Interagency Committee on Disability Research (ICDR), authorized by the Rehabilitation Act of 1973, as amended, promotes coordination and cooperation among Federal departments and agencies conducting disability and rehabilitation research programs. Representatives of 35 Federal entities regularly participate in the ICDR. In addition to the full committee, five subcommittees address specific issues: Disability Statistics, Medical Rehabilitation, Technology, Technology Transfer and the New Freedom Initiative. The goals of the ICDR and its Subcommittees are to: (1) Increase public input and involvement in ICDR deliberations to ensure research efforts lead to solutions for identified needs, (2) improve the visibility of the ICDR and Federal disability research in general, (3) identify and solve common problems through collaboration among agencies, and (4) initiate and monitor activities involving interagency coordination and cooperation in support of the New Freedom Initiative.

According to statute (Rehabilitation Act of 1973, as amended): ''After receiving input from individuals with disabilities and the individuals' representatives, the Committee shall identify, assess, and seek to coordinate

all Federal programs, activities, and projects, and plans for such programs, activities, and projects with respect to the conduct of research related to rehabilitation of individuals with disabilities.''

The ICDR maintains a public Web site at *http://www.icdr.us*, which contains additional information about the ICDR. This public Web site also provides a comment form for collection of comments regarding the Federal research agenda in disability and rehabilitation research. The purpose of these public meetings and request for written comments is to ensure that individuals who may not have access to the Internet and the ICDR public Web site also have an opportunity to submit comments.

The Director of the National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services, Department of Education is Chair of the ICDR. The Director announces two public meetings in 2004 and invites written comments with respect to the Federal disability and rehabilitation research agenda. Representatives of the ICDR will be present at the meetings to hear your comments. Your comments will be used by the ICDR in its deliberations; however we will not respond individually to your comments.

*Dates, Times, and Addresses:*

*Meeting 1:* July 20, from 2 p.m. to 5 p.m. in San Francisco, the Palace Hotel, 2 New Montgomery Street, Meeting Room: Mendocino, San Francisco, CA 94105. Telephone: (415) 512–1111.

*Meeting 2:* July 22, 2004, from 10 a.m. to 3 p.m. in the Washington, DC Metropolitan Area, the Ritz Carlton Hotel, Pentagon City, 1250 South Hayes Street, Meeting Room: Plaza D, Arlington, VA 22202. Telephone: (703) 415–5000.

**FOR FURTHER INFORMATION CONTACT:** Robert Jaeger, Executive Secretary ICDR, U.S. Department of Education, 550 12th Street, SW., room 6050, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7386. Fax: (202) 245–7633. Internet: *Robert.Jaeger@ed.gov*.

Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–4475.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, material in alternative format) should notify Robert Jaeger at (202) 245–7386 or (202) 205–4475 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

*Participants:* Individuals who wish to present comments at either public meeting must reserve time on the agenda by contacting the individual identified under Reservations and Additional Meeting Information: Reservations for presenting comments will be accepted on a first-come, first-served basis. Given the expected number of individuals interested in presenting comments at the meetings, reservations should be made as soon as possible. Individuals must specify the location (San Francisco or Washington, DC) where they plan to attend.

*Format:* Participants will be allowed approximately five minutes to present their comments, depending upon the number of individuals who reserve time on the agenda. Prior to the meeting, participants must submit written copies of their comments, and other written or electronic versions of information such as agency or organization policy statements, recommendations, research findings and research literature. Walk-ins must bring two written copies of their comments.

*Reservations and Additional Meeting Information:* All individuals attending the public meetings, including those presenting comments, must make reservations by July 9, 2004, by contacting: Robert Jaeger, Executive Secretary, ICDR.

If time permits, individuals who have not registered in advance may be allowed to make comments.

*Assistance to Individuals with Disabilities at the Public Meeting:* The meeting room and proceedings will be accessible to individuals with disabilities. In addition, when making reservations, anyone presenting comments or attending the meetings who needs special accommodations, such as sign language interpreters, Brailled agenda, computer-assisted real-time (CART) reporting, should inform the previously listed individual of his or her specific accessibility needs. You must make requests for accommodations on or before July 9, 2004. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

*Due Dates:* We request your registration to attend along with written and e-mail comments to be provided no later than July 9, 2004.

**ADDRESSES:** Submit all comments to: Robert Jaeger, Executive Secretary ICDR, U.S. Department of Education, 550 12th Street, SW., room 6050, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7386. Fax: (202) 245–7633. Internet: *Robert.Jaeger@ed.gov*.

If you use a telecommunications device for the deaf, you may call (202) 205–4475.

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Dated: June 24, 2004.

**Troy R. Justesen,**

*Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 04–14860 Filed 6–29–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

**[Docket No. EA–293]**

## Application To Export Electric Energy; Coral Energy Management, LLC

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Coral Energy Management, LLC (Coral) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before July 30, 2004.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On May 24, 2004, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Coral to transmit electric energy from the United States to Mexico for a period of five years. Coral is owned by subsidiaries of Shell Oil Company and InterGen, N.V., with its principal place of business in Houston, Texas. Coral does not own or control any electric generation facilities, nor does it have a franchised electric power service area. The electric energy which Coral proposes to export to Mexico would be purchased from electric utilities and other suppliers within the U.S.

Coral proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by San Diego Gas & Electric Company, El Paso Electric Company, Central Power and Light Company, Baja California Power, and Comision Federal de Electricidad, the national electric utility of Mexico. The construction of each of the international transmission facilities to be utilized, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

FE notes that Coral has requested it be authorized to export electric energy using the 230–kV international transmission facilities currently owned by Baja California Power, Inc. (also an Intergen affiliate) and authorized by Presidential Permit PP–234. These facilities have not previously been authorized for third-party use since they do not interconnect with the system of the Comision Federal de Electricidad. Rather, these facilities connect directly to the Energia de Baja California (EBC) powerplant located in Mexicali, Mexico, and can be used in the export mode at a maximum rate of transmission of 17 megawatts (MW) only to deliver electric energy to the powerplant during startup. Presently, EBC is the only entity authorized to export over the PP–234 facilities. If granted an electricity export authorization in this docket, Coral's use of these facilities also would be limited to exports not to exceed an instantaneous transmission rate of 17 MW.

*Procedural Matters:* Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Coral application to export electric energy to Mexico should be clearly marked with Docket EA–293. Additional copies are to be filed directly with Robert Reilley, Vice President, Regulatory Affairs, 909 Fannin, Plaza Level 1, Houston, TX 77010.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on June 24, 2004.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 04–14807 Filed 6–29–04; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Revision to the Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste

**AGENCY:** Department of Energy.

**ACTION:** Revision to Record of Decision.

**SUMMARY:** The Department of Energy (DOE) is revising the Record of Decision (ROD) for its Waste Management Program: Treatment and Storage of Transuranic Waste prepared pursuant to the Waste Management Programmatic Environmental Impact Statement (WM PEIS, DOE/EIS–0200–F, May 1997). The original ROD was issued on January 20, 1998 (63 FR 3629), and revised on December 19, 2000 (65 FR 82985), July 13, 2001 (66 FR 38646), and September 6, 2002 (67 FR 56989). This present revision, based on consideration of new information, confirms DOE's September 6, 2002, decision to ship its transuranic (TRU) waste from the Battelle West Jefferson North Site (West Jefferson Site) in Columbus, Ohio, to the Hanford Site near Richland, Washington, for storage, processing, and certification, pending disposal at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico.

In its September 6, 2002, decision, DOE stated that it would transfer small quantities of TRU waste from the West Jefferson Site (approximately 27 cubic meters), and the Energy Technology Engineering Center (ETEC) (approximately 9 cubic meters) in Canoga Park, California, to the Hanford Site for storage. The TRU waste would be shipped to Hanford from both sites in Type B truck-mounted shipping casks licensed by the U.S. Nuclear Regulatory Commission (NRC) and ultimately shipped to WIPP.

After issuing its September 6, 2002, decision, DOE completed the ETEC shipments and three shipments of the West Jefferson TRU waste (about five cubic meters) to Hanford. In March 2003, DOE suspended further shipments of West Jefferson TRU waste to Hanford, and subsequently a preliminary injunction stopping further shipments of TRU waste to Hanford from West Jefferson was issued by the U.S. District Court for the Eastern District of Washington in response to actions filed by the State of Washington and Columbia Riverkeeper. Shipments of TRU waste to Hanford for storage and certification for disposal at WIPP have remained suspended pending completion of the Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement (HSW EIS, DOE/EIS–0286) and lifting of the preliminary injunction. DOE completed the Final HSW EIS in January 2004, and the U.S. Environmental Protection Agency (EPA) published a Notice of Availability of the HSW EIS on February 13, 2004. In the HSW EIS, DOE analyzed site-specific impacts at Hanford associated with storage, processing, and certification of the West Jefferson and other TRU waste and, using the most recent census data (Year 2000) and an updated version of the RADTRAN computer model, DOE analyzed transportation impacts of shipping this waste. The analyses conducted in the HSW EIS confirmed conclusions previously reached in the

WM PEIS. That is, the impacts of transporting the West Jefferson TRU waste to Hanford and the onsite impacts of storing, certifying, and processing this waste for shipment to WIPP are small.

Based on the new information in the HSW EIS, as well as the information on which DOE's September 6, 2002, decision was based, DOE intends to complete the transfer of the West Jefferson TRU waste to Hanford for storage and certification prior to disposal at WIPP. The remaining shipments will not commence unless and until the preliminary injunction issued by the U.S. District Court for the Eastern District of Washington is lifted.

**ADDRESSES:** Copies of the documents referenced herein are available from the: Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, telephone: 1–800–736–3282 (in Washington, DC: 202–863–5084).

The Final HSW EIS and other relevant information can also be viewed in the DOE Public Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130W, Richland, WA 99352, telephone: 509–376–8583, Monday–Friday, 10 a.m. to 4 p.m.

The Final HSW EIS is available for review on the Internet at *http://www.hanford.gov/eis/eis-0286D2* and on the DOE National Environmental Policy Act (NEPA) Web page (*http://www.eh.doe.gov/nepa/eis/eis0286F*).

**FOR FURTHER INFORMATION CONTACT:** For copies of the Final HSW EIS and further information about the HSW EIS, contact: Mr. Michael Collins, Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, A6–38, Richland, WA 99352, telephone: 509–376–6536.

For further information on the disposal of TRU waste at WIPP, contact: Mr. Harold Johnson, U.S. Department of Energy, Carlsbad Field Office, P.O. Box 3093, Carlsbad, NM 88221, telephone: 505–234–7349.

For further information on Hanford Site TRU waste operations, contact: Mr. Mark French, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, MSIN A6–38, Richland, WA 99352, telephone: 509–373–9863.

For information on DOE's NEPA process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:**

## I. Background

TRU waste is waste that contains alpha particle-emitting radionuclides with atomic numbers greater than that of uranium (92) and half-lives greater than 20 years in concentrations greater than 100 nanocuries per gram. TRU waste is classified according to the radiation dose at a package surface. Contact-handled (CH) TRU waste has a radiation dose rate at a package surface of 200 millirem per hour or less; direct contact with this waste can be made safely by workers. Remote-handled (RH) TRU waste has a radiation dose rate at a package surface greater than 200 millirem per hour, and must be handled remotely (*e.g.*, with machinery designed to shield workers from radiation).

West Jefferson performed atomic energy research and development for DOE as part of the government's fuel and target fabrication programs from 1943–1986. DOE is contractually responsible for the disposal of CH– and RH–TRU waste generated as part of the cleanup of the West Jefferson Site. This waste consists of sample residues, analytical equipment, and hot cell fixtures that became contaminated during several decades of metallurgical and nuclear fuel research. As part of the closeout of its nuclear materials research contract, DOE is assisting in the remediation of the site. Although the West Jefferson facilities are privately owned, contract terms specify that all radioactive waste generated during the site cleanup is ''DOE-owned'' for the purposes of disposal. In the WM PEIS, prepared under the NEPA implementing regulations (40 CFR 1500–1508 and 10 CFR 1021), DOE evaluated the potential environmental impacts of treating and storing TRU waste at DOE generator sites and at DOE sites such as Hanford, where this waste could be consolidated on a regional or centralized basis. In the WM PEIS TRU Waste ROD (63 FR 3629, January 20, 1998), DOE selected the Decentralized Alternative, stating that ''each of the Department's sites that currently has or will generate TRU waste will prepare and store its waste on site'' prior to shipment to WIPP.[1] The WM PEIS TRU Waste ROD also noted that ''in the future, the Department may decide to ship transuranic wastes from sites where it may be impractical to prepare them for disposal to sites where DOE has or will have the necessary capability.'' The WM PEIS TRU Waste ROD stated that the sites that could receive TRU waste shipments from other sites were the Idaho National Engineering and Environmental Laboratory, the Oak Ridge Reservation, the Savannah River Site, and the Hanford Site, and that such decisions would be subject to appropriate review under NEPA.

In its September 6, 2002, decision, DOE identified approximately 115 55-gallon drums of RH–TRU waste (about 25 cubic meters) and approximately 10 drums of CH–TRU waste (about two cubic meters) for transfer from West Jefferson to Hanford. In that decision, based on the analysis contained in the WM PEIS and earlier analysis in of such shipments in the Environmental Assessment for Battelle Columbus Laboratories Decommissioning Project (DOE/EA–0433, June 1990), DOE concluded that the potential health and environmental impacts of shipping a total of approximately 27 cubic meters of TRU waste from West Jefferson to Hanford for storage and future certification for disposal at WIPP would be very small. Since that time, 20 drums of the previously-identified RH–TRU waste (about five cubic meters) have been transferred to Hanford, and through the decommissioning process, DOE has generated an additional 20 drums of RH–TRU waste at West Jefferson (also about five cubic meters). Thus about 25 cubic meters of RH–TRU waste remain at West Jefferson. An additional 10 cubic meters of CH–TRU waste was also generated through the decommissioning process, bringing the total remaining CH–TRU waste at West Jefferson to approximately 12 cubic meters. This waste has been packaged into six standard waste boxes. All of the TRU waste (totaling approximately 37 cubic meters) was moved from the site's hot cell building to an onsite shielded area for temporary storage in order for decontamination and demolition of the hot cell building to proceed.[2] DOE does not believe that additional TRU waste will be generated at the West Jefferson site.

In March 2003, DOE suspended further shipments of West Jefferson TRU waste to Hanford, and subsequently a preliminary injunction stopping further shipments of TRU waste to Hanford was issued by the U.S. District Court for the Eastern District of Washington in response to actions filed by the State of Washington and Columbia Riverkeeper (Nos. CT–03–5018AAM and CT–03–

[1] The only exception to this decision was the Sandia National Laboratory in New Mexico, which will ship its TRU waste to the Los Alamos National Laboratory for storage and processing before disposal at WIPP.

[2] In that same ROD, DOE also decided to transfer approximately 9 cubic meters of waste from ETEC to Hanford. Due to DOE repackaging, the actual volume of TRU waste shipped was approximately 4 cubic meters. DOE completed those shipments in December 2002.

5044AAM). Shipments of TRU waste from West Jefferson to Hanford for storage and future certification for disposal at WIPP have remained suspended pending completion of the HSW EIS and lifting of the preliminary injunction.

DOE completed the Final HSW EIS in January 2004, and EPA published a Notice of Availability of the HSW EIS on February 13, 2004 (69 FR 7215). In the HSW EIS, DOE analyzed site specific impacts at Hanford associated with storage, processing, and certification of the West Jefferson and other TRU waste, and, using the most recent census data (Year 2000) and an updated version of the RADTRAN computer model, analyzed transportation impacts of shipping this waste. The analyses conducted in the HSW EIS confirmed conclusions previously reached by the WM PEIS and the WIPP Disposal Phase Supplemental EIS–II (WIPP–SEIS–II, DOE/EIS–0026–S–2, September 1997), which supported DOE's September 6, 2002, decision. These multiple NEPA reviews show that the impacts of transporting the West Jefferson TRU waste to Hanford, and the onsite impacts of storing, certifying, and processing this waste for shipment to WIPP are small.

In the WIPP SEIS II ROD, based on the analysis In the WIPP SEIS II, DOE decided to dispose of up to 175,600 cubic meters of TRU waste generated from defense activities, including waste from the Battelle West Jefferson site, at WIPP. The Department reaffirmed that decision in the September 6, 2002, revision to the WMPEIS ROD with respect to the Battelle waste when it decided to transfer this waste to Hanford pursuant to that revision.

Section 9(a)(1)(H) of the WIPP Land Withdrawal Act exempts mixed TRU waste designated for disposal at WIPP from certain provisions of the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*:

With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. 6924(m)) and shall not be subject to the land disposal prohibitions in section 3004(d), (e), (f) and (g) of the Solid Waste Disposal Act.

WIPP Land Withdrawal Act Amendments, Public Law No. 104–201, 110 Stat. 2422 (September 23, 1996), 3188(a) at Stat. 2853. In this ROD, the Department confirms its prior designation of the mixed TRU waste at West Jefferson for disposal at WIPP in the WIPP SEIS II ROD and the September 2002 revision to the WM PEIS ROD.

EPA has approved DOE's implementation plans to characterize defense-related RH–TRU waste for disposal at WIPP. DOE is still awaiting approval of its RH waste analysis plan. DOE anticipates that WIPP will begin disposal of RH–TRU waste in the 2006 time frame. For the reasons explained in the Department's Revised Record of Decision for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase, issued concurrently with this ROD, the need for additional regulatory approval that DOE is actively seeking and reasonably expects to be able to obtain is not an obstacle to designation of this waste under section 9(a)(1)(H) of the WIPP Land Withdrawal Act.

## II. Decision

DOE intends to complete the action stated in its September 6, 2002, ROD and ship the TRU waste currently stored at the West Jefferson Site in Columbus, Ohio, to the Hanford Site in Richland, Washington. This waste consists of approximately 115 drums (about 25 cubic meters) of RH–TRU waste and 6 standard waste boxes (about 12 cubic meters) of CH–TRU waste. DOE intends to transfer the RH–TRU waste in approximately 14 shipments using truck-mounted, Type B shipping containers licensed by the NRC, and the CH waste in one shipment, also in NRC-licensed, truck-mounted Type B containers.

At Hanford, DOE will store the West Jefferson RH–TRU in shielded containers at solid (radioactive and mixed) waste management facilities located in the 200 West Area of the site until this waste can be accepted at WIPP. West Jefferson CH–TRU waste will be assayed at Hanford, and any fraction determined to be low-level waste (LLW) will be disposed of at Hanford in lined trenches.[3] West Jefferson is currently an approved generator site for disposal of LLW at Hanford.

The remaining fraction would be CH–TRU waste, which would be packaged and certified to meet the WIPP Waste Acceptance Criteria, and ultimately shipped to WIPP for disposal.

## III. Basis for the Decision

DOE needs to ship its TRU waste from the West Jefferson site in order to complete the cleanup of contaminated facilities at this site in a timely manner. The TRU waste is predominantly RH–TRU waste, which cannot presently be accepted at WIPP for disposal. Continued storage of the TRU waste on the West Jefferson Site until WIPP is ready to receive the RH–TRU waste (estimated to be in the 2006 time frame) may require construction of a new, shielded facility licensed by the State of Ohio and the NRC. Construction of a new facility could not be completed by the West Jefferson scheduled closure date of December 2005. Also, building a new facility would divert funding away from necessary clean-up activities, be inconsistent with DOE's goal of early removal of radioactive waste from privately owned sites, and result in additional costs for decontaminating and decommissioning the storage building. DOE thus needs to ship the TRU waste to another DOE site that has the requisite remote-handling and storage capabilities. In addition, DOE needs to ship the West Jefferson CH–TRU waste to a DOE site having the capabilities to process and certify CH–TRU waste for WIPP in order to avoid the cost required to establish such capability at West Jefferson, particularly for such a small waste volume.

The Hanford Site, located in Washington State near Richland, has an established radioactive waste management capability in the central plateau (200 Area) of the 586-square mile (1,520-square kilometer) reservation. DOE's Hanford Site offers a practical, safe, and secure location for storing the TRU waste from West Jefferson. Hanford is certifying and shipping CH–TRU waste according to WIPP's Waste Acceptance Criteria and applicable state and federal regulations. RH– and CH–TRU waste have been, are being, and will be managed at Hanford, which has trained waste management personnel and storage capacity for TRU waste at waste management facilities located in the 200 Area of the site. The Hanford Site's planning for facilities and operations to characterize, certify and package RH–TRU waste is also well underway.[4]

The potential health and environmental impacts of this decision would be small. The HSW EIS included an updated route-specific transportation analysis of potential low-level waste,

[3] Concurrently with the issuance of this ROD, DOE is issuing a ROD under the HSW EIS (Record of Decision for the Solid Waste Program, Hanford Site, Richland, Washington: Storage and Treatment of Low-Level Waste and Mixed Low-Level Waste; Disposal of Low-Level Waste and Mixed Low-Level Waste; and Storage, Processing, and Certification of Transuranic Waste for Shipment to the Waste Isolation Pilot Plant). DOE's decisions for onsite LLW disposal at Hanford include a requirement to dispose of such waste in lined trenches.

[4] The Hanford Solid Waste EIS analyzed construction of new and modification of existing facilities to characterize and prepare RH–TRU waste at the Hanford Site.

mixed low-level waste, and TRU waste shipments using Year 2000 census data and an updated version of the RADTRAN computer code to calculate potential risks associated with shipping. This analysis included the route-specific impacts of transporting the West Jefferson TRU waste to Hanford and subsequent shipment of this waste to WIPP. Due to the additional TRU waste generated and identified at West Jefferson subsequent to DOE's September 6, 2002, decision, DOE's currently estimated total number of 18 shipments (3 completed RH–TRU waste shipments, 14 remaining RH–TRU waste shipments, and 1 remaining CH–TRU waste shipment) exceeds DOE's prior estimate of total shipments by 3. However, the currently estimated number of shipments is within the number of shipments analyzed for the West Jefferson TRU waste in the HSW EIS (29 shipments of RH–TRU waste and 1 shipment of CH–TRU waste).

The HSW EIS also analyzed potential onsite impacts at Hanford of storage, certification, and processing of TRU waste for shipment to WIPP, including TRU waste from Hanford and offsite generators such as West Jefferson. The potential health and environmental impacts of shipping the West Jefferson TRU waste to Hanford and managing the waste there until it can be shipped to WIPP for disposal are consistent with the results presented in the WM PEIS and WIPP SEIS–II, which supported DOE's prior decision regarding the West Jefferson TRU waste.

For the reasons stated above and for the reasons stated in the September 6, 2002, revision to the WM PEIS, DOE is confirming its September 6, 2002, decision and will transfer the remaining TRU waste from West Jefferson to Hanford for storage and certification, pending shipment to WIPP for disposal once the preliminary injunction issued by the U.S. District Court for the Eastern District of Washington is lifted.

Issued in Washington, DC, this 23rd day of June, 2004.

**Jessie Hill Roberson,**

*Assistant Secretary for Environmental Management.*

[FR Doc. 04–14809 Filed 6–29–04; 8:45 am]

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## DEPARTMENT OF ENERGY

### Record of Decision for the Solid Waste Program, Hanford Site, Richland, WA: Storage and Treatment of Low-Level Waste and Mixed Low-Level Waste; Disposal of Low-Level Waste and Mixed Low-Level Waste, and Storage, Processing, and Certification of Transuranic Waste for Shipment to the Waste Isolation Pilot Plant

**AGENCY:** Department of Energy.

**ACTION:** Record of Decision.

**SUMMARY:** The U.S. Department of Energy (DOE) is making decisions regarding low-level radioactive waste (LLW), mixed low-level waste (MLLW), which contains both radioactive and chemically hazardous components, and transuranic (TRU) waste (including mixed TRU waste) at the Hanford Site in southeastern Washington State. These decisions are made pursuant to the Final Hanford Site Solid (Radioactive and Hazardous) Waste Program Environmental Impact Statement (HSW EIS, DOE/EIS–0286, January 2004). DOE prepared the HSW EIS according to requirements of the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations for implementing NEPA (40 CFR parts 1500–1508), and DOE NEPA implementing procedures (10 CFR part 1021) to evaluate the potential environmental impacts of alternatives for storage, treatment, transportation, and disposal of certain radioactive and mixed wastes at Hanford. The HSW EIS scope includes wastes that are currently stored or projected to be generated at Hanford and offsite locations through the end of Hanford's routine waste management operations. Key operations evaluated were storage, treatment, and disposal of LLW and MLLW generated at Hanford and other sites; storage, processing, and certification of TRU waste generated at Hanford and other DOE sites for shipment to the Waste Isolation Pilot Plant (WIPP) in New Mexico; and disposal of Hanford's vitrified immobilized low-activity waste (ILAW) and melters from the vitrification process.

DOE has decided to implement the preferred alternative described in the Final HSW EIS, modified as described below. This decision is based on the environmental impact analyses in the HSW EIS, including analysis of impacts to worker and public health and safety; costs; applicable regulatory requirements; and public comments. DOE will limit the volumes of LLW and MLLW received at Hanford from other sites for disposal to 62,000 $m^3$ of LLW and 20,000 $m^3$ of MLLW. Also, effective immediately, DOE will dispose of LLW in lined disposal facilities, a practice already used for MLLW. In addition, DOE will construct and operate a lined, combined-use disposal facility in Hanford's 200 East Area for disposal of LLW and MLLW, and will further limit offsite waste receipts until the facility is constructed. LLW and MLLW requiring treatment will be treated at either offsite facilities or existing or modified onsite facilities, as appropriate. Storage, processing and certification of TRU waste for subsequent shipment to WIPP will occur at existing and modified onsite facilities. DOE expects the preferred alternative, as described in this Record of Decision (ROD), will have small environmental impacts, provide a balance among short- and long-term environmental impacts and cost effectiveness, be consistent with applicable regulatory requirements, and provide DOE with the capability to accommodate projected waste receipts from the Hanford Site and offsite DOE facilities.

**ADDRESSES:** For copies of the Final HSW EIS and further information about the HSW EIS, contact: Mr. Michael Collins, Document Manager, U.S. Department of Energy Richland Operations Office, P.O. Box 550, A6–38, Richland, WA 99352, telephone: 509–376–6536.

The Final HSW EIS and related information can also be viewed in the DOE Public Reading Room, Washington State University, Tri-Cities Campus, 100 Sprout Road, Room 130W, Richland, WA 99352, telephone: 509–376–8583, Monday–Friday, 10 a.m. to 4 p.m.

The Final HSW EIS is also available for review on the Internet at *http://www.hanford.gov/eis/eis-0286D2* and on the DOE NEPA Web page (*http://www.eh.doe.gov/nepa/eis/eis0286F*).

**FOR FURTHER INFORMATION CONTACT:** For information concerning the HSW EIS or onsite management operations at Hanford contact Mr. Michael Collins at the address or telephone number provided above.

Information on the DOE NEPA process may be requested from Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Ms. Borgstrom may be contacted by telephone at (202) 586–4600 or by leaving a message at (800) 472–2756.

**SUPPLEMENTARY INFORMATION:**

### Purpose and Need for Action

DOE needs to provide capabilities to continue or modify the way it manages

existing and anticipated quantities of solid LLW, MLLW, and TRU waste at the Hanford Site located in southeastern Washington in order to: Protect human health and the environment; facilitate cleanup at Hanford and other DOE facilities; take actions consistent with DOE's decisions under the Waste Management Programmatic Environmental Impact Statement (WM PEIS, DOE/EIS–0200, May 1997); comply with applicable local, State, and Federal laws and regulations; and meet other obligations such as the Hanford Federal Facility Agreement and Consent Order (also referred to as the Tri-Party Agreement, or TPA).

Specifically, DOE needs to:

- Continue to operate and modernize existing treatment, storage, and disposal facilities for LLW and MLLW, and storage and processing facilities for TRU waste;
- Construct additional disposal capacity for LLW and MLLW;
- Develop capabilities to treat MLLW for disposal at Hanford;
- Close onsite disposal facilities and provide for post-closure facility stewardship at disposal sites; and
- Develop additional capabilities to process and certify TRU waste for disposal at WIPP.

**Background**

On October 27, 1997, DOE announced its intent to prepare the HSW EIS (62 FR 55615) to support programmatic needs and plans, and provide additional capabilities and flexibility to continue to manage LLW, MLLW, and TRU waste at the Hanford Site. The HSW EIS also evaluated the potential environmental impacts of transporting, storing, processing, and certifying TRU waste from Hanford and offsite DOE generators. The Draft HSW EIS was approved in April 2002, and the U.S. Environmental Protection Agency (EPA) published a Notice of Availability of the Draft HSW EIS on May 24, 2002 (67 FR 36592). Responding to requests from the public, DOE extended the initial 45-day public comment period for the Draft HSW EIS to 90 days. DOE received about 3,800 comments on the Draft HSW EIS from individuals, organizations, agencies, and tribes.

In response to public comments, DOE expanded the scope of the HSW EIS and issued a Notice of Revised Scope for the HSW EIS on February 12, 2003 (68 FR 7110). The revised scope included the disposal of ILAW and melters at the Hanford Site. DOE also expanded its impact analyses for waste disposal and transportation. A Revised Draft HSW EIS was approved in March 2003, and EPA published a Notice of Availability on April 11, 2003 (68 FR 17801). In response to requests from the public, DOE extended the initial 45-day public comment period to 62 days. DOE's responses to all comments received during the public comment period on the Draft HSW EIS (including the complete text of written comment documents and transcripts of public meetings) were published in the Revised Draft HSW EIS, Volume III.

DOE received about 1,600 comments on the Revised Draft HSW EIS from individuals, organizations, agencies, and tribes. In response to public comments, DOE provided clarifying information and expanded analyses in the Final HSW EIS. The complete text of written comment documents and transcripts of public meetings, and DOE's response to public comments on the Revised Draft HSW EIS, were published in Volumes III and IV of the Final EIS. The Final HSW EIS was approved in January 2004, and EPA published a Notice of Availability for the Final HSW EIS on February 13, 2004 (69 FR 7215).

The Final HSW EIS addresses actions by DOE to manage LLW, MLLW, ILAW, melters, and TRU waste under Hanford's solid waste program. The HSW EIS analyzed wastes through the end of site operations which, for the purpose of the analyses, was assumed to be 2046. The wastes analyzed included:

- 283,000 $m^3$ of waste previously disposed of at Hanford in the Low Level Burial Grounds (LLBGs);
- Up to 348,000 $m^3$ of LLW that is in storage or is forecast to be received from onsite and offsite sources;
- Up to 198,000 $m^3$ of MLLW that is in storage or is forecast to be received from onsite and offsite sources;
- Up to 350,000 $m^3$ of ILAW forecast to be received from the treatment of Hanford tank waste;
- Up to 6,825 $m^3$ of melters used in the vitrification process; and
- Up to 47,550 $m^3$ of TRU waste that is in storage or is forecast to be received from onsite and offsite sources.

Section 9(a)(1)(H) of the WIPP Land Withdrawal Act exempts mixed TRU waste designated for disposal at WIPP from certain provisions of the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*:

With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. 6924(m)) and shall not be subject to the land disposal prohibitions in section 3004(d), (e), (f) and (g) of the Solid Waste Disposal Act.

(WIPP Land Withdrawal Act Amendments, Pub. L. 104–201, 110 Stat. 2422 (September 23, 1996), 3188(a) at Stat. 2853.) For a more complete discussion of the Department's implementation of this provision see the Department's Revision of the Record of Decision for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase, issued concurrently with this ROD. This HSW EIS ROD confirms the Department's prior designation of the mixed TRU waste analyzed in the HSW EIS for disposal at WIPP.

DOE initially designated up to 175,600 $m^3$ of TRU waste for disposal at WIPP in the ROD for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase. 63 FR 3624, January 23, 1998 (WIPP ROD). That decision included both contact-handled (CH) and remote-handled (RH) TRU waste in storage at the various DOE facilities across the country, as well as TRU waste projected to be generated over the life of the repository. Of that amount approximately 57,000 $m^3$ of CH–TRU waste and 2,800 $m^3$ of RH–TRU were attributed to the Hanford site. WIPP Disposal Phase Supplemental EIS–II (WIPP SEIS II). page 3–3.[1]

This ROD provides for the storage, processing, and certification for shipment to WIPP of approximately 40,000 $m^3$ of CH TRU waste and 2,600 $m^3$ of RH TRU waste at Hanford and confirms the WIPP ROD's prior designation of this waste for disposal at WIPP.[2] This inventory of TRU-waste at Hanford is less than previously analyzed for Hanford in the WIPP SEIS–II and designated for disposal by the WIPP ROD. The reduction in inventory is in part the result of further characterization and reassessment of waste assumed to be TRU waste and TRU waste projected to be generated at the Hanford site at the time the WIPP SEIS–II and the accompanying ROD to dispose of up to 175,600 $m^3$ of TRU waste at WIPP were issued.[3]

[1] The volume of RH TRU waste projected in the WIPP–SEIS–II for Hanford was conservatively estimated to be higher than the 2,800 $m^3$ volume in the Basic Inventory which was used for analytical purposes in the EIS. However, only 2,800 $m^3$ of RH–TRU waste at Hanford were included in the 175,600 $m^3$ of TRU waste designated for disposal at WIPP in the SEIS–II ROD.

[2] The CH TRU waste volume may increase or decrease depending on volume reduction or volume expansion due to the treatment or packaging for shipment to WIPP. The RH–TRU waste volume reflects the packaged amount expected to be shipped to WIPP.

[3] The volume of RH–TRU waste in the HSW EIS is also less than the estimates for Hanford used in the Department's application for recertification of compliance (CRA) submitted to EPA in March 2004, in accordance with sections 8(d)-(f) of the WIPP Land Withdrawal Act. For analytical purposes the

The Hanford TRU waste volume analyzed in the HSW EIS and addressed in this ROD does not include potential TRU waste from the Hanford tanks. These wastes have not been determined to be TRU waste and accordingly have not been designated for disposal at WIPP.

**Action Alternatives Considered in the HSW EIS**

The HSW EIS considered the range of reasonable alternatives for management of solid LLW, MLLW, TRU waste, ILAW, and melters at the Hanford Site. Currently, Hanford's solid waste program activities include transportation, storage, treatment, and disposal of LLW and MLLW, as well as transportation, storage, processing, and certification of TRU waste for shipment to WIPP. The HSW EIS considered use of both existing and proposed waste management facilities in carrying out these activities. In response to comments on the Revised Draft HSW EIS, the transportation analysis was updated to account for Year 2000 Census data, to use a more recent version of the RADTRAN computer modeling code, and expanded to consider specific transportation routes between Hanford and sites that might transfer LLW and MLLW for disposal at Hanford, and sites that might transfer their TRU waste to Hanford for storage, processing, and certification pending shipment to WIPP.

The following sections describe the action alternatives considered in the Final HSW EIS.

*Storage Alternatives*

The specific storage methods for waste awaiting treatment and/or disposal depend on the chemical and physical characteristics of the waste as well as the type and concentration of radionuclides in the waste. As described in the HSW EIS, in most cases, alternatives for storage of LLW, MLLW, and TRU waste consisted of using existing capacity at the Central Waste Complex (CWC), the T Plant Complex, the LLBGs, or other onsite facilities. Additional storage capacity was not expected to be needed to accommodate future waste receipts, because as waste in storage is treated, processed, or certified for disposal, space would become available for newly received waste. Although construction and operation of new storage facilities is not proposed in any of the action alternatives, the HSW EIS analyzed the impacts of using existing storage capacity for completeness.

*Treatment and Processing Alternatives*

Action alternatives for waste treatment examined in the Final HSW EIS applied two general approaches in developing alternatives for treating and processing wastes. The first approach would maximize the use of offsite treatment and develop additional onsite capacity to treat waste that could not be accepted at offsite facilities. DOE would establish additional contracts or agreements with a permitted offsite facility (or facilities) to treat most of Hanford's CH–MLLW and non-conforming LLW that does not meet Hanford's waste acceptance criteria for disposal. DOE would develop new onsite treatment capability by modifying the T Plant Complex as necessary for treatment of RH–MLLW and MLLW in non-standard containers, *e.g.*, oversize boxes or large items. (CH waste containers can be safely handled by direct contact using appropriate health and safety measures. RH waste containers require special handling or shielding during waste management operations.) DOE would develop new onsite processing capability by modifying the T Plant Complex as necessary for processing and certification of RH TRU waste and TRU waste in non-standard containers for shipment to WIPP.

The second approach for developing alternatives for treating and processing wastes maximizes the use of onsite treatment capabilities. If treatment capacity does not currently exist at Hanford, a new waste processing facility (or facilities) would be constructed to treat MLLW and non-conforming LLW and to process and certify RH TRU waste and TRU waste in non-standard containers for shipment to WIPP.

In both approaches, the Waste Receiving and Processing Facility (WRAP) and mobile processing units (referred to as Accelerated Process Lines, or APLs) would continue to process and certify CH TRU waste in standard containers for shipment to WIPP.

*Disposal Alternatives*

The final step in the waste management process is disposal. Disposal facilities at Hanford accept waste suitable for near-surface disposal in accordance with the Hanford Site solid waste acceptance criteria. The HSW EIS evaluated alternatives or updated previous plans for disposal of LLW, MLLW, ILAW, and melters at Hanford, including expansion, reconfiguration, and closure of onsite disposal facilities.

Disposal alternatives in the HSW EIS assumed continued use of existing disposal facilities at Hanford until new disposal capacity can be developed and permitted. All disposal facilities would meet applicable state and federal requirements. Facilities for disposal of MLLW would be constructed to regulatory standards for new MLLW facilities with double liners and leachate collection systems. LLW disposal in either lined or unlined trenches was evaluated in various alternatives. At the end of operations, all disposal facilities would be closed by applying an engineered barrier (cap) (*i.e.*, a cover of soil and other material placed over waste sites) to reduce water infiltration and the potential for intrusion.

Several different configurations and locations were evaluated for new disposal facilities needed to manage each waste type. Disposal configurations included various options for the number and size of trenches, including facilities dedicated to a single type of waste and options for combined disposal of two or more waste types in the same facility. Alternatives for segregated disposal of LLW or MLLW consisted of multiple trenches similar to those currently employed for each waste type, multiple trenches of a deeper and wider configuration, or a single expandable trench for each waste type.

Alternatives for combined disposal of two or more waste types were also evaluated. The HSW EIS considered alternatives that included two combined-use disposal facilities; one for combined disposal of LLW and MLLW, and one for combined disposal of ILAW and melters. In addition, disposal of all waste types in a single modular combined-use facility was evaluated. To ensure that wastes placed in the same module are suitable for disposal together and are compatible with the engineered disposal system, disposal in combined-use facilities would involve construction of separate modules for wastes with different characteristics.

The HSW EIS alternatives considered several different disposal locations for new or expanded disposal facilities, including use of LLBGs in the 200 West and 200 East Areas. New disposal sites in the 200 West Area near the CWC and near the PUREX facility located in the southeastern corner of the 200 East Area were also evaluated. Some alternatives evaluated combined-use disposal facilities near the existing Environmental Restoration Disposal Facility (ERDF).

volumes provided in the CRA are relatively more conservative.

**Waste Volumes**

The potential environmental consequences of action alternatives in the HSW EIS have been evaluated for three waste volumes: a Hanford Only, a Lower Bound, and an Upper Bound waste volume. These alternative waste volume scenarios encompass the range of quantities that might be generated at Hanford, and which could be received from other sites. The Hanford Only and Lower Bound waste volumes were evaluated in the No Action Alternative. The Hanford Only waste volume was included in the HSW EIS in response to requests from the public as a base volume for considering the impacts of managing offsite waste. The three waste volumes are as follows:

- The *Hanford Only* waste volume consists of (1) currently stored and forecast volumes of LLW, MLLW, and TRU waste from Hanford Site generators, (2) forecast volumes of Hanford's ILAW and melters, and (3) waste that has previously been disposed of in the LLBGs.
- The *Lower Bound* waste volume consists of (1) the Hanford Only waste volume, (2) forecast volumes of LLW and small quantities of MLLW from other sites for disposal at Hanford under existing approvals, and (3) small quantities of TRU waste from other DOE sites that would be received at Hanford for interim storage, processing, certification, and shipment to WIPP.
- The *Upper Bound* waste volume consists of the Lower Bound waste volume plus the estimated total quantities of LLW, MLLW, and TRU waste that could be received from other sites through the end of Hanford site waste management operations. All of the action alternatives summarized below included an analysis of the Upper Bound volume consistent with DOE's decisions under the WM PEIS (63 FR 3629, January 23, 1998; 65 FR 10061, February 25, 2000; and 67 FR 56989, September 6, 2002).

**Grouping of Action Alternatives**

There is a large potential number of combinations of the various waste streams, potential waste volumes, and individual options for their storage, treatment, and disposal. To facilitate the analysis and presentation of impacts, these potential combinations were grouped into five primary alternatives which comprise the range of reasonable alternatives for managing the waste types considered in the HSW EIS.

**Summary of Action Alternatives**

Each action alternative included the Hanford Only, Lower Bound, and Upper Bound waste volumes. All of the action alternatives assumed continued use of existing waste management capabilities and facilities, such as operation of WRAP and the APLs to process and certify CH TRU waste, and use of existing disposal facilities until new ones can be designed, permitted, and constructed. All of these alternatives assumed all disposal facilities would be closed with an engineered barrier (cap) designed and installed to meet regulatory requirements applicable to MLLW disposal facilities.

*Alternative Group A—Disposal by Waste Type in Deeper, Wider Trenches—Onsite and Offsite Treatment:* New LLW and MLLW disposal trenches would be deeper and wider than those currently in use, and facilities for disposal of MLLW, ILAW, and melters would include liners and leachate collection systems. Different waste types would be disposed of in separate facilities. New LLW disposal facilities would be located in the 200 West Area and new MLLW, ILAW, and melter disposal facilities would be located in the 200 East Area. Existing facilities would be modified to provide processing capabilities for RH TRU waste and TRU waste in non-standard containers, as well as treatment capabilities for RH–MLLW and MLLW in non-standard containers. Most CH–MLLW would be treated in commercial treatment facilities.

*Alternative Group B—Disposal by Waste Type in Existing Design Disposal Trenches—Onsite Treatment:* Disposal trenches for LLW and MLLW would be of the same design as those currently in use. Different waste types would be disposed of separately. New LLW and ILAW disposal facilities would be located in the 200 West Area, and new MLLW and melter disposal facilities would be located in the 200 East Area. A new facility would be built to provide processing capabilities for RH TRU waste and TRU waste in non-standard containers, as well as treatment capabilities for RH–MLLW, most CH–MLLW, and MLLW in non-standard containers.

*Alternative Group C—Disposal by Waste Type in Expandable Design Facilities—Onsite and Offsite Treatment:* A single, expandable disposal facility (similar to the ERDF) would be used for each waste type. Different waste types would be disposed of in separate facilities. A new LLW disposal facility would be located in the 200 West Area and new MLLW, ILAW, and melter disposal facilities would be located in the 200 East Area. Treatment alternatives would be the same as those described for Alternative Group A.

*Alternative Group D—Single Combined-use Disposal Facility—Onsite and Offsite Treatment:* LLW, MLLW, ILAW, and melters would be disposed of in a single combined-use facility. Disposal would occur at one of three locations.

*Alternative Group D1:* in the 200 East Area near the PUREX facility.

*Alternative Group D2:* in the 200 East Area LLBGs.

*Alternative Group D3:* at the ERDF.

Treatment alternatives would be the same as those described for Alternative Group A. Alternative Group D1 was identified as the preferred alternative in the Final HSW EIS.

*Alternative Group E—Dual Combined-use Disposal Facilities—Onsite and Offsite Treatment:* Two combined-use disposal facilities would be constructed. One facility would be used for disposal of LLW and MLLW, and a second would be used for disposal of ILAW and melters. Disposal would occur in one of three combinations of locations.

*Alternative Group* $E_1$: ILAW and melters at ERDF, LLW and MLLW within the existing 200 East Area LLBGs.

*Alternative Group* $E_2$: ILAW and melters at ERDF, LLW and MLLW in the 200 East Area near the PUREX facility.

*Alternative Group* $E_3$: ILAW and melters in the 200 Area near the PUREX facility, LLW and MLLW at ERDF.

Treatment alternatives would be the same as those described for Alternative Group A.

**No Action Alternative**

Analyzing a No Action Alternative is required under NEPA regulations and provides an environmental baseline against which the impacts of other alternatives can be compared. The HSW EIS No Action Alternative would continue ongoing waste management activities. However, the HSW EIS No Action Alternative did not include development of new capabilities to manage wastes that cannot currently be treated, or which are otherwise not suitable either for shipment to WIPP or for onsite disposal under the Hanford Site solid waste acceptance criteria. Under the No Action Alternative, these wastes would be stored indefinitely with no path forward for ultimate disposition and DOE would not be able to meet all applicable regulatory requirements or TPA milestones for management of those wastes.

Hanford's treatment and processing capacity under the No Action Alternative would be limited to existing onsite capabilities and previously established contracts with offsite

facilities to treat small quantities of MLLW. Disposal of LLW in the LLBGs would continue using trenches of the current design. The trenches would be backfilled with soil but would not be capped. Two existing MLLW trenches would be filled to capacity and capped in accordance with applicable regulations. Processing and certification of some CH TRU waste at WRAP and the APLs would continue, and certified wastes would be shipped to WIPP. Any wastes that could not be treated, processed, certified, or disposed of would require indefinite storage. The CWC would be expanded to store most unprocessed or uncertified TRU waste and most untreated LLW and MLLW, as well as melters and other treated MLLW exceeding existing disposal capacity. Small quantities of waste could also be stored at other locations, such as T Plant or the LLBGs. ILAW would be stored in concrete vaults to be constructed near the PUREX facility located in the southeastern corner of the Hanford Site 200 East Area.

**Environmentally Preferable Alternative**

All of the action alternative groups were estimated to result in low environmental impacts, with small differences in impacts among the alternative groups. No occupational fatalities or increased incidences of cancer or fatal chemical exposures associated with normal operations would be expected from any of the action alternatives. Although potential adverse impacts on soils, air quality, noise levels, visual resources, socioeconomic conditions, resource availability, and land use could occur with any of the alternatives, these impacts would be low. Potential transportation impacts, including incidence of cancer and fatalities from accidents, would be very small. Because transportation impacts are related to the number of shipments, such impacts would increase with increasing waste volumes being shipped to, from, and within the Hanford Site. The maximum potential transportation impacts calculated for all the action alternatives were associated with the upper bound volume and would possibly result in up to 75 accidents, up to a total of three potential fatalities resulting from those accidents, and up to 10 potential latent cancer fatalities during routine transport. A substantial portion of these potential transportation impacts would be from shipments of TRU waste generated at Hanford that DOE had previously decided to ship to WIPP for disposal.

No single alternative group could be identified as the environmentally preferable alternative for all types of impacts considered in the HSW EIS. Although Alternative Group D1 may result in greater potential impacts to the shrub-steppe habitat at Hanford than the other alternative groups, it shows slightly lower impacts to other resource areas. On balance Alternative Group D1 would be environmentally preferable for most types of potential impacts.

Compared to the other action alternative groups, the preferred alternative identified in the Final HSW EIS (Alternative Group D1) would have slightly lower long-term impacts on water quality and slightly lower long-term dose impacts if groundwater is used for drinking water and other uses, but somewhat greater potential for disturbance of shrub-steppe habitat over the operational period. Incremental doses from radionuclides in groundwater at 100 meters from disposal facilities would not exceed the 4-millirem-per-year DOE benchmark (based on radiation dose conversion factors as published in Federal Guidance Reports 11 and 12 [EPA–520/1–88–020 and EPA–402–R–93–081, respectively]). Due to differences in the new disposal facility design, construction, operation, location, and waste packaging and/or encapsulation (which affect the concentration, location, and time of any release), constituents migrating from the new lined, combined-use disposal facilities, when added to impacts remaining from past waste disposal activities, would not be expected to result in exceedences of maximum contaminant levels [4] in groundwater at points beyond the disposal facility boundary.

**Transportation of Waste**

Shipments of LLW, MLLW and TRU waste to Hanford and subsequent shipment of TRU waste from Hanford to WIPP are the subject of previous decisions made under the WM PEIS (63 FR 3629, 65 FR 10061, and 67 FR 56989) and WIPP Disposal Phase Final Supplemental EIS SEIS–II (DOE/EIS–0026–S–2). In response to public interest in potential transportation impacts and risks of shipping offsite waste to Hanford and shipments of TRU waste from Hanford to WIPP, the HSW EIS includes an updated route-specific transportation analysis of potential LLW, MLLW, and TRU waste shipments using Year 2000 census data and an updated version of the RADTRAN computer modeling code. The transportation analyses conducted in the HSW EIS confirmed conclusions previously reached by the WM PEIS.

**Comments on the Final HSW EIS**

Comments on the Final HSW EIS were received from the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes and Bands of the Yakama Indian Nation, members of Congress, EPA, the State of Washington Department of Ecology, and the Oregon Department of Energy. The major concerns raised in the comments, along with DOE's responses, are as follows:

- Opposition to the importation to Hanford of waste from other sites, primarily LLW and MLLW for disposal, in the face of the need to clean up the Hanford Site: DOE has decided to restrict receipt of LLW and MLLW from other sites for disposal at Hanford. DOE is also pursuing a strategy whereby Hanford's TRU waste, high-level waste, and spent nuclear fuel will be shipped offsite to federal repositories built to provide the high degree of isolation from the human environment required for these wastes. DOE expects that the benefits of these actions, coupled with other remediation programs at Hanford, will contribute significantly to attaining sound cleanup goals for Hanford.
- *Opposition to disposal of LLW in unlined trenches and the threat this poses to Hanford's groundwater:* DOE has decided to dispose of LLW in lined trenches, effective immediately. DOE will use existing lined trenches until the new lined, combined-used disposal facility is available, which is expected in approximately the 2007 time frame.
- *Mitigation necessary to protect groundwater and the Columbia River:* DOE has decided to institute new mitigation measures, including installation of secondary leak detection capability in the new lined, combined-use disposal facility, in addition to existing mitigation measures summarized in ''Mitigation Measures'' below.
- *Declaration of irretrievable and irreversible commitment of groundwater as a means of abrogating cleanup responsibilities:* As stated in the HSW EIS, DOE believes that already present contamination from past practices precludes the beneficial use of groundwater beneath portions of the Hanford Site for the foreseeable future, as a matter of protecting public health. DOE will continue to use ongoing cleanup programs to address contaminants resulting from past practices. DOE intends to meet its responsibilities for cleanup and site remediation and is not changing

[4] Contaminant concentration limits for drinking water supplied by public water systems as set by EPA or the Washington State Department of Health were used as a benchmark in the HSW EIS to compare the potential impacts of alternatives.

existing groundwater remediation activities or commitments. Groundwater protection, monitoring and remediation will continue to be performed consistent with the TPA, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) past-practice requirements.

• *Adequacy of groundwater analyses in the Final HSW EIS:* As stated in the HSW EIS, there are uncertainties in the data about the geology and groundwater at Hanford and in the analytical approaches available to estimate potential environmental impacts. DOE accounted for uncertainties by using conservative assumptions in the groundwater analyses. Accordingly, DOE believes that sufficient information currently exists to enable DOE to make informed decisions regarding waste management. DOE will continue to support ongoing investigative efforts to improve its technical and analytical capabilities.

• *Adequacy of the existing groundwater monitoring system near unlined disposal trenches:* Groundwater monitoring wells including those near unlined disposal trenches will be installed, operated, and removed from service consistent with the TPA and applicable regulations. DOE will install 17 additional wells around the LLBGs to meet its commitment under the M–24 series of TPA milestones. (The M–24 series of TPA milestones also has mechanisms for determining future Hanford Site groundwater monitoring needs.) Other monitoring needs for the LLBGs will be established through ongoing permitting processes with the State of Washington Department of Ecology. The Hanford Site Groundwater Strategy (DOE/RL–2002–59, February 2004) addresses monitoring as part of a larger program to protect the groundwater, monitor the groundwater, and continue remediating existing contamination. Other TPA milestones establish dates for completing investigations of existing sites where waste was disposed of and deciding how these sites will be closed.

• *''Long-term stewardship'' is not being adequately addressed at Hanford:* Accelerating cleanup at the Hanford Site and disposing of additional LLW and MLLW from Hanford and other DOE sites requires attention to long-term stewardship both now and in the future. Hanford Site closure and long-term stewardship are being addressed consistent with the TPA and applicable CERCLA and DOE requirements, including monitoring, periodic reassessments of past decisions, and institutional controls. These requirements address the potential application of new technologies during periodic reassessments. DOE will continue to refine and implement the Hanford Long-Term Stewardship Program: Preparation for Environmental Management Cleanup Completion (DOE/RL–2003–39, August 2003), which has been developed with the input of regulators and stakeholders over the last several years. Because of the need to prepare for its post-cleanup mission, DOE has established the Office of Legacy Management to monitor, maintain, and reassess sites after they are closed. Decisions made in this ROD are consistent with existing and planning efforts.

• *Lack of information on retrieval and treatment of tank waste:* As stated in the HSW EIS, DOE is preparing the ''Environmental Impact Statement for Retrieval, Treatment, and Disposal of Tank Waste and Closure of Single-Shell Tanks at the Hanford Site,'' referred to as the Tank Closure Environmental Impact Statement (TC EIS). The State of Washington Department of Ecology is a cooperating agency involved in the preparation of the TC EIS. The public will have an opportunity to comment on the Draft TC EIS.

• *Limited availability of thermal treatment capability for some types of mixed waste, and DOE's plans for managing such wastes are unclear:* DOE is determining how best to manage waste for which no final disposition plans currently exist. Though the availability of thermal treatment for radioactive waste is limited, DOE is actively seeking the services necessary to treat thermally some Hanford-generated MLLW in the commercial sector.

• *Worker safety:* DOE will increase efforts to protect and enhance worker safety and has recently given new direction to Hanford contractors establishing DOE's expectations of measurable safety improvements. DOE's Integrated Safety Management System principles will continue to be applied to ensure extensive worker involvement in planning work. DOE will conduct special emphasis reviews of particular issues as appropriate.

**Decisions**

*Storage and Treatment of Low-Level Waste and Mixed Low-Level Waste*

DOE has decided to implement the actions described in the preferred alternative, Alternative Group $D_1$, for storing and treating LLW and MLLW. LLW and MLLW will continue to be stored in existing facilities such as the CWC. Most LLW and MLLW will be treated under agreements with offsite treatment facilities. Existing onsite treatment capabilities and facilities will also continue to be used as appropriate. For wastes that cannot be treated at existing onsite or offsite facilities, such as RH waste or waste in non-standard containers, treatment capacity will be established at Hanford by modifying the T Plant Complex as needed. Although DOE expects most offsite waste to be treated elsewhere before receipt at Hanford, small quantities of offsite waste (up to 100 $m^3$ of MLLW) will be received as necessary for onsite treatment.

*Disposal of Low-Level Waste and Mixed Low-Level Waste*

DOE has decided to implement the actions described in the preferred alternative, Alternative Group $D_1$, for disposing of LLW and MLLW at Hanford, including the waste resulting from the vitrification process (ILAW and melters), should they be determined to be LLW or MLLW, up to the volumes evaluated in the HSW EIS, subject to the limitations on receipt of offsite waste described below. DOE will construct a new lined, combined-use facility for disposal of this waste near the PUREX facility located in the southeastern corner of the Hanford Site 200 East Area. The combined-use facility will contain separate modules for wastes with differing characteristics as necessary to ensure that wastes placed in the same module are suitable for disposal together and do not adversely affect disposal system components. The new facility is projected to be available for waste disposal in 2007.

DOE will continue to dispose of MLLW in lined facilities having leachate collection systems. In addition, effective immediately, DOE will dispose of LLW in the existing lined facilities and will subsequently dispose of LLW in the new lined, combined-use disposal facility when it becomes operational. After the end of disposal operations, the LLBGs and the new lined, combined-use facility will be closed by applying an engineered barrier (cap) to reduce water infiltration and the potential for intrusion.

Also effective immediately, DOE will limit the total receipt of additional waste from offsite generators for disposal at Hanford to 62,000 $m^3$ of LLW and 20,000 $m^3$ of MLLW. This is less than 25 percent of the Upper Bound volume of waste evaluated for offsite generators in the HSW EIS. Until the new disposal facility is operational, DOE will limit receipt of LLW and MLLW from offsite generators for

disposal at Hanford to no more than 13,000 $m^3$, of which no more than 5,000 $m^3$ will be MLLW.

*Storage, Processing, Certification, and Shipment of TRU Waste*

DOE has decided to implement the actions described in the preferred alternative, Alternative Group $D_1$, to process and certify TRU waste for shipment to WIPP. WRAP and APLs will continue to process and certify most CH TRU waste. For TRU waste that cannot be processed and certified at existing facilities, such as RH or non-standard containers, DOE will develop onsite capability by modifying the T Plant Complex as necessary to store, process, certify, and ship TRU waste to WIPP in quantities up to the Upper Bound waste volume evaluated in the Final HSW EIS (up to 46,000 $m^3$ of Hanford TRU waste and up to 1,550 $m^3$ of offsite TRU waste). If, through the certification process, any of this waste is determined to be LLW, it will be disposed of at Hanford in lined trenches according to existing procedures, Hanford Site solid waste acceptance criteria, and consistent with applicable regulatory requirements.

No decision is being made in this ROD to transfer TRU waste from other sites to Hanford for storage prior to disposal at WIPP. Such a decision would be made in a separate ROD or RODs revising, as appropriate, decisions previously made under the WM PEIS.[5] As stated in DOE's decision under the WM PEIS regarding the treatment and storage of TRU waste, DOE may, in the future, decide to ship TRU waste from sites that do not have the capability to manage this waste to sites that do have this capability, until the waste can be disposed of at WIPP. The sites that could receive such TRU waste are the Hanford Site, the Oak Ridge Reservation, the Savannah River Site, and the Idaho National Environmental and Engineering Laboratory. If DOE decides to ship additional offsite TRU waste to Hanford for storage, processing, or certification prior to shipment to WIPP, DOE would consider information from the WM PEIS and the HSW EIS in issuing a revised ROD.

[5] Concurrently with the issuance of this ROD, DOE is issuing a revision to the WM PEIS ROD confirming its September 6, 2002, decision under the WM PEIS to transfer a small quantity of TRU waste from the Battelle West Jefferson North Site in Columbus, Ohio, to Hanford. This waste will be stored, certified, and processed pending shipment to WIPP for disposal. However, these shipments will not commence unless and until the preliminary injunction issued by the District Court for the Eastern District of Washington is lifted.

*Bases for Decisions*

DOE considered potential environmental impacts as identified in the HSW EIS, cost, applicable regulatory requirements, and public comments in arriving at its decisions. Of all of the action alternatives, DOE believes the slightly lower long-term impacts on water quality in Alternative Group $D_1$, and the slightly lower long-term dose impacts if groundwater is used, offset a somewhat greater potential for disturbance of shrub-steppe habitat over the operational period. Future waste disposal operations would be combined in a single location in the 200 East Area that could provide a unified regulatory pathway to construction, operation, and post-closure maintenance of the disposal site. The use of lined facilities for disposal and significant limits on the receipt of LLW and MLLW from other sites for disposal at Hanford is responsive to public concerns and comments. In addition, the construction of a single disposal facility and modification of the T Plant Complex is expected to offer a cost advantage over other alternatives.

*Mitigation Measures*

In addition to limiting receipt of offsite LLW and MLLW and disposing of LLW in lined trenches, DOE will adopt all practicable measures, which are described below, to avoid or minimize adverse environmental impacts that may result from implementing the actions described in the Final HSW EIS under Alternative Group $D_1$. All of these measures are either explicitly part of the alternatives or are already performed as part of routine operations.

- Storage, treatment, and disposal facilities will be designed, constructed, and operated in accordance with the comprehensive set of DOE requirements and applicable regulatory requirements that have been established to protect public health and the environment. These requirements encompass a wide variety of areas, including radiation protection, facility design criteria, fire protection, emergency preparedness and response, and operational safety requirements.
- Waste and other materials will be transported in accordance with applicable U.S. Department of Transportation and DOE requirements.
- RH MLLW and RH TRU waste will be transported, stored, treated, processed, and/or certified with appropriate shielding to protect workers and the public.
- LLW will be disposed of in facilities that incorporate double liners and leachate collection systems although not required by regulation. MLLW will continue to be disposed of in such facilities according to applicable regulations.
- Measures will be taken to protect construction and operations personnel from occupational hazards and the ''As-Low-as-Reasonably-Achievable'' principle will be implemented to minimize worker exposures to radioactive and chemical hazards.
- Emergency response plans will be in place to allow rapid response to potentially dangerous unplanned events.
- Water and other surface sprays will be used to control dust emissions, especially at borrow sites, gravel or dirt haul roads, and during construction earthwork.
- Pollution control or treatment will be used to reduce or eliminate releases of contaminants to the environment and meet applicable regulatory standards.
- Environmental monitoring systems will be installed and operated to detect potential releases to the environment.
- Secondary leak detection capability will be designed into the new lined, combined-use disposal facility.
- Disturbed areas will be mitigated consistent with the Hanford Comprehensive Land-Use Plan Environmental Impact Statement Record of Decision (64 FR 61615, November 12, 1999).
- LLW and MLLW disposal facilities will be closed with an engineered barrier (cap) designed and installed to meet regulatory requirements applicable to MLLW.
- LLW and MLLW containing more mobile contaminants will continue to be disposed of in high-integrity containers or by encapsulating the waste in grout.
- Consideration will be given to further protect the environment from contaminants of concern (*e.g.*, iodine-129, technetium-99) in solid waste from the 200 Area Effluent Treatment Facility and as part of the development of the performance assessments and the waste acceptance criteria for the new lined, combined-use disposal facility.
- TRU waste stored in the LLBGs will continue to be retrieved consistent with existing TPA milestones. This waste will continue to be shipped from Hanford to WIPP for disposal.

Issued in Washington, DC, this 23rd day of June 2004.

**Jessie Hill Roberson,**

*Assistant Secretary for Environmental Management.*

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## DEPARTMENT OF ENERGY

### Revision to the Record of Decision for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase

**AGENCY:** Department of Energy.

**ACTION:** Revision to record of decision.

**SUMMARY:** The Department of Energy (DOE), pursuant to its implementing regulations under the National Environmental Policy Act (NEPA), 10 CFR 1021.315, is revising its *Record of Decision for the Department of Energy's Waste Isolation Pilot Plant Disposal Phase* (WIPP ROD), 63 FR 3624 (Jan. 23, 1998). DOE has decided to dispose of up to 2,500 cubic meters of transuranic (TRU) waste containing polychlorinated biphenyls (PCBs) in concentrations of 50 parts per million (ppm) or greater at the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico. DOE's current inventory of TRU waste mixed with PCBs is located at six DOE sites: the Hanford Site in Washington, the Idaho National Engineering and Environmental Laboratory, the Savannah River Site in South Carolina, the Oak Ridge Reservation in Tennessee, the Rocky Flats Environmental Technology Site in Colorado, and the Knolls Atomic Power Laboratory in New York.[1]

Other sites in the DOE complex may also identify some TRU waste that contains PCBs during the process of characterizing their TRU waste for disposal at WIPP. Subject to further NEPA review, as appropriate, DOE would dispose of this waste from other sites at WIPP once it meets all of the acceptance criteria for placement in the repository. This decision to dispose of TRU waste containing PCBs does not include the small amount of TRU waste with PCB liquids and PCB articles (*e.g.*, capacitors, transformers, electric motors, pumps and pipes) of approximately 5 cubic meters. DOE will continue to work with the Environmental Protection Agency (EPA) on a disposition path for these wastes.

In the WIPP ROD, issued under the *Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement* (WIPP SEIS–II), DOE/EIS–0026–S2, September 1997, DOE decided to dispose of up to 175,600 cubic meters of TRU waste from atomic energy defense activities at WIPP provided that the waste meets the repository's waste acceptance criteria.

DOE's WIPP ROD specifically excluded TRU waste with PCBs. After the WIPP ROD was issued in January 1998, EPA issued new regulations under the Toxic Substances Control Act (TSCA), *Disposal of Polychlorinated Biphenyls, Final Rule,* 63 FR 35384 (June 29, 1998), that allow the disposal of specific types of PCB wastes (such as PCB remediation waste) without treatment at a chemical waste landfill authorized in accordance with EPA regulations regarding TSCA at 40 CFR Part 761. DOE then asked EPA to authorize WIPP as a chemical waste landfill so that DOE could use the repository for disposal of its TRU waste containing PCBs. On May 15, 2003, EPA authorized WIPP as a chemical waste landfill. DOE also applied to the State of New Mexico for a modification to WIPP's hazardous waste facility permit proposing to remove language reciting the prohibition on disposal of TRU waste with PCBs. This recital was based on the January 1998 WIPP ROD's exclusion of such TRU wastes, which in turn had been based on the fact that at that time there was no regulatory process available for WIPP to obtain an authorization from EPA to dispose of PCBs. On September 11, 2003, the State of New Mexico removed the recital by approval of a permit modification that allows disposal of TRU waste with PCBs at WIPP. With these regulatory changes, it is reasonable to believe that DOE will be able to obtain all the regulatory approvals necessary to allow it to dispose of most of the Department's anticipated inventory of TRU waste with PCBs.

Because the Department's estimates of its inventory of TRU waste with PCBs exceeds the inventory analyzed in the WIPP SEIS II and would not be thermally treated before disposal, DOE prepared a Supplement Analysis, *Supplement Analysis for Disposal of Polychlorinated Biphenyl-Commingled Transuranic Waste at the Waste Isolation Pilot Plant* (DOE–EIS–0026–SA02), in accordance with DOE regulations for compliance with NEPA. Based on the Supplement Analysis, DOE determined that a supplement to the WIPP SEIS II is not required for the action decided in this revised ROD.

This revision to the WIPP ROD also constitutes the Department of Energy's designation of this waste for disposal at WIPP in accordance with Section 9(a)(1)(H) of the WIPP Land Withdrawal Act. Accordingly, this waste is exempt from treatment standards and land disposal requirements promulgated pursuant to section 3004 of the Solid Waste Disposal Act (42 U.S.C. 6924).

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the WIPP SEIS–II, its ROD, the Supplement Analysis or for copies of these and other documents referenced herein, contact: Harold Johnson, WIPP SEIS–II Document Manager, Mail Stop 535, U.S. Department of Energy, Carlsbad Field Office, Post Office Box 3090, Carlsbad, NM 88221, Telephone (505) 234–7349, E-Mail: *Harold.Johnson@wipp.ws*.

For further information on DOE's National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone 202–586–4600, or leave a message at 1–800–472–2756.

This Revised Record of Decision and the associated Supplement Analysis (SA) will also be available on DOE's NEPA Web page at: *http://www.eh.doe.gov/nepa* under DOE NEPA Documents. The SA is available from the contact person identified above and in the DOE public reading room at the Forrestal Building in Washington, DC.

**SUPPLEMENTARY INFORMATION:**

### I. Background

TRU waste is radioactive waste that contains radionuclides with atomic numbers greater than that of uranium (92) and half-lives longer than 20 years in concentrations greater than 100 nanocuries per gram of waste. Contact-handled (CH) TRU waste has a radiation dose rate at a package surface of 200 millirems or less per hour and can be safely handled by workers without additional shielding. Remote-handled (RH) TRU waste has a radiation dose rate at a package surface greater than 200 millirems per hour and requires special shielding to protect workers. In the WIPP ROD, issued under the WIPP SEIS–II, DOE decided to dispose of up to 175,600 cubic meters of TRU waste derived from atomic energy defense activities at WIPP, provided that the waste meets the repository's waste acceptance criteria. 63 FR 3628 (Jan. 23, 1998). That decision specifically excluded TRU waste with PCBs. DOE also decided in that ROD that it would generally treat TRU waste destined for WIPP to meet the repository's TRU waste acceptance criteria. However, based on site-specific circumstances, DOE might treat TRU at some sites more

[1] In addition to more significant quantities of PCB-contaminated waste already at the Hanford site, DOE transferred a small amount of TRU waste with PCBs (4 cubic meters) from the Energy Technology Engineering Site in California to Hanford in December 2002 for characterization, repackaging, and storage pending shipment to WIPP. 67 FR 56989 (Sept. 6, 2002). At that time, DOE designated that particular waste for disposal at WIPP in accordance with the WIPP Land Withdrawal Act.

extensively than these criteria would require.

In a companion ROD, based on the analyses in and made pursuant to the *Waste Management Programmatic EIS* (WM PEIS), DOE/EIS–0200, May 1997, DOE also announced that it would generally treat and store its TRU waste at the sites where that waste was currently located, except in the case of Sandia National Laboratory's waste, which would be transferred to the Los Alamos National Laboratory. Record of Decision for the Department of Energy's Waste Management Program: Treatment and Storage of Transuranic Waste, 63 FR 3629 (Jan. 23, 1998). That decision also stated that DOE might decide in the future to ship TRU wastes at sites where it might be impractical to prepare them for disposal to other sites that had or were slated to have the necessary capability.

## II. Basis for the Decision

*Regulatory authorizations for TRU waste containing PCBs:* Much of DOE's TRU waste contains hazardous constituents that are regulated under the Resource Conservation and Recovery Act (RCRA). At the time that DOE issued the WIPP ROD in January 1998, DOE had applied for, but had not yet received, initial certification of the WIPP repository by EPA under the WIPP Land Withdrawal Act, 63 FR 3624 (Jan. 23, 1998),[2] and a hazardous waste facility permit issued by the State of New Mexico pursuant to RCRA and New Mexico's Hazardous Waste Act. Since that time, both EPA [3] and New Mexico [4] have issued these approvals. Consistent with the WIPP ROD and with these approvals, DOE has disposed of 55,768 cubic meters of contact handled (CH) TRU waste as of early June 2004. EPA has also approved DOE's procedures for characterizing remote handled (RH) TRU waste.[5]

Some of DOE's TRU waste contains PCBs in concentrations of 50 ppm or greater. Disposal of such waste is regulated under TSCA. At the time DOE issued the WIPP ROD, neither DOE nor any commercial facility had the capability to treat TRU waste with PCBs in a manner that would meet the treatment requirements for PCBs imposed by TSCA in order to allow it to be disposed of at WIPP, and applicable EPA regulations regarding PCB-contaminated waste contained no provision that would allow for disposal of such waste there without meeting these requirements. Accordingly, the WIPP ROD specifically excluded waste with PCBs with concentrations of 50 ppm or greater from the decision to proceed with disposal operations at WIPP.

Subsequently, EPA issued new regulations for PCB disposal under TSCA, 63 FR 35384 (June 29, 1998), establishing categories of PCB waste (such as PCB remediation waste) that could be disposed of without treatment in a chemical waste landfill authorized pursuant to 40 CFR Part 761. In light of EPA's new PCB regulations, DOE reconsidered its strategy for managing TRU waste containing PCBs. DOE updated its inventory of this waste, which identified a larger volume of CH– and RH–TRU waste with PCBs than was identified in the WIPP SEIS–II. DOE also classified its TRU wastes containing PCBs according to the categories established in the new PCB regulations. Most of DOE's TRU waste containing PCBs in concentrations of 50 ppm or greater is remediation waste, which does not require treatment prior to disposal in an authorized chemical waste landfill.

DOE applied to EPA for authorization of WIPP as a chemical waste landfill in order to dispose of its TRU waste containing PCBs. On December 10, 2002, EPA proposed to grant this authorization, and on May 15, 2003, EPA authorized WIPP as a chemical waste landfill. DOE also applied to the State of New Mexico for a modification to WIPP's hazardous waste facility permit to remove language reciting the prohibition on disposal of TRU waste with PCBs, which was based on the fact that at the time there was no regulatory process available for WIPP to obtain an authorization to dispose of PCBs. On September 11, 2003, the State of New Mexico granted the permit modification. With these regulatory changes, it is reasonable to believe that DOE will be able to obtain all the regulatory approvals necessary to allow it to dispose of most of the Department's anticipated inventory of TRU waste containing PCBs in concentrations of 50 ppm or greater. DOE must still obtain certain additional approvals from EPA with respect to its waste characterization programs at certain sites where the TRU waste containing PCBs is located.

*Prior NEPA Analyses:* In the WIPP SEIS II, DOE analyzed the potential environmental impacts of the treatment, storage, transportation, and disposal of TRU waste, including TRU waste containing PCBs in concentrations of 50 ppm or greater. The WIPP SEIS II assumed that TRU waste containing PCBs would be thermally treated to destroy the PCBs before disposal at WIPP. To determine whether a supplemental EIS would be needed for the proposed action to dispose of approximately 2,500 cubic meters of TRU waste containing PCBs at WIPP, DOE prepared the *Supplement Analysis for Disposal of Polychlorinated Biphenyl-Commingled Transuranic Waste at the Waste Isolation Pilot Plant,* June 2004, (DOE EIS–0026–SA02) in which DOE reviewed the impacts that would be expected from preparing and transporting up to 2,500 cubic meters of TRU waste containing PCBs and disposing of this waste at WIPP. Adding this volume of TRU waste to the Basic Inventory in the WIPP SEIS II will not exceed the total volume of 175,600 cubic meters analyzed in the WIPP SEIS II Proposed Action Alternative. DOE estimated the maximum impacts that could be associated with the addition of TRU waste containing PCBs (*i.e.*, waste that would not be thermally treated to destroy the PCBs before disposal) to the hazardous organic compounds analyzed in Action Alternative 2 of the WIPP SEIS II. These impacts would be extremely small because no release of PCBs will occur under undisturbed conditions for at least 10,000 years. In no instance would the presence of PCBs increase the impacts beyond the small impacts presented in the WIPP SEIS II. Based on DOE's review of the potential impacts on land use, geology, hydrology, biological resources, air quality, socioeconomic conditions, noise, cultural resources, environmental justice, waste handling and characterization, transportation and long-term performance of the WIPP repository, DOE concluded that disposing of up to 2,500 cubic meters of TRU waste containing PCBs at WIPP is not a substantial change to the Proposed Action analyzed in the WIPP SEIS II. Further, there are no substantial changes to the proposed action or significant new circumstances or information relevant to environmental concerns and

[2] EPA had issued a proposed certification of compliance, Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the Disposal Regulations: Certification Decision, 62 FR 58792 (Oct. 30, 1997), as the WIPP ROD noted, 63 FR at 3624.

[3] Criteria for the Certification and Recertification of the Waste Isolation Pilot Plant's Compliance With the Disposal Regulations: Certification Decision, 63 FR 27354 (May 18, 1998). EPA's certification specified that DOE would have to obtain EPA approval of its quality assurance programs at all sites other than Los Alamos, as well as of its waste characterization system of controls for all waste streams other than retrievably stored legacy debris.

[4] Hazardous waste permit issued to DOE October 27, 1999, by New Mexico Environment Department (NMED).

[5] Letter dated March 25, 2004, from Frank Marcinowski, Director, EPA Region VI Radiation Protection Division, to R. Paul Detwiler, Acting Manager, Carlsbad Field Office.

bearing on the proposed action or its impacts. For these reasons, DOE has determined that a supplement to the WIPP SEIS II is not required under 40 CFR 1502.9 or 10 CFR 1021.314 in order for DOE to implement the proposed action.

*Designation of Waste for WIPP:* Section 9(a)(1)(H) of the WIPP Land Withdrawal Act exempts mixed TRU waste designated for disposal at WIPP from certain provisions of the Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.:*

> With respect to transuranic mixed waste designated by the Secretary for disposal at WIPP, such waste is exempt from treatment standards promulgated pursuant to section 3004(m) of the Solid Waste Disposal Act (42 U.S.C. 6924(m)) and shall not be subject to the land disposal prohibitions in section 3004(d), (e), (f) and (g) of the Solid Waste Disposal Act.

WIPP Land Withdrawal Amendment Act, Pub. L. 104–201, 110 Stat. 2422 (1996), section 3188(a) at Stat. 2853. DOE's prior RODs determining that various waste streams will be disposed of at WIPP, issued by officials with authority for management of nuclear waste, constitute designations of waste for WIPP under section 9(a)(1)(H) of the WIPP Land Withdrawal Act.

In addition, the Secretary has also confirmed and ratified all prior designations. DOE's practice has been to issue these RODs with the reasonable expectation that it will be able to obtain all additional regulatory approvals it needs to carry out these decisions. DOE believes this practice is appropriate and that the fact that DOE needed certain additional regulatory approvals that it reasonably expected to obtain at the time it issued those RODs did not preclude the RODs from operating as a designation. Similarly, with respect to the PCB-contaminated transuranic waste, DOE does not believe that the fact that it still lacks certain regulatory approvals operates as an obstacle to its proceeding with today's ROD or to this ROD constituting a designation of TRU wastes for disposal at WIPP.

While DOE has now obtained the primary regulatory authorizations needed to dispose of TRU wastes containing PCBs in concentrations of 50 ppm or greater at WIPP, DOE recognizes that additional authorizations will be needed prior to shipping some wastes from particular sites to WIPP. For example, the Oak Ridge Reservation has not yet obtained approval from EPA and the New Mexico Environment Department (NMED) of its waste characterization program for certifying shipments of any types of TRU wastes to WIPP. Other sites, such as the Hanford Site in Richland, Washington, are approved to ship certain types of TRU wastes to WIPP (Hanford has shipped more than 450 cubic meters of TRU waste to WIPP), but have not yet obtained approval from EPA or NMED of all aspects of their waste characterization procedures for certifying TRU waste containing PCBs in concentrations of 50 ppm or greater.

Nevertheless, DOE believes it is appropriate in this ROD to designate its entire inventory of remediation and bulk product transuranic wastes containing PCBs in concentrations of 50 ppm or greater for disposal at WIPP pursuant to Section 9(a)(1)(H) of the WIPP Land Withdrawal Act. The word ''designation'' connotes a fairly simple and unilateral executive action by the Department with no particular formalities associated with it. It certainly contains no suggestion that DOE must await the obtaining of all regulatory approvals before taking this unilateral act. Nothing in the WIPP Land Withdrawal Act suggests that the Secretary's authority to designate waste for disposal at WIPP is limited to wastes with respect to which DOE has obtained all necessary regulatory authorizations for disposing of them in this fashion. Moreover, the purpose of section 9(a)(1)(H) is to exempt wastes destined for WIPP from costly treatment and related requirements that otherwise would be applicable under the Solid Waste Disposal Act. Given that there is every reason to believe that DOE will be able to obtain the additional approvals it needs, there is no reason to require DOE to meet the Solid Waste Disposal Act's Land Disposal Restriction treatment requirements and associated storage limitations. To the contrary, allowing DOE to proceed with designating TRU mixed wastes containing PCBs in concentrations of 50 ppm or greater for disposal at WIPP prior to obtaining these authorizations is fully consistent with the purposes of section 9(a)(1)(H).

Conversely, requiring DOE to wait to designate wastes for disposal at WIPP until all regulatory approvals needed to send the wastes to WIPP have been obtained would subject those wastes to treatment requirements that ultimately will not apply once the wastes are ready for disposal at WIPP. This would result in regulatory confusion and in wasted time and money spent to comply with requirements from which mixed TRU wastes ultimately sent to WIPP are exempt by virtue of section 9(a)(1)(H) of the WIPP Land Withdrawal Act. DOE believes the best and most rational interpretation of section 9(a)(1)(H) is that DOE may designate waste for disposal at WIPP at the time that DOE determines the waste can eventually be sent to WIPP, so long as there is a reasonable prospect that it will receive the necessary regulatory approvals for WIPP disposal.

With respect to the wastes at issue here, DOE believes that it will be able to obtain from EPA and New Mexico any additional approvals it may need to dispose of this material at WIPP, including state approval of the RH–TRU waste analysis plan. Waiting to designate these wastes for disposal at WIPP until all approvals needed to send the wastes to WIPP have been obtained would subject these wastes to treatment requirements that ultimately will not apply once the wastes are ready for disposal at WIPP.

Accordingly, DOE believes it is appropriate to designate the approximately 2,500 cubic meters of TRU waste containing PCBs in concentrations of 50 ppm or greater for disposal at WIPP, within the meaning of section 9(a)(1)(H) of the WIPP Land Withdrawal Act. This designation comprises up to 2,500 cubic meters of TRU wastes with PCBs in concentrations of 50 ppm or greater that have been identified at the Hanford Site, the Idaho National Engineering and Environmental Laboratory, the Savannah River Site, the Oak Ridge Reservation, the Rocky Flats Environmental Technology Site, the Knolls Atomic Power Laboratory, and similar wastes that may be identified in the future at these or other sites, subject to further NEPA review, as appropriate.

## III. Decision

In accordance with DOE's implementing regulations under NEPA, DOE has decided to dispose of its TRU waste containing PCBs in concentrations of 50 ppm or greater at WIPP near Carlsbad, New Mexico. DOE has identified approximately 2,500 cubic meters of TRU wastes with PCBs, located at six sites: the Hanford Site in Washington, the Idaho National Engineering and Environmental Laboratory, the Savannah River Site in South Carolina, the Oak Ridge Reservation in Tennessee, the Rocky Flats Environmental Technology Site in Colorado, and the Knolls Atomic Power Laboratory in New York. DOE will continue to work with EPA on options for the disposal of the relatively small portion of the Department's inventory of TRU wastes with PCBs (approximately 5 cubic meters of PCB liquids and PCB articles) that at present cannot be placed in a chemical waste landfill.

In the future, these or other sites in the DOE complex may identify

additional TRU waste that contains PCBs during the process of characterizing their TRU waste for disposal at WIPP. Subject to further NEPA review, as appropriate, DOE would dispose of this waste at WIPP if it meets all of the acceptance criteria for placement in the repository. DOE's decision in this ROD to dispose of this waste at WIPP constitutes the designation of that waste for purposes of section 9(a)(1)(H) of the WIPP Land Withdrawal Act.

DOE needs to safely and securely dispose of the TRU waste containing PCBs that has accumulated at its facilities and to provide for the disposal of such waste that it may generate in the future. DOE has requested and received the primary regulatory authorizations necessary to proceed with this decision. EPA has granted DOE's request for authorization to operate WIPP as a chemical waste landfill in accordance with TSCA, having confirmed that most of DOE's TRU waste with PCBs is remediation waste that can be disposed of at WIPP. Further, the State of New Mexico has approved a modification to WIPP's hazardous waste facility permit that removed language reciting the prohibition on disposal of TRU waste with PCBs. For the reasons discussed above, and in light of the finding that no further NEPA review is required, DOE can now safely isolate these wastes from the environment by disposing of them at WIPP.

Issued in Washington, DC, on June 23, 2004.

**Jessie Hill Roberson,**

*Assistant Secretary for Environmental Management.*

[FR Doc. 04–14808 Filed 6–29–04; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–362–000]**

### Colorado Interstate Gas Company; Notice of Application

June 23, 2004.

Take notice that Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP04–362–000 on June 14, 2004, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, to abandon, convert, and reclassify certain natural gas storage assets in the Boehm Storage Field in Morton County, Kansas. Specifically CIG proposes to plug and abandon nine wells and to convert and reclassify 12 other wells which will be placed into revised use in the storage field. CIG states that the plugging and abandoning activities are being undertaken to remove from service certain wells which are operationally obsolete and that these activities must be completed in order for CIG to comply with the underground storage regulations recently promulgated by the Kansas Corporation Commission, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web 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 (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, as operator for Young Gas Storage Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado 80944; at (719) 520–3788, fax (719) 667–7534.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

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.

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.

*Comment Date:* July 14, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1444 Filed 6–29–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–328–000]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 23, 2004.

Take notice that on June 9, 2004, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, Third Revised Sheet No. 290A, with an effective date of July 12, 2004.

El Paso states that the tariff sheet establishes procedures for demonstrating the availability of capacity prior to re-sale.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. 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. 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 TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1442 Filed 6–29–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP04–229–001]**

### Natural Gas Pipeline Company of America; Notice of Amendment to Tariff Filing

June 23, 2004.

Take notice that on May 28, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet, to be effective as soon as feasible:

Substitute Second Revised Sheet No. 280B

Natural states that the purpose of this filing is to revise the General Terms and Conditions in Natural's Tariff relating to shipper creditworthiness. Natural further states that specifically, the proposed changes would allow Natural to obtain security from non-creditworthy customers on gas loaned under any park and loan service.

Natural states that copies of the filing are being served on all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. 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 proceedings. 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. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

*Protest Date:* June 29, 2004.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1445 Filed 6–29–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP04–343–000]**

### Paiute Pipeline Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Paiute Wadsworth Compressor Station, Request for Comments on Environmental Issues, and Notice of Site Visit

June 23, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Paiute Pipeline Company's (Paiute) proposed Wadsworth Compressor Station Project. Paiute proposes to abandon operation and use of a liquefied natural gas (LNG) peak-shaving facility near the town of Lovelock in Pershing County, Nevada and an associated pipeline, modify existing valve assemblies, and construct and operate a new compressor station near the town of Wadsworth in Washoe County, Nevada.[1] The EA will be used by the Commission in its decision-making process to determine whether the projects are in the public convenience and necessity.

This notice (NOI) is being sent to affected and adjacent landowners; Federal, State and local representatives and agencies; local newspapers and libraries; potentially interested Indian tribes; public interest and environmental groups; and parties to the proceeding. Government representatives and agencies are encouraged to notify their constituents of the proposed projects and encourage them to comment.

Additionally, with this NOI we[2] are asking government agencies and tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. Agencies may choose to participate once they evaluate Paiute's proposal relative to their responsibilities. Agencies that would like to request cooperating status should follow the directions for filing comments described below.

If you are a landowner receiving this NOI, you may be contacted by a representative of Paiute about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' should have been attached to the project notice Paiute is required to provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

**Summary of the Proposed Project**

Paiute seeks authority to:

- Abandon operation, use, and storage services at the H.G. Laub LNG facility near Lovelock, in Pershing

[1] Paiute's application was filed with the Commission, on May 21, 2004, under sections 7(b) and (c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations. The Commission issued a notice of the application on May 28, 2004.

[2] ''We'', ''us, and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects (OEP).

County, Nevada, at about milepost (MP) 164.4 along Paiute's mainline, which it leases from Public Service Resources Corporation (PSRC);

• Abandon operation and use of 61.1 miles of 20-inch-diameter pipeline which loops [3] Paiute's mainline between the Lovelock LNG plant and Paiute's existing Wadsworth Pressure Limiting Station. This loop is also leased from PSRC;

• Modify existing aboveground valve assembly facilities, including the:

—Compressor Station 6 Valve Assembly at about MP 164.4 in Pershing County, Nevada;

—Chimney Rock Valve Assembly at about MP 183.9 in Pershing County, Nevada;

—Brady Hot Springs Valve Assembly at about MP 199.5 in Churchill County, Nevada;

—Pyramid Indian Reservation Valve Assembly at about MP 219.4 in Washoe County, Nevada; and

—Wadsworth Pressure Limiting Station at about MP 225.5 in Washoe County, Nevada; and

—Construct, own, operate, and maintain a new 3,747 horsepower (hp) compressor station near Wadsworth, at about MP 224.0 in Washoe County, Nevada.

Paiute has proposed two options for the abandonment of the facilities leased from PSRC. One option would be to leave the facilities in an inactive state, with all natural gas purged from the LNG plant and loop. The loop would be cut and capped, and the connections between the loop and Paiute's mainline would be removed at four valve assembly sites. The second option would be to leave the leased facilities in an active state, with PSRC taking over operation of the LNG plant and loop. In this case, Paiute would need to install inlet and outlet piping at the LNG plant, Compressor Station 6 Valve Assembly, and at the Wadsworth Pressure Limiting Station. PSRC would need to install custody metering and pressure limiting facilities at the same locations, plus odorization facilities at the LNG plant. Paiute's proposed new Wadsworth Compressor Station would add 27,154 dekatherms per day, or 26.7 million cubic feet per day, to the capacity of its mainline system, making up the deficit lost by abandonment of the LNG facility and loop. Paiute's lease of the LNG plant and associated loop terminates in July 2005. Paiute would like to have the proposed facilities constructed and in service prior to the winter of 2005–2006.

Paiute's proposed Wadsworth Compressor Station would be located on privately owned land. However, Paiute's existing Compressor Station 6, Chimney Rock, and Brady Hot Spring Valve Assemblies are on land administered by the U.S. Bureau of Land Management (BLM), while its existing Pyramid Lake Indian Reservation Valve Assembly is within the Pyramid Lake Indian Reservation. The general location of the project facilities is shown in appendix 1.[4]

## Land Requirements for Construction

Construction of the proposed facilities would affect a total of about 12.2 acres. Operation of the facilities would require about 1.3 acres total. Construction of Paiute's Wadsworth Compressor Station would affect about 11.7 acres, of which 1.3 acres would be needed for operation of the facility. Most of the modifications at Paiute's existing aboveground valve assemblies would be done within the existing fenced permanent right-of-way. However, modifications at three existing Paiute facilities may affect about 0.5 acre total temporarily during construction. The land temporarily impacted during construction of these facilities would afterwards be restored to its previous condition and use.

## The Scoping Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this NOI.

Our independent analysis of environmental issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, affected and adjacent landowners, environmental and public interest groups, interested individuals and Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

## Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Paiute. This preliminary list of issues may be changed based on your comments and our analysis.

• Geology and Soils:

—Seismic hazards related to the location of facilities in areas of high earthquake potential.

• Water Resources and Wetlands:

—Assessment of impacts on any streams and wetlands.

• Fish, Wildlife, and Vegetation:

—Permanent clearing of vegetation for operation of new aboveground facilities.

—Potential effects on the bald eagle, a federally-listed threatened species.

• Cultural Resources:

—Avoidance of archaeological sites which may potentially qualify for the National Register of Historic Places.

—Native American and tribal concerns.

• Land Use, Recreation and Special Interest Areas, and Visual Resources:

—Assessment of land use and visual compatibility of the proposed facilities with Federal and tribal land owners, including the BLM and the Pyramid Lake Indian Reservation.

• Air and Noise Quality:

—Effects on local air quality and noise environment from construction and operation of proposed facilities.

• Reliability and Safety:

—Assessment of hazards associated with the abandonment of the Lovelock LNG plant.

• Alternatives:

—Assessment of the no action alternative, system alternatives, and alternative facility locations.

[3] A loop is a segment of pipeline installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[4] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to Paiute.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative facility locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 3;
- Reference Docket No. CP04–343–000; and
- Mail your comments so that they will be received in Washington, DC on or before July 30, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

If you do not want to send comments at this time but still want to remain on our environmental mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

**Site Visit**

We will also be conducting a site visit to the proposed location of Paiute's Wadsworth Compressor Station, on Monday, July 12, 2004. Anyone interested in participating in the site visit should meet at the parking lot for the Best Western Airport Plaza, 1981 Terminal Way, Reno, Nevada 89502, at 12 p.m. (noon) on July 12, 2004. Participants must provide their own transportation. For additional information, please contact the Commission's Office of External Affairs at (202) 502–8004.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to rule 214 of the Commission's rules of practice and procedure (18 CFR 385.214) (*see* appendix 2).[5] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

**Additional Information**

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502-8659.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1443 Filed 6–29–04; 8:45 am]

BILLING CODE 6717–01–P

[5] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. CP04–223–000, CP04–293–000, CP04–358–000]**

### KeySpan LNG, L.P., Algonquin Gas Transmission Company; Notice of Public Scoping Meetings for the Proposed Keyspan LNG Facility Upgrade Project and Algonquin-Keyspan Interconnect Pipeline Project

June 23, 2004.

As referenced in the June 17, 2004 ''Notice of Extension of the Scoping Period for the Proposed KeySpan LNG Facility Upgrade Project,'' the staff of the Federal Energy Regulatory Commission will conduct two additional public scoping meetings for the above-referenced projects. These meetings are scheduled at the request of U.S. Senators Jack Reed and Lincoln Chafee, and U.S. Representatives Patrick Kennedy and James Langevin. A previous public scoping meeting was held on June 3, 2004, in Providence, Rhode Island.

The locations and times of the scoping meetings are as follows:

Wednesday, July 7, 2004, Roger Williams Middle School, Providence, RI, 278 Thurbers Road (Auditorium), 7 p.m. (e.s.t.);

Thursday, July 8, 2004, Gaudet Middle School, Middletown, RI, 1113 Aquidneck Avenue (Cafetorium; entrance off Turner Road), 7 p.m. (e.s.t.).

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–1446 Filed 6–29–04; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OAR–2004–0086, FRL–7780–5]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Information Requirements for Importation of Nonconforming Marine Engines, EPA ICR Number 1723.04, OMB Control Number 2060–0320

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on 2004 November 30. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 30, 2004.

**ADDRESSES:** Submit your comments, referencing docket ID number OAR–2004–0086, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Emily Chen, Certification and Compliance Division, Environmental Protection Agency, 2000 Traverwood Dr, Ann Arbor MI 48105, (734) 214–4122, *chen.emily@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established a public docket for this ICR under Docket ID number OAR–2004–0086, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

*Affected entities:* Entities potentially affected by this action are individuals and businesses importing marine engines.

*Title:* Information Requirements for Importation of Nonconforming Marine Engines.

*Abstract:* Individuals and businesses importing marine engines, including outboard engines and personal water craft, request approval for engine importations. The collection of this information is mandatory (40 CFR 89.601 *et seq.* , 91.701 *et seq.* , & 94.801 *et seq.* and Clean Air Act Sections 203 and 208) in order to ensure compliance of nonconforming engines with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 89.601 *et seq.*, 40 CFR 91.701 *et seq.*, 40 CFR 94.801 *et seq.*, and 19 CFR 12.74 promulgated under the authority of Clean Air Act Sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming engines are met. Any information submitted to the Agency for which a claim of confidentiality is made, is safeguarded according to policies set forth in title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (*see* CFR 2), and the public is not permitted access to information containing personal or organizational identifiers. 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.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

*Burden Statement:* EPA estimates that 1,000 respondents annually will, on average, import nonconforming marine engines 3.1 times each year. Each importation will require one half hour to prepare and submit the required information, yielding a total burden of 1550 hours. The total cost associated with this reporting burden is $77,500. 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.

Dated: June 21, 2004.

**Robert Brenner,**

*Acting Assistant Administrator, Office of Air and Radiation.*

[FR Doc. 04–14827 Filed 6–29–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0098; FRL–7365–8]**

## TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission; Request for Comment on Renewal of Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission (EPA ICR No. 1139.07, OMB Control No. 2070–0033). This ICR involves a collection activity that is currently approved and scheduled to expire on October 31, 2004. The information collected under this ICR relates to protecting public health and the environment by assuring that chemicals that may pose serious risks undergo testing by manufacturers or processors. EPA uses the information collected under the authority of the Toxic Substances Control Act (TSCA) section 4 activity to assess any risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

**DATES:** Written comments, identified by the docket ID number OPPT–2004–0098, must be received on or before August 30, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

*For technical information contact*: Keith Cronin, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8102; fax number: (202) 564–4775; e-mail address: *cronin.keith@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture, process or import, use, distribute or dispose of one or more specified chemical substances. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., basic chemical manufacturing, resin, synthetic rubber, and artificial and synthetic fibers and filaments manufacturing, paint, coating, and adhesive manufacturing, and other chemical product and preparation manufacturing.
- Petroleum refineries (NAICS 32411), e.g., crude petroleum refineries, diesel fuels manufacturing, fuel oils manufacturing, oil refineries, petroleum distillation.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0098. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.*You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly

available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and to Whom Do I Submit the Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0098. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0098. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0098. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider when I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*F. What Information is EPA Particularly Interested in?*

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits

comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

## II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

*Title*: TSCA Section 4 Test Rules, Consent Orders, Test Rule Exemptions, and Voluntary Data Submission.

*ICR numbers*: EPA ICR No. 1139.07, OMB Control No. 2070–0033.

*ICR status*: This ICR is currently scheduled to expire on October 31, 2004. 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**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

*Abstract*: Section 4 of TSCA is designed to assure that chemicals that may pose serious risks to human health or the environment undergo testing by manufacturers or processors, and that the results of such testing are made available to EPA. EPA uses the information collected under the authority of TSCA section 4 activity to assess risks associated with the manufacture, processing, distribution, use or disposal of a chemical, and to support any necessary regulatory action with respect to that chemical.

EPA must assure that appropriate tests are performed on a chemical if it decides: (1) That a chemical being considered under TSCA section 4(a) may pose an ''unreasonable risk'' or is produced in ''substantial'' quantities that may result in substantial or significant human exposure or substantial environmental release of the chemical; (2) that additional data are needed to determine or predict the impacts of the chemical's manufacture, processing, distribution, use or disposal; and (3) that testing is needed to develop such data. Rules and consent orders under TSCA section 4 require that one manufacturer or processor of a subject chemical perform the specified testing and report the results of that testing to EPA. TSCA section 4 also allows a manufacturer or processor of a subject chemical to apply for an exemption from the testing requirement if that testing will be or has been performed by another party.

Responses to the collection of information described in 40 CFR part 790 are mandatory. Responses to the collection of information established by the High Production Volume (HPV) Challenge Program are voluntary. Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

## III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 125 hours per response. The following is a summary of the estimates taken from the ICR:

*Respondents/affected entities*: Entities potentially affected by this action are companies that manufacture, process, import, use, distribute or dispose of chemicals.

*Estimated total number of potential respondents*: 396.

*Frequency of response*: On occasion.

*Estimated total annual burden hours*: 177,707 hours.

*Estimated total annual burden costs*: $7,559,572.

## IV. Are There Changes in the Estimates from the Last Approval?

This request reflects a decrease in the total estimated burden of approximately 1 million hours (from 1,182,574 hours to 177,707 hours) from that currently in the OMB inventory. This decrease is attributable to changes in the Agency's expectations about the number of section 4 actions it will issue annually. Additionally, this ICR no longer describes the burden related to the Voluntary Children's Chemical Evaluation Program (VCCEP). The collection activities and burden related to the VCCEP are now described in a seperate ICR. In the previous ICR, EPA's estimated burden was based on the assumption that it would issue 3 test rules and 8 enforceable consent agreements (ECAs), and included estimates of testing needs would be completed under the voluntary HPV Challenge Program and the VCCEP. For this ICR, the estimated burden is based on the Agency's expectation that it will issue 1 test rule and 3 ECAs, and also EPA's estimate of the expected level of testing remaining to be done under the HPV Challenge Program.

## V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

## List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: June 23, 2004.

**Susan B. Hazen,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 04–14832 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0151; FRL–7363–4]**

## Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**.

**DATES:** The deletions are effective on December 27, 2004, or July 30, 2004, for product registrations 000100–00579, 000100–00786, 000264–00316, 000264–00333, 000264–00349, 000264–00453, 000264–00482, 000264–00524, 000264–00526, 000264–00532, 000264–00689, 000769–00954, 005905–00496, 005905–00502, 005905–00510, 011685–00013, 011685–00014, 028293–00237, 033955–00462, and 04000–00058, unless the Agency receives a written withdrawal request on or before applicable dates given above.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before dates given above.

**ADDRESSES:** Written withdrawal requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0151 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** James A. Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761; e-mail address: *hollins.james@epa.gov*.

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0151. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

*C. How and to Whom Do I Submit Written Withdrawal Requests?*

1. *Electronically*—i. *E-mail*. E-mail your written withdrawal requests to: James A. Hollins at *hollins.james@epa.gov*, Attention: Docket ID Number OPP–2004–0151.

ii. *Disk or CD ROM*. Written withdrawal requests on disk or CD ROM may be mailed to the address in Unit I.C.2. or delivered by hand or courier to the address in Unit I.C.3., Attention: Docket ID Number OPP–2004–0151. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your written withdrawal requests to: James A. Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0151.

3. *By hand delivery or courier*. Deliver your written withdrawal requests to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0151. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

### II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to delete uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name/active ingredient, and specific uses deleted:

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Registration no. | Product Name | Active Ingredient | Delete From Label |
|---|---|---|---|
| 000100–00579 | Ametryn Technical | Ametryn | Uses in bananas (and plantains) and noncrop areas |

TABLE 1.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

| Registration no. | Product Name | Active Ingredient | Delete From Label |
|---|---|---|---|
| 000100–00786 | Evik DF Herbicide | Ametryn | Uses in bananas (and plantains) and noncrop areas |
| 000264–00316 | SEVIN Brand 80S Carbaryl Insecticide | Carbaryl | Use on poultry |
| 000264–00333 | SEVIN Brand XLR PLUS Carbaryl Insecticide | Carbaryl | Use on poultry |
| 000264–00349 | SEVIN Brand 4F Carbaryl Insecticide | Carbaryl | Use on poultry |
| 000264–00453 | Rovral Fungicide | Iprodione | Use on blueberries |
| 000264–00482 | Rovral Brand 4 Flowable Fungicide | Iprodione | Use on blueberries |
| 000264–00524 | Rovral Brand WG Fungicide | Iprodione | Use on blueberries |
| 000264–00526 | SEVIN Brand 80WSP Carbaryl Insecticide | Carbaryl | Use on poultry |
| 000264–00532 | Rovral 50 SP Fungicide | Iprodione | Use on blueberries |
| 000264–00689 | Rovral Brand75 WG Fungicide | Iprodione | Use on blueberries |
| 000769–00689 | SMCP Diazinon AG500 | Diazinon | Use on almonds |
| 000769–00954 | AllPro Diazinon 50WP Insecticide | Diazinon | Use on almonds |
| 001022–00543 | Chapcide 4-EC | Chlorpyrifos | Use on wood chips |
| 002382–00180 | Zema Pyrethrins Powder | Piperonyl butoxide; pyrethrins | Vegetable crops, ornamentals, non-food areas, food areas and food handling establishments |
| 002935–00511 | L.V.4 | 2,4-D, 2-ethylhexyl ester | Use in drainage ditchbanks |
| 004000–00058 | Flying Insect Killer | Resmethrin; d-trans allethrin | Food handling claims |
| 005905–00496 | 1.5LB Benfluralin EC | Benfluralin | Use on peanuts and tobacco |
| 005905–00502 | Weed Rhap A4-MCPA | MCPA, diethylamine salt | Use on rice |
| 005905–00510 | MCPA Sodium Salt | MCPA | Use on rice |
| 010163–00061 | Prokil Malathion 25-WP | Malathion | Vegetable crops, pasture, rangeland, small grains, cotton, apricots, cherry, citrus, grapes, peach, plums/prunes, blueberries, cole crop, alfalfa, clover, grass |
| 011685–00013 | Nufarm MCPA Acid Technical | MCPA | Use on rice |
| 011685–00014 | Nufarm MCPA Technical Acid | MCPA | Use on rice |
| 028293–00237 | Unicorn Carbaryl Insecticide 5% Dust | Carbaryl | Use on poultry and poultry houses |
| 033955–00462 | Acme Sevin 5% Dura-Dust | Carbaryl | Use on poultry |
| 035935–00008 | Nufarm MCPA Technical Acid | MCPA | Use on rice |
| 035935–00009 | Nufarm MCPA Acid | MCPA | Use on rice |
| 037425–00021 | Adams Animal Repellent Concentrate | Piperonyl butoxide; pyrethrins; permethrin | Kennel and yard uses |
| 051036–00287 | Permethrin 3.2 TC | Permethrin | Use directions for livestock |
| 071532–00001 | LG Permethrin Technical Insecticide | Permethrin | Use for mosquito and biting fly control |

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before applicable dates indicated in the **DATES** section of this notice to discuss withdrawal of the application for amendment. This 30 or 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the deletion.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number.

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Company No. | Company Name and Address |
|---|---|
| 000100 | Syngenta Crop Protection, Inc., Attn: Regulatory Affairs, P.O. Box 18300, Greensboro, NC 27419–8300 |
| 000264 | Bayer CropScience LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 |
| 000769 | Value Gardens Supply, LLC, P.O. Box 585, St. Joseph, MO 64502 |
| 001022 | IBC Manufacturing Co., c/o Gail Early, 416 E. Brooks Road, Memphis, TN 38109 |
| 002382 | Virbac AH Inc., Joseph E. Dyer - Regulatory Agent, 3200 Meacham Blvd., Forth Worth, TX 76137 |
| 002935 | Wilbur Ellis Co., P.O. Box 1286, Fresno, CA 93715 |
| 004000 | Southern Chemical Products, Co., Subsidiary of Carroll Co., 2900 West Kingsley Road, Garland, TX 75041 |
| 005905 | Helena Chemical Co., 225 Schilling Blvd., Suite 300, Collierville, TN 38017 |
| 010163 | Gowan Co., P.O. Box 5569, Yuma, AZ 85366–5569 |

TABLE 2.—REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

| EPA Company No. | Company Name and Address |
|---|---|
| 011685 | Nufarm Americas, Inc., SJM Div. Agent for: Nufarm UK Limited, 2300 Frederick Avenue, Suite 208, St. Joseph, MO 64504 |
| 028293 | Unicorn Laboratories, 12385 Automobile Blvd., Clearwater, FL 33762 |
| 033955 | PBI/Gordon Corp, Attn: Craig Martens, P.O. Box 014090, Kansas, MO 64101 |
| 035935 | Nufarm Americas, Inc., SJM Div. Agent for: Nufarm Limited, 2300 Frederick Avenue, Suite 208, St. Joseph, MO 64504 |
| 037425 | Pet Chemicals, P.O. 18993, Memphis, TN 3818–10993 |
| 051036 | Micro-Flo Company, LLC, 530 Oak Court Drive, Memphis, TN 38117 |
| 071532 | Biologic, Inc, Agent for: LG Life Sciences, Ltd. 115 Obtuse Hill, Brookfield, CT 06804 |

## III. What is the Agency Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

## IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to James A. Hollins using the instructions in Unit I.C. The Agency will consider written withdrawal requests postmarked on or before applicable dates indicated in the **DATES** section of this notice.

## V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

## List of Subjects

Environmental protection, Pesticides and pests.

Dated: June 8, 2004.

**Arnold E. Layne,**

*Director, Information Resources and Services Division, Office of Pesticide Programs.*

[FR Doc. 04–14833 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–S

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–2004–0143; FRL–7366–6]**

## Report of the Food Quality Protection Act Tolerance Reassessment and Risk Management Decision for Oryzalin; Notice of Availability and the Registration Eligibility Determination for Turf Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document announces availability of and starts a 30–day public comment period for the report of the Food Quality Protection Act (FQPA) Tolerance Reassessment and Risk Management Decision (TRED) for Oryzalin. EPA has reassessed the existing tolerances for oryzalin and completed a reregistration eligibility decision for oryzalin use on turf.

**DATES:** Comments, identified by docket ID number OPP–2004–0143, must be received on or before July 30, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Christina Scheltema, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2201; fax number: (703) 308–2201; e-mail address: *scheltema.christina@epa.gov*.

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general but may be of interest to a wide range of stakeholders, including environmental, human health, and agricultural advocates; the agrochemical industry; pesticide users; and members of the public interested in pesticide use on food. This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. If you have any questions regarding the applicability of this action to you or a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0143. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall#2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0143. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0143. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0143.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2003–0143. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

**II. What Action is the Agency Taking?**

EPA has reassessed the risks associated with current and proposed food uses of the pesticide active ingredient oryzalin, reassessed 14 existing tolerances, and completed a reregistration eligibility decision for oryzalin use on residential lawns and turf. The Agency is issuing for comment the resulting report on FQPA Tolerance Reassessment Progress and Risk Management Decision for Oryzalin, known as a TRED, as well as a risk assessment overview and technical support documents.

EPA must review tolerances and tolerance exemptions that were in effect when FQPA was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the tolerances and exemptions included in this notice.

EPA works extensively with affected parties to reach the tolerance reassessment decisions presented in TREDs. The Agency therefore, is issuing the oryzalin TRED as a final decision with a 30–day comment period. All comments received during the next 30 days will be carefully considered by the Agency. If any comment significantly affects the Agency's decision, EPA will publish an amendment to the TRED in the **Federal Register**. In the absence of substantive comments, the tolerance reassessment decisions reflected in this TRED will be considered final.

**List of Subjects**

Environmental protection, Oryzalin, Pesticides, Tolerance reassessment.

Dated: June 21, 2004.

**Peter Caulkins,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 04–14608 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2002–0039; FRL–7356–4]**

## Four Purchasing Guides; Notice of Review and Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA's Environmentally Preferable Purchasing (EPP) program is announcing the posting and public review of four draft EPP guides on EPA's electronic public docket and comment system, EPA Dockets. This is part of an effort to implement Presidential Executive Order 13101, ''Greening the Government Through Waste Prevention, Recycling and Federal Acquisition.'' EPA's EPP Program operates in a transparent manner, with open participation and counsel from our stakeholders. In today's notice, EPA is announcing an open review of the four purchasing guides that can provide information to Federal procurement officials in making EPP decisions that can help protect human health and the environment.

**DATES:** Comments, identified by docket ID number OPPT–2002–0039, must be received on or before August 30, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

*For technical information contact:* Terry Grogan, Pollution Prevention Division (7409M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460; telephone number: (202) 564–6317; e-mail address: *grogan.terry@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to Federal purchasers affected by Executive Order 13101. This action may also be of interest to: State and local government and private procurement officials interested in environmentally preferable products, and persons or organizations interested in the aforementioned product categories. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0039. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. Electronic access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2002–0039. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID number OPPT–2002–0039. In contrast to EPA's electronic public

docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO), EPA East Building, Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number OPPT–2002–0039. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

*D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. Provide copies of any technical information and/or data you used that support your views.

In particular, EPA would like comments to address the following questions:

1. Is the discussion on the potential environmental impacts of the product categories useful for Federal purchasers?

2. Is there any more recent information that is germane to or would enhance the discussion of these product categories?

3. Can Federal purchasers act easily upon the stated recommendations in the product guides?

4. Is this an approach you would like EPA to take in addressing EPP?

## II. Background

*A. What Action is the Agency Taking?*

EPA is initiating an open process to allow stakeholders to review and comment on the four draft EPP product guides. The four product guides now available for review are:

1. ''Greening Your Purchase of Carpet: A Guide For Federal Purchasers.''

2. ''Greening Your Purchase of Cleaning Products: A Guide For Federal Purchasers.''

3. ''Greening Your Purchase of Copiers: A Guide For Federal Purchasers.''

4. ''Greening Your Meetings and Conferences: A Guide For Federal Purchasers.''

The EPP program does not endorse products nor does it recommend for or against the purchase of specific products. EPP seeks to provide information on products with the overall best value, taking into account price competitiveness, regulatory requirements, performance standards, and environmental impact. Because purchasers typically have readily available sources of information on procurement and safety regulations and well-established methods for evaluating price and performance, EPA's EPP program has developed these purchasing guides to help government purchasers consider the environmental factors in the purchasing process. EPA's EPP program is committed to reviewing and updating information contained within the purchasing guides when new information becomes available.

*B. What is the Agency's Authority for Taking this Action?*

Spending approximately $230 billion annually on a large quantity and wide variety of products and services, the Federal government leaves a large environmental ''footprint.'' However, by purchasing environmentally preferable products and services, the Federal government can use its purchasing power to increase national demand for greener products as well as to help meet environmental goals through markets rather than mandates. In 1995, in response to Executive Order 12873, EPA established the EPP program to encourage and assist Executive agencies in the purchase of environmentally preferable products and services. In 1997, the Federal Acquisition Regulation (FAR), which establishes uniform procedures and policies for Federal acquisition, was amended to support Federal procurement of ''green'' products and services. And, most recently, in 1998, Executive Order 13101, titled ''Greening the Government through Waste Prevention, Recycling, and Federal Acquisition,'' directed Executive agencies to ''consider . . . a broad range of factors including: elimination of virgin material requirements; use of biobased products; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal'' when making purchasing decisions and to ''modify their procurement programs as appropriate.''

Similarly, the Biomass R & D Act of 2000, the Farm Bill of 2002, and Executive Order 13134 emphasize the potential importance of biobased products to national economic and environmental interests. Together these authorities encourage a strong Federal role in the development and early adoption of biobased products and recognize the role of procurement as part of an overall Federal policy on biobased products.

## List of Subjects

Environmental protection, Procurement guidelines, Environmentally preferable purchasing product guides, Federal procurement, Environmentally preferable purchasing.

Dated: June 23, 2004.

**Susan B. Hazen,**

*Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 04–14831 Filed 6–29–04; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–2004–0101; FRL–7367–6]**

## Certain New Chemicals; Receipt and Status Information

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSC, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 24, 2004 to June 11, 2004, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the docket ID number OPPT–2004–0101 and the specific PMN number or TME number, must be received on or before July 30, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0101. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*C. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0101. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0101 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0101 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

### *D. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from May 24, 2004 to June 11, 2004, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent

that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 44 PREMANUFACTURE NOTICES RECEIVED FROM: 05/24/04 TO 06/11/04

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–04–0597 | 05/24/04 | 08/21/04 | CBI | (G) Intermediate for detergents | (G) Alkylbenzenes sulfonic acid |
| P–04–0598 | 05/24/04 | 08/21/04 | CBI | (G) Intermediate for detergent | (G) Alkylated benzene bottoms sulfonated |
| P–04–0599 | 05/24/04 | 08/21/04 | CBI | (G) Metalworking detergents | (G) Alkylbenzenes sulfonic aids, metal salts |
| P–04–0600 | 05/24/04 | 08/21/04 | CBI | (G) Metalworking detergent | (G) Alkylbenzenes sulfonic acids, metal salts |
| P–04–0601 | 05/24/04 | 08/21/04 | CBI | (G) Metalworking detergent | (G) Alkylbenzenes sulfonic acids, metal salts |
| P–04–0602 | 05/24/04 | 08/21/04 | CBI | (G) Lubrication detergent | (G) Alkylbenzenes sulfonic acids, metal salts |
| P–04–0603 | 05/24/04 | 08/21/04 | CBI | (G) Lubrication detergent | (G) Alkylbenzenes sulfonic acids, metal salts |
| P–04–0604 | 05/24/04 | 08/21/04 | CBI | (G) Lubrication detergent | (G) Alkylbenzenes sulfonic aicds, metal salts |
| P–04–0605 | 05/24/04 | 08/21/04 | CBI | (G) Metalworking additive | (G) Alkylbenzene sulfonic acids, metal salts |
| P–04–0606 | 05/24/04 | 08/21/04 | CBI | (G) Metalworking additive | (G) Alkylbenzene sulfonic acids, metal salts |
| P–04–0607 | 05/24/04 | 08/21/04 | CBI | (G) Automotive lubricant | (G) Alkylbenzene sulfonic acids, metal salts |
| P–04–0608 | 05/24/04 | 08/21/04 | CBI | (G) Intermediate for lubrication detergents | (G) Alkylated benzene |
| P–04–0609 | 05/24/04 | 08/21/04 | Cognis Corporation | (S) Expected to be used initially for the manufacture of inks, possibly as a solvent; intermediate for chemical derivatives for metal working, adhesives, textiles. no specifics. | (S) Alcohols, $C_{14-18}$ and $C_{18}$-unsaturated, branched and linear |
| P–04–0610 | 05/24/04 | 08/21/04 | CBI | (G) Ultra violet (uv) pressure sensitive adhesive | (G) Methacrylated terpene phenolic oligomer |
| P–04–0611 | 05/25/04 | 08/22/04 | CBI | (G) Additive for industrial and consumer products dispersive use | (S) (1r,4r)-4-methoxy-2,2,7,7-tetramethyltricyclo[6.2.1.01,6]undec-5-ene |
| P–04–0618 | 05/26/04 | 08/23/04 | CBI | (S) Concrete additive | (G) Purandione telomer |
| P–04–0619 | 05/26/04 | 08/23/04 | CBI | (G) Component of a mixture for highly dispersive applications. | (G) Essential oil extract |
| P–04–0620 | 05/27/04 | 08/24/04 | Henkel Adhesives | (S) Low pressure molding adhesive | (G) Polyamide Resin |
| P–04–0621 | 05/27/04 | 08/24/04 | Mitsui Chemicals America, Inc. | (G) Coating resin | (S) 2-propenoic acid, 2-methyl-, polymer with ethyl 2-propenoate, 2-hydroxyethyl 2-methyl-2-propenoate and methyl 2-methyl-2-propenoate, 2,2′-azobis[2-methylpropanenitrile]-initiated |
| P–04–0622 | 05/27/04 | 08/24/04 | CBI | (G) Ingredients for use in consumer products: highly dispersive | (G) Alkyl 2-alkanoate |
| P–04–0623 | 05/27/04 | 08/24/04 | Ethox Chemicals, LLC | (G) Cleaning fluid | (S) Hexanoic acid, 2-ethyl-, $C_{8-12}$-alkyl esters |
| P–04–0624 | 05/24/04 | 08/21/04 | CBI | (G) Product is a component in a lubricant blend with final use in the plastics industry | (G) Mixed alkyl phosphate esters alkoxylated |
| P–04–0625 | 05/28/04 | 08/25/04 | CBI | (G) Crude oil additive for downhole application | (G) Dibutylhexadecylhydroxyethylammoniumbromide |
| P–04–0626 | 06/01/04 | 08/29/04 | CBI | (G) Processing aid | (G) Substituted phenol, polymer with polyalkylene polyether polyol and epichlorohydrin |
| P–04–0627 | 06/02/04 | 08/30/04 | CBI | (G) Spray applied filled backing resin | (G) Unsaturated polyester benzoate |
| P–04–0628 | 06/02/04 | 08/30/04 | CBI | (G) Component of manufactured consumer article-contained use. | (G) Spiro[isobenzofuran-1(3h),9′-[9h]heteropolycycle]-3-one, 3′-[(2-methylphenyl)amino]-6′-[(2-methylphenyl)octylamino]- |
| P–04–0629 | 06/02/04 | 08/30/04 | CBI | (S) Organic synthesis intermediate | (G) Spiro[isobenzofuran-1(3h),9′-[9h]heteropolycycle]-3-one, 3′,6′-bis[(2-methylphenyl)amino]- |

I. 44 PREMANUFACTURE NOTICES RECEIVED FROM: 05/24/04 TO 06/11/04—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|---|---|---|---|---|---|
| P–04–0630 | 06/02/04 | 08/30/04 | CBI | (S) Acid dye for textile | (G) Substituted naphthalene sulfonic acid, alkali salt |
| P–04–0631 | 06/02/04 | 08/30/04 | CBI | (G) Hyperdispersant | (G) Fatty acid polyester amide |
| P–04–0632 | 06/02/04 | 08/30/04 | CIBA Specialty Chemicals Corporation, Textile Effects | (S) Exhaust application to cotton and nylon fabrics | (G) Bis substituted benzenesulfonic acid amino substituted triazin amino substituted phenyl azo compound |
| P–04–0633 | 06/03/04 | 08/31/04 | Na Industries, Inc. | (G) Concrete additive | (G) Poly (oxyethylene) alkenyl ether |
| P–04–0634 | 06/04/04 | 09/01/04 | U.S. Polymers Inc. | (S) Binder for thermo-plastic coating; binder for ink/adhesive | (G) Reaction product of: isophorone diisocyanate, aliphatic diamine, .beta.hydro-.omega.-hydroxypoly (oxy-1,4-butanediyl) and aliphatic hydroxy functional polyols. |
| P–04–0635 | 06/02/04 | 08/30/04 | CBI | (G) Solvent | (S) Ethane, 1,1,2,2-tetrafluoro-1-(2,2,2-trifluoroethoxy)- |
| P–04–0636 | 06/07/04 | 09/04/04 | CBI | (S) Ink jet dye for inks | (G) Cuprate, [[[[[[[(sulfonaphthalenyl)]azo]-(substitutedphenyl)]azo]-(substitutedsulfonaphthalenyl)]azo]-substitutedphenyl-substituted heteromonocycle], sodium salts |
| P–04–0637 | 06/08/04 | 09/05/04 | Cognis Corporation | (G) Synthetic fiber lubricant | (S) 9,12-octadecadienoic acid (9z,12z)-, reaction products with tetraethylenepentamine, acetates |
| P–04–0638 | 06/07/04 | 09/04/04 | CBI | (G) Use: spray-apllied paint, degree of containment: open, non-dispersive | (G) Alkanedioic acid, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 1,3-isobenzofurandione, 2-methyl-1,3-propanediol, and oxiranylmethyl neodecanoate |
| P–04–0639 | 06/07/04 | 09/04/04 | CBI | (G) Industrial detergent and dispersant use. | (G) Modified aspartic acid polymer |
| P–04–0640 | 06/07/04 | 09/04/04 | CBI | (G) A crosslinking agent for solvent based inks. A monomer for polymerizations. A water scavenger for producing anyhydrous polymers. | (G) Multifunctional polycarbodiimide |
| P–04–0641 | 06/10/04 | 09/07/04 | Rahn USA Corp. | (S) UV/electonic beam inks; uv/electronic beam coatings; uv/electron beam fillers; uv/electron beam adhesives | (G) Polyetherpolyol polymer with aromatic dialkylamine |
| P–04–0642 | 06/10/04 | 09/07/04 | CBI | (G) Plastics additives | (G) Adipic acid ester oligomer |
| P–04–0643 | 06/09/04 | 09/06/04 | Hi-Tech Color, Inc. | (S) 1. Plastic molding (tv, radio casset, etc.,) 2. Pvc sheet (wall paper, bookjacket etc.,) | (G) 9-octadecenoic acid (z)-, butyl ester, polymer with propanediol, 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-oxepanone,and 1,3,5-tris(6-isocyanatohexyl)-1,3,5-triazine-2,4,6(1h,3h,5h)-trione. |
| P–04–0644 | 06/09/04 | 09/06/04 | BASF Corporation | (G) Radiation curing agent | (G) Polyurethane acrylic ester |
| P–04–0650 | 06/09/04 | 09/06/04 | Genencor International Inc. | (S) A preparation for the detoxification of organophosphate agents | (S) Reaction catalyzed: aryl dialtyl phosphate + h20 odialkyl phosphate + an aryl acohol acts on organophosphorus compounds (such as paraoxon) including esters of phosphonic and phosphinic acid. |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 15 NOTICES OF COMMENCEMENT FROM: 05/24/04 TO 06/11/04

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–00–1118 | 06/08/04 | 06/03/04 | (G) Alkenyl hydroxy acid |
| P–02–0846 | 06/02/04 | 04/29/04 | (G) Sulfonated naphthalene condensate, calcium salt |
| P–02–0847 | 06/02/04 | 04/29/04 | (G) Sulfonated naphthalene condensate, sodium salt |
| P–03–0417 | 06/03/04 | 05/26/04 | (G) Polyester isocyanate polymer |

II. 15 NOTICES OF COMMENCEMENT FROM: 05/24/04 TO 06/11/04—Continued

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|---|---|---|---|
| P–03–0838 | 06/03/04 | 05/04/04 | (G) Benzo thiadiazine derivative |
| P–03–0841 | 06/03/04 | 05/04/04 | (G) Benzothiadiazine derivative |
| P–04–0090 | 06/08/04 | 05/18/04 | (G) Triazine derivative |
| P–04–0141 | 06/01/04 | 05/16/04 | (G) Modified amidoamine |
| P–04–0188 | 06/03/04 | 05/10/04 | (G) Heterocyclic substituted sulfonyloxybenzenecarboxamide |
| P–04–0265 | 05/28/04 | 05/13/04 | (G) Substituted alkyl diol polymer with substituted alkyloxime and substituted cycloalkane and unsaturated alcohols |
| P–04–0275 | 06/09/04 | 05/21/04 | (S) Oxetane, 3-(bromomethyl)-3-methyl- |
| P–04–0288 | 06/09/04 | 05/26/04 | (G) Substituted aromatic azo isoindole |
| P–04–0295 | 06/08/04 | 05/27/04 | (S) 2-propenoic acid, 2-methyl-, (dimethoxymethylsilyl)methyl ester |
| P–04–0335 | 06/09/04 | 06/02/04 | (G) Quaternary ammonium compound |
| P–04–0342 | 06/03/04 | 05/25/04 | (G) Polyurethane prepolymer |

**List of Subjects**

Environmental protection, Chemicals, Premanufacturer notices.

Dated: June 24, 2004.

**Sandra R. Wilkins,**

*Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 04–14834 Filed 6–29–04; 8:45 am]

BILLING CODE 6560–50–S

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7780–2]**

## Proposed Reissuance of the NPDES General Permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Proposed NPDES General Permit Reissuance.

**SUMMARY:** The Regional Administrator of Region 6 today proposes to reissue the National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000) for discharges from existing and new dischargers and New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act. The permit, previously reissued on April 19, 1999, published in the **Federal Register** at 64 FR 19156, authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas off Louisiana and Texas. Discharges of produced water to Federal waters from facilities located in the territorial seas are also authorized when all conditions of the permit are met. The following changes to the expiring permit are proposed to be made as a part of the permit reissuance: The time frame is specified for collection of a produced water sample after a sheen is observed. The discharge prohibitions at National Marine Sanctuaries are clarified in an attempt to better reflect National Oceanic and Atmospheric Administration regulations. The variability factor for use in determining compliance with the permit's limits for sediment toxicity and biodegradation is removed. The requirement to submit fourteen day advanced notification of intent to be covered by the permit is removed. The final discharge monitoring report will be required to be submitted along with the a notice of termination. New test methods are allowed for monitoring cadmium and mercury in stock barite. Several minor miscellaneous discharges are added to better represent deep water technologies. Other changes to the permit's miscellaneous discharge requirements are proposed to clarify that toxicity testing is not required for non-toxic dyes. Other minor changes in wording are also proposed to resolve confusion of EPA's intent regarding the permit's requirements. EPA is proposing that the permit be reissued for three years. During the three year permit term, EPA and Minerals Management Service (MMS) propose to conduct a study to collect additional information to support the evaluation of potential produced water discharge impacts in the hypoxic zone in the northern Gulf of Mexico. Our intent is to ensure that we have the information necessary to determine whether or not anticipated future increases in produced water discharges may result in unreasonable degradation of the marine environment. EPA and Minerals Management Service (MMS) will work in partnership to determine the appropriate next steps based on this study.

**DATES:** Comments must be received by July 30, 2004.

**ADDRESSES:** Comments should be sent to: Regional Administrator, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733

Comments may also be submitted via EMAIL to the following address: *smith.diane@epa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency (6WQ-CA), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–2145.

A copy of the proposed permit and the fact sheet more fully explaining the proposal may be obtained from Ms. Smith. The Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advance notice. Additionally, a copy of the proposed permit and fact sheet, and this **Federal Register** Notice may be obtained on the Internet at: *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

### Administrative Compliance Order (ACO) for NPDES OCS Permit Transition for Dischargers in the Western Portion of the Gulf of Mexico

Persons who own or operate offshore platforms in Federal waters of the Western Portion of the Gulf of Mexico (defined as seaward of the outer boundary of the territorial seas off Louisiana and Texas) and have unauthorized discharges of pollutants to waters of the U.S. may not obtain new permit coverage under the 1998 National Pollutant Discharge Elimination System (NPDES) Outer Continental Shelf (OCS) general permit (NPDES No. GMG290000) since it expired on November 3, 2003. However, these persons may request coverage

under a Clean Water Act ACO that orders them to comply with the 1998 general permit until issuance of the replacement permit. The ACO, its fact sheet (which includes other options), and the application form for coverage under the ACO are available on the Internet at *http://www.epa.gov/region6/6en/w/offshore/1998-permit-ao-extension-jun-2004.htm.*

If you do not have access the Internet, you may contact EPA Region 6's Enforcement Offshore Coordinator, Mr. Taylor Sharpe, by telephone at (214) 665–7112, or by mail at: EPA Region 6, Attn: Mr. Taylor Sharpe (6EN–WT), P.O. Box 50625, Dallas, TX 75250.

**SUPPLEMENTARY INFORMATION:**

*Regulated entities.* EPA intends to use the proposed reissued permit to regulate oil and gas extraction facilities located in the Outer Continental Shelf of the Western Gulf of Mexico, *e.g.*, offshore oil and gas extraction platforms, but other types of facilities may also be subject to the permit. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

The permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitations Guidelines at 40 CFR Part 435 and additional requirements assuring that regulated discharges will cause no unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

**Other Legal Requirements**

*Oil Spill Requirements.* Section 311 of the CWA, (the Act), prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits are excluded from the provisions of Section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by Section 311 of the Act.

*Ocean Discharge Criteria Evaluation.* For discharges into waters of the territorial sea, contiguous zone, or oceans CWA section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment in issuance of NPDES permits. These Ocean Discharge Criteria (40 CFR Part 125, Subpart M) are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980). EPA Region 6 has previously determined that discharges in compliance with the Western Gulf of Mexico Outer Continental Shelf general permit (GMG290000) will not cause unreasonable degradation of the marine environment. Since this proposed permit contains limitations which will protect water quality and in general reduce the discharge of toxic pollutants to the marine environment, the Region finds that discharges proposed to be authorized by the reissued general permit will not cause unreasonable degradation of the marine environment. EPA and Minerals Management Service (MMS) propose to conduct a study to collect additional information to support the evaluation of the potential BOD contribution from produced water discharges in the hypoxic zone in the northern Gulf of Mexico. Our intent is to ensure that we have the information necessary to determine whether or not anticipated future increases in produced water discharges may result in unreasonable degradation of the marine environment.

*Coastal Zone Management Act.* EPA has determined that the activities which are proposed to be authorized by this permit reissuance are consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination will be submitted to the State of Louisiana and the State of Texas for interagency review at the time of public notice.

*Marine Protection, Research, and Sanctuaries Act.* The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate certain ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, NOAA has designated the Flower Garden Banks, an area within the coverage of the OCS general permit, a marine sanctuary. The OCS general permit prohibits discharges in areas of biological concern, including marine sanctuaries. Changes to the permit proposed today will authorize several historic discharges incidental to oil and gas production from a facility which predates designation of the Flower Garden Banks National Marine Sanctuary as a marine sanctuary. EPA has worked extensively with NOAA to ensure that the changes are consistent with regulations governing the National Marine Sanctuary. NOAA's concurrence with the changes will be obtained prior to issuance of the final permit.

*State Water Quality Standards and State Certification.* The permit does not authorize discharges to State Waters; therefore, the state water quality certification provisions of CWA section 401 do not apply to this proposed action.

*Executive Order 12866.* The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to Section 8(b) of that order. Guidance on Executive Order 12866 contain the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of guidelines on which a number of the permit's provisions are based and submitted it to OMB for review. *See* 58 FR 12494.

*Paperwork Reduction Act.* The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Since this permit reissuance will not significantly change the reporting and application requirements which are required under the previous Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000), the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for the reissued permit will be the same and will not be affected by this action.

However, the alternative to obtaining authorization to discharge under this general permit is to obtain an individual permit. The application and reporting burden of obtaining authorization to discharge under the general permit is expected to be significantly less than that under an individual permit.

*Regulatory Flexibility Act.* The Regulatory Flexibility Act, 5 U.S.C. 601 et seq, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit reissuance proposed today is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that issuance of this permit will not have a significant impact on a substantial number of small entities.

*Unfunded Mandates Reform Act.* Section 201 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1501, *et seq*, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See, e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the proposed permit reissuance would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (*See* UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit, as proposed, also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit.

*National Environmental Policy Act.* The Agency is preparing an Environmental Assessment that will be made available to the public before the Agency takes final action.

Dated: June 23, 2004.

**Larry Wright,**

*Acting Director, Water Quality Protection Division, EPA Region 6.*

[FR Doc. 04–14829 Filed 6–29–04; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7780–3]**

## Public Water System Supervision Program Revision for the State of North Carolina

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of Tentative Approval.

**SUMMARY:** Notice is hereby given that the State of North Carolina is revising its approved Public Water System Supervision Program. North Carolina has adopted drinking water regulations for the Interim Enhanced Surface Water Treatment Rule and the Stage 1 Disinfection and Disinfectants Byproducts Rule. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends on approving this State program revision.

All interested parties may request a public hearing. A request for a public hearing must be submitted by July 30, 2004, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 30, 2004, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 30, 2004. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

**ADDRESSES:** All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

North Carolina Department of Environment and Natural Resources, Public Water Supply Section, Parker-Lincoln Building, 2728 Capital Boulevard, Raleigh, North Carolina 27604.

Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Madolyn Dominy, EPA Region 4, Drinking Water Section at the Atlanta address given above (telephone (404) 562–9305).

**Authority:** Section 1401 and section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: June 23, 2004.

**J.I. Palmer, Jr.,**

*Regional Administrator, EPA Region 4.*

[FR Doc. 04–14828 Filed 6–29–04; 8:45 am]

**BILLING CODE 6560–50–P**

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of Administration

### Notice of Meeting of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

**ACTION:** Notice.

**SUMMARY:** The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (''Commission'') will meet in closed session on Wednesday, July 14, 2004, and Thursday, July 15, 2004, in its offices in Arlington, Virginia.

Executive Order 13328 established the Commission for the purpose of assessing whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support the United States Government's efforts to respond to, the development of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century. This meeting will consist of briefings and discussions involving classified matters of national security, including classified briefings from representatives of agencies within the Intelligence Community; Commission discussions based upon the content of classified intelligence documents the Commission has received from agencies within the Intelligence Community; and presentations concerning the United States' intelligence capabilities that are based upon classified information. While the Commission does not concede that it is subject to the requirements of the Federal Advisory Committee Act (FACA), 5 United States Code Appendix 2, it has been determined that the July 14–15 meeting would fall within the scope of exceptions (c)(1) and (c)(9)(B) of the Sunshine Act, 5 United States Code, Sections 552b(c)(1) & (c)(9)(B), and thus could be closed to the public if FACA did apply to the Commission.

**DATES:** Wednesday, July 14, 2004 (9 a.m. to 5 p.m.), and Thursday, July 15, 2004 (9 a.m. to 1 p.m.).

**ADDRESSES:** Members of the public who wish to submit a written statement to the Commission are invited to do so by facsimile at (703) 414–1203, or by mail at the following address: Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Washington, DC 20503. Comments also may be sent to the Commission by e-mail at *comments@wmd.gov*.

**FOR FURTHER INFORMATION CONTACT:** Brett C. Gerry, Associate General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, by facsimile, or by telephone at (703) 414–1200.

**Victor E. Bernson, Jr.,**

*Executive Office of the President, Office of Administration, General Counsel.*

[FR Doc. 04–14770 Filed 6–29–04; 8:45 am]

BILLING CODE 3130–W4–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 plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

*Type of Review:* Renewal of collection.

*Title:* Transfer Agent Registration and Amendment Form.

*OMB Number:* 3064–0026.

*Estimate of Annual Burden:*

Number of respondents: 18.

*Frequency of response:* Occasional.

*Total annual responses:* 6 initial registrations and 12 amendments.

*Time per response:* 1.25 hours per initial registration and .75 hours per amendment.

*Total annual burden:* 17 hours.

*Comment Date:* Comments on this collection of information are welcome and should be submitted on or before July 30, 2004, to both the OMB reviewer and the FDIC contact listed below.

**ADDRESSES:** *OMB:* Mark Menchik, (202) 395–5611, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. *FDIC:* Thomas Nixon, Legal Division (202) 898–8766, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** The information collection takes the form of Form TA–1, which is used by insured nonmember banks and their direct subsidiaries to register with the FDIC as transfer agents, as required by the Securities Exchange Act of 1934 and Part 341 (12 CFR) of the FDIC Rules and Regulations. Information about this submission may be obtained by calling or writing the FDIC contact listed above.

Dated: June 24, 2004.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 04–14751 Filed 6–29–04; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011075–066.

*Title:* Central America Discussion Agreement.

*Parties:* APL Co. PTE Ltd.; A.P. Moller–Maersk A/S; Crowley Liner Services, Inc.; Dole Ocean Cargo Express; Great White Fleet; King Ocean Services Limited; Lykes Lines Limited, LLC; and Seaboard Marine, Ltd.

*Synopsis:* The amendment adds Trinity Shipping Line, S.A. as a party to the agreement.

*Agreement No.:* 011796–001.

*Title:* CMA CGM/Lloyd Triestino Slot Exchange, Sailing and Cooperative Working Agreement.

*Parties:* CMA CGM, S.A. and Lloyd Triestino di Navigazione S.p.A.

*Synopsis:* The proposed modification would increase the number of vessels authorized under the agreement and revise the parties' space allocation.

*Agreement No.:* 011865–001.

*Title:* CMA CGM/LT Amerigo Express MUS Slot Charter Agreement.

*Parties:* CMA CGM, S.A. and Lloyd Triestino di Navigazione S.p.A.

*Synopsis:* The proposed modification would increase the number of TEUs being chartered. The parties request expedited review.

Dated: June 25, 2004.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–14878 Filed 6–29–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermeidary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

*License Number:* 003270NF.
*Name:* A America Cargo Services, Inc. dba A America Container Lines.
*Address:* 8202 N.W. 70th Street, Miami, FL 33166.
*Date Revoked:* August 10, 2003.
*Reason:* Failed to maintain valid bonds.

*License Number:* 004161F.
*Name:* Fast Transportation Services, Inc.
*Address:* Lot 12 Charlyn Industrial Park, Carolina, PR 00983.
*Date Revoked:* June 3, 2004.
*Reason:* Surrendered license voluntarily.

*License Number:* 018631N.
*Name:* Hua Lian Fa Logistics, Inc.
*Address:* 3380 Flair Drive, Suite 236, El Monte, CA 91731.
*Date Revoked:* June 4, 2004.
*Reason:* Surrendered license voluntarily.

*License Number:* 002693F.
*Name:* Jean H. Johnson dba JIFF.
*Address:* 1480 Mt. Olive-Agosta Road, New Bloomington, OH 43341.
*Date Revoked:* June 9, 2004.
*Reason:* Failed to maintain a vailid bond.

*License Number:* 002893F.
*Name:* Johnnie C.F. Chin dba J C Express.
*Address:* 963 South Meridian Avenue, Alhambra, CA 91083.
*Date Revoked:* June 6, 2004.
*Reason:* Failed to maintain a valid bond.

*License Number:* 017409N.
*Name:* Transnation Logistics, Inc.
*Address:* 11222 La Cienega Blvd., Suite 475, Inglewood, CA 90304.
*Date Revoked:* June 4, 2004.
*Reason:* Failed to maintain a valid bond.

*License Number:* 016945NF.
*Name:* Universe International Transport, Inc. dba World Bright Transport, Inc.
*Address:* 11200 S. Hindry Avenue, Los Angeles, CA 90045.
*Date Revoked:* March 24, 2004.
*Reason:* Surrendered license voluntarily.

*License Number:* 017353NF.
*Name:* West Consolidators, Inc.
*Address:* 220 West Ivy Avenue, Suite 200, Inglewood, CA 90302.
*Date Revoked:* June 9, 2004.
*Reason:* Failed to maintain valid bonds.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 04–14880 Filed 6–29–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 004264F | Trans Freight Services Inc., 147–29 182nd Street, Jamaica, NY 11413 | May 16, 2004. |
| 000167NF | Westfeldt Brothers Forwarders, Inc., dba Global Direct Lines, Gravier Street, New Orleans, LA 70130. | April 19, 2004. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 04–14879 Filed 6–29–04; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

### Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Worldgreen Shipping Line, Inc., 1371 S. Santa Fe Avenue, Compton, CA 90221. *Officers:* June Nan (David) Chiang, Vice President (Qualifying Individual), Hsin Yuan Huang, President.

Perfect Air & Sea Service Inc., 175–11 148th Avenue, Jamaica, NY 11434. *Officers:* Jack Lu, General Manager (Qualifying Individual), Patrick Chen, President.

Alliance Logistics, Inc., 2225 W. Commonwealth Avenue, Suite #103, Alhambra, CA 9180324. *Officers:* Francis Yefei Liang, CEO (Qualifying Individual), Polly Po-Lei Yeung, Director.

Pohl Logistics, Inc., 9297 McGreevey Road, Versailles, OH 45380. *Officers:* James M. Pack, Mgr. Of Logistics Development (Qualifying Individual), Harold J. Pohl, President.

Shelton Tomkinson, Inc., 1225 North Loop West, Ste. 432, Houston, TX 77008. *Officers:* Teresa Hendrix, Secretary (Qualifying Individual), Bradley Victor Skelton, Director/President.

Badua International, 8915 Mira Mesa Blvd., San Diego, CA 92126. *Officer:* Ronilio D. Badua, Sole Proprietor.

Netfrate LLC, 11 Hunters Path, Skillman, NJ 08558. *Officer:* Pavel Trubetskoy, President (Qualifying Individual).

APE Freight International Inc., 161–15 Rockaway Blvd., Suite 308, Jamaica, NY 11434. *Officer:* Philip Lou, President (Qualifying Individual).

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Lambert Maritime Express, Inc., 3352 Castle Drive, Kenner, LA 70065. *Officers:* Dina Patricia Derose, Secretary (Qualifying Individual), Manuel H. Lambert, President.

Anderson Cargo Services, Inc. dba Anderson Worldwide Logistics and Forwarding, Inc., 1045 Gemini Road, Fagan, MN 55121. *Officers:* Brian Wesely Anderson, CEO, Joel Ripley, Director of Logistics (Qualifying Individuals), Kathy Bear Anderson, CFO.

Ansa McAl (US) Inc. dba Amus Logistics, 11403 NW 39th Street, Miami, FL 33178. *Officers:* Steven P. Rosensteel, V. P. for Logistics (Qualifying Individual), Conrad O'Brien, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Ohanneson Freight Forwarding Co., 50 Indian Hill Road, Nicasio, CA 94946. *Officer:* Elizabeth A. Ohanneson, Sole Proprietor.

Gonzalez Exporting Corp. dba Goexco, 7349 NW 54th Street, Miami, FL 33166. *Officers:* Yolanda M. Gonzalez, President (Qualifying Individual), Dario Gonzalez, Director.

Shiplane Transport, Inc., 2620 N. Oak Park, Chicago, IL 60707. *Officers:* Elizabeth Esparza, President (Qualifying Individual).

Dated: June 25, 2004.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 04–14877 Filed 6–29–04; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (ARHQ) to request the Office of Management and Budget (OMB) to allow the proposed information collection project: 2004–2006 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC). In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A)), AHRQ invites the pubic to comment on this proposed information collection.

**DATES:** Comments on this notice must be received by August 30, 2004.

**ADDRESSES:** Written comments should be submitted to: Cynthia McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room 5202, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

**FOR FURTHER INFORMATION CONTACT:** Cynthia McMichael, AHRQ Reports Clearance Officer, (301) 427–1651.

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*2004–2006 Medical Expenditure Panel Survey—Insurance Component (MEPS–IC).*

The MEPS–IC, an annual survey of the characteristics of employer-sponsored health insurance, was first conducted by AHRQ in 1997 for the calendar year 1996. The survey has since been conducted annually for calendar years 1997 through 2003. AHRQ proposes to continue this annual survey of establishments for calendar years 2004 through 2006. The survey data for calendar year 2004 will be collected in 2005. Likewise, calendar year 2005 will be collected in 2006 and calendar year 2006 data in 2007. The survey will collect information from both public and private employers.

This survey will be conducted for AHRQ by the Bureau of the Census using a sample comprised of:

1. An annual sample of employers selected from Census Bureau lists of private sector employers and governments (known as the List Sample), and

2. An every fourth year sample of employers identified by respondents to the MEPS-Household Component (MEPS–HC) for the same calendar year (known as the Household Sample). The MEPS–HC is an annual household survey designed to collect information concerning health care expenditures and related data for individuals. This sample is next scheduled to be collected for the 2006 survey year.

Data to be collected from each employer will include a description of the business (*e.g.,* size, industry) and descriptions of health insurance plans available, plan enrollments, total plan costs and costs to employees.

**Data Confidentiality Provisions**

MEPS–IC List Sample data confidentiality is protected under the U.S. Census Bureau confidentiality statute, Section 9 of Title 13, United States Code. MEPS–IC Household Sample data confidentiality is protected under sections 308(d) and 924(c) of the Public Health Service Act (42 U.S.C. 242m and 42 U.S.C. 299c–3(c)).

Section 308(d), the confidentiality statute of the National Center for Health Statistics, is applicable because the MEPS–HC sample is derived from respondents of an earlier NCHS survey. Section 924(c), the confidentiality statute of AHRQ, applies to all data collected for research that is supported by AHRQ. All data products listed below must fully comply with the data confidentiality statute under which the raw data was collected as well as any additional confidentiality provisions that apply.

**Data Products**

Data will be produced in three forms: (1) Files derived from the Household Sample, which can be linked back to other information from household respondents in the MEPS–HC, will be available to researchers at the AHRQ Research Data Center; (2) files containing employer information from the List Sample will be available for use by researchers at the Census Bureau's Research Data Centers; and (3) a large compendium of tables of estimates, also based on List Sample data, will be produced and made available on the AHRQ website. These tables will contain descriptive, but non-identifiable statistics, such as, numbers of establishments offering health insurance, average premiums, average contributions, total enrollments, numbers of self insured establishments and other related statistics for a large number of population subsets defined by firm size, state, industry and establishment characteristics, such as, age, profit/nonprofit status and union/non-union.

The data are intended to be used for purposes such as:

- Generating national and State estimates of employer health insurance offerings;
- Producing estimates to support the Bureau of Economic Analysis and the Center for Medicare and Medicaid Services in their production of health care expenditure estimates for the National Health Accounts and the Gross Domestic Product;
- Producing national and State estimates of spending on employer-sponsored health insurance to study the

results of national and State health care policies;

• Supply data for modeling the demand for health insurance; and

• Providing data on health plan choices, costs, and benefits that can be linked back to households' use of health care resources in the MEPS–HC for studies of the consumer health insurance selection process.

These data provide the basis for researchers to address important questions for employers and policymakers alike.

**Method of Collection**

The data will be collected using a combination of modes. The Census Bureau's first contact with employers will be made by telephone. This contact will provide information on the availability of health insurance from that employer and essential persons to contact. Based upon this information, Census will mail a questionnaire to the employer.

In order to assure high response rates, Census will follow-up with a second mailing after an interval of approximately 30 working days, followed by a telephone call to collect data from those who have not responded by mail.

As part of this process, for larger respondents with high burdens, such as State employers and very large firms, we will, if needed, perform personal visits and do customized collection, such as, acceptance of data in computerized formats and use of special forms.

**Estimated Annual Respondent Burden**

| Survey years | Annual number of respondents | Estimated time per respondent in hours | Estimated total annual burden hours | Estimated annual cost to the government |
|---|---|---|---|---|
| 2004 | 34,507 | .6 | 19,708 | $8,800,000 |
| 2005 | 34,507 | .6 | 19,708 | 9,138,000 |
| 2006 | 39,791 | .6 | 23,550 | 10,660,000 |

**Request for Comments**

In accordance with the above cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of the burden (including hours and costs) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 23, 2004.

**Carolyn M. Clancy,**

*Director.*

[FR Doc. 04–14734 Filed 6–29–04; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Notice of Correction—Technical Review Meeting Date

The original notice was published in the **Federal Register** on June 10, 2004 under Volume 69, Number 112, Pages 32558–32559 (*http:/ a257.g.akamaitech.net/7257/2422/ 06jun20041800/edocket.access.gpo.gov/ 2004/04–13102.htm*). With this Notice, the Agency for Healthcare Research and Quality (AHRQ) is informing the public that the correct meeting date for the ''AHRQ State and Regional Demonstrations in Health Information Technology'' is July 7 and 8, 2004.

Dated: June 23, 2004.

**Carolyn M. Clancy,**

*Director, AHRQ.*

[FR Doc. 04–14733 Filed 6–29–04; 8:45 am]

BILLING CODE 4160–90–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004M–0203]**

### Medical Devices Regulated by the Center for Biologics Evaluation and Research; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved by the Center for Biologics Evaluation and Research (CBER). This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and FDA's Division of Dockets Management.

**ADDRESSES:** Submit written requests for copies of summaries of safety and effectiveness to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please include the appropriate docket number as listed in table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

**FOR FURTHER INFORMATION CONTACT:** Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**I. Background**

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**, providing instead to post this information on the Internet at *http:// www.fda.gov*. In addition, the regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were

announced during the quarter. FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting administrative reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of PMAs approved by CBER for which summaries of safety and effectiveness were placed on the Internet from January 1, 2004, through March 31, 2004. There were no denial actions during the period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE JANUARY 1, 2004, THROUGH MARCH 31, 2004

| PMA No./Docket No. | Applicant | Trade Name | Approval Date |
|---|---|---|---|
| BP 030025/02004M–0203 | Trinity Biotech plc | Trinity Uni-Gold Recombigen HIV, Uni-Gold Recombigen HIV Positive and Negative Controls | December 23, 2003 |

## II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cber/products.htm*.

Dated: May 17, 2004.

**Jesse Goodman,**

*Director, Center for Biologics Evaluation and Research.*

[FR Doc. 04–14805 Filed 6–29–04; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004D–0178]**

### Guidance for Industry and FDA Staff; Draft Class II Special Controls Guidance Document: Dental Bone Grafting Material; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled ''Class II Special Controls Guidance Document: Dental Bone Grafting Material.'' Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify tricalcium phosphate granules for dental bone repair from class III (premarket approval) to class II (special controls) and to classify other dental bone grafting materials into the same class II (special controls) classification identification. The draft guidance describes a means by which dental bone grafting material devices may comply with the requirement of special controls for class II devices. This guidance is neither final nor is it in effect at this time.

**DATES:** Submit written or electronic comments on this draft guidance by September 28, 2004.

**ADDRESSES:** Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled ''Class II Special Controls Guidance Document: Dental Bone Grafting Material'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Adjodha, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 123, e-mail: *mea@cdrh.fda.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a proposed rule to reclassify tricalcium phosphate granules for dental bone repair from class III (premarket approval) to class II (special controls) and to classify other dental bone grafting materials into the same class II (special controls) classification identification. This draft guidance document describes a means by which the device may comply with the requirement of special controls for class II devices. Following the effective date of the final rule, any firm submitting a 510(k) premarket notification for the device will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

## II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on dental bone grafting material. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statute and regulations.

## III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Dental Bone Grafting Material'' by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter

the system. At the second voice prompt, press 1 to order a document. Enter the document number (1512) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared submissions and approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

## IV. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collection of information addressed in the guidance document has been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

## V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 4, 2004.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 04–14768 Filed 6–29–04; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; The Framingham Study

**SUMMARY:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish period summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

*Proposed Collection: Title:* The Framingham Study. *Type of Information Request:* Revision (OMB No. 0925–0216). *Need and Use of Information Collection:* The Framingham Study will conduct examinations and morbidity and mortality follow-up in original, offspring, and third generation participants for the purpose of studying the determinants of cardiovascular disease. *Frequency of response:* The participants will be conducted annually. *Affected public:* individuals or households; businesses or other for profit; small businesses or organizations. *Types of Respondents:* Adult men and women; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows: *Estimated Number of Respondents:* 5,649; *Estimated Number of Responses per respondent:* 2.16; and *Estimated Total Annual Burden Hours Requested:* 6,886.

There are no capital, operating, or maintenance costs to report.

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Participants | 3,513 | 2.86 | 0.606 | 6,085 |
| Physician, hospital, nursing home staff | 1,068 | 1.0 | 0.67 | 716 |
| Participant's next of kin | 1,068 | 1.0 | .08 | 85 |
| Total | 5,649 | 2.16 | | 6,886 |

*Request For Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have practical utility; (2) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of 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.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Paul Sorlie, Division of Epidemiology and Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC #7934, Bethesda, MD, 20892–7934, or call non-toll-free number (301) 435–0707, or e-mail your request, including your address to: *sorliep@nhlbi.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: June 21, 2004.

**Peter Savage,**

*Director, DECA, NHLBI, National Institutes of Health.*

[FR Doc. 04–14775 Filed 6–29–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; The Cardiovascular Health Study (CHS)

**SUMMARY:** Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposal information collection was previously published in the **Federal Register** on March 25, 2004, pages 15346–15347, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* The Cardiovascular Health Study. *Type of Information Collection Request:* Revision of a currently approved collection (OMB NO. 0925–0334). *Need and Use of Information Collection:* This study will quantify associations between conventional and hypothetical risk factors and coronary heart disease (CHD) and stroke in people age 65 years and older. The primary objectives include quantifying associations of risk factors with subclinical disease; characterize the natural history of CHD and stroke; and identify factors associated with clinical course. The findings will provide important information on cardiovascular disease in an older U.S. population and lead to early treatment of risk factors associated with disease and identification of factors which may be important in disease prevention. *Frequency of Response:* Twice a year (participants) or once per cardiovascular disease event (proxies and physicians). *Affected Public:* Individuals. *Type of Respondents:* Individuals recruited for CHS and their selected proxies and physicians. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,915; *Estimated Number of Responses per Respondent:* 3.2; *Average Burden Hours Per Response:* 0.21; and *Estimated Total Annual Burden Hours Requested:* 868. The annualized cost to respondents is estimated at $55,633. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

There are no capital, operating, or maintenance costs to report.

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent* | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Participants | 2,506 | 3.9 | 0.21 | 681 |
| Physicians | 380 | 1.0 | 0.09 | 11 |
| Participant proxies | 1029 | 2.3 | 0.22 | 176 |
| Total | 3,915 | 3.2 | 0.21 | 868 |

*Total for 3 years.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Jean Olson, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0707 or E-mail your request, including your address to: *OlsonJ@nhlbi.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: June 21, 2004.

**Peter Savage,**

*Director, DECA, NHLBI.*

[FR Doc. 04–14776 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing: SARS-Related Technologies

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive

Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**SARS Coronavirus MVA Vaccines and Therapy**

Bernard Moss (NIAID).
U.S. Provisional Application No. 60/558,995 filed 05 Apr 2004 (DHHS Reference No. E–165–2004/0–US–01).
*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Intranasal or intramuscular inoculations of BALB/c mice with modified vaccinia Ankara (MVA) vector encoding SARS–CoV Spike protein produced serum antibodies that recognized SARS S in ELISA and elicited protective immunity as shown by reduced titers of SARS–CoV in the upper and lower respiratory tracts of mice following challenge. Passive transfer of serum from mice immunized with MVA/S to naive mice also reduced the replication of SARS–CoV in the respiratory tract following challenge, demonstrating the role of antibody to S in protection.

**Enhanced Sensitivity ELISA for SARS Diagnostic**

Gary J. Nabel *et al.* (NIAID).
U.S. Provisional Application No. 60/503,508 filed 15 Sep 2003 (DHHS Reference No. E–334–2003/0–US–01).
U.S. Provisional Application No. 60/550,317 filed 08 Mar 2004 (DHHS Reference No. E–334–2003/1–US–01).
*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Reagents and protocols for extremely sensitive ELISA for use as a SARS diagnostic are described. The ELISA uses recombinant-expressed nucleoprotein (N) or spike (S) glycoprotein from the SARS coronavirus as capture antigens. As little as five (5) days after onset, detection of antibody response is possible. The ELISA described herein is more sensitive than existing technology because of the N and S proteins; existing ELISAs use formalin-inactivated whole virus or peptides.

E–334–2003/1–US–01 also describes DNA Vaccines (CMV/R–SARS–S plasmid) including a nucleic acid encoding the peptide of SARS Spike glycoprotein, the RSV enhancer, the mouse ubiquitin enhancer (mUBB), and the CMV enhancer (Xu *et al.* 1998 Nature Med. 4: 37–42). Optionally the HTLV–1 R region (Takebe *et al.* 1988 Mol Cell Biol 8: 466–472) is also included.

**Interferon-Alpha SARS Treatment**

Kathryn C. Zoon, Renqui Hu, Joseph B. Bekisz (NCI).

U.S. Provisional Application filed 30 Apr 2004 (DHHS Reference No. E–278–2003/0–US–01).

*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The Public Health Service seeks a licensee to commercialize protein engineered human interferon alphas for treating and/or preventing a SARS-associated coronaviral infection in humans and other relevant mammalian species.

**Soluble SARS Coronavirus Spike Protein (S Protein)**

Dimiter S. Dimitrov, Xiadong Xiao (NCI).

U.S. Provisional Application No. 60/489,166 filed 21 Jul 2003 (DHHS Reference No. E–228–2003/0–US–01).

*Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

The SARS coronavirus is etiologically linked to severe acute respiratory syndrome. Soluble forms of the SARS coronavirus spike protein have been cloned, expressed and characterized, and are available for licensing for use as research reagents, in the development of vaccines and inhibitors of the viral infection, for selection of monoclonal antibodies, and development of kits containing antibodies that bind to the spike protein. The filed patent application additionally claims the associated spike protein polypeptides, peptide fragments, and conserved variants thereof; nucleic acid segments and constructs that encode the spike protein, polypeptides and peptide fragments of the spike protein, and conserved variants thereof and coupled proteins that include the spike protein or a portion thereof and peptidomimetics.

Dated: June 20, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–14750 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Antibody (Anti-Allergen) Microarray**

Jay E. Slater, William J. Finlay, Nicolette DeVore (FDA)
DHHS Reference No. E–044–2004/0—Research Tool
Licensing Contact: Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov*

Available for licensing as a biological material or by material transfer is a microarray with immobilized antibodies specific to particular allergens or allergen epitopes and specifically allergens from an allergen vaccine or extract. Allergen extracts are manufactured and sold worldwide for the diagnosis and treatment of IgE-mediated allergic disease. Each extract contains a variety of active allergenic components (*e.g.*, proteins, carbohydrates and other small molecules) in varying concentrations and immugenicities. Most allergen extracts are non-standardized. These extracts have been labeled either with a designation of extraction ratio (w/v) or with a protein unit designation determined using the Kjeldahl method (protein nitrogen units/mL). There appears to be little correlation between these two designations and biological measures of allergen potency. At

present, there are nineteen standardized allergen extracts available from U.S. manufacturers. Each extract is assigned a potency value for sale to the public. Potency value is an arbitrary measurement based on quantitation of the total protein content and specific allergen content within the allergen extracts (as measured with hyperimmune sheep sera), or by the inhibition of the binding of IgE from pooled allergic sera to reference allergen. These methods are generally crude and provide only integral averages. These averages are non-characteristics of the concentration of individual allergens in the extract and their respective immunoglobulin binding affinities. By contrast, this microarray uses large numbers of engineered antibodies to ''fingerprint'' the test extract. The present invention provides 10–100 allergen specific scFV or $F_{ab}$ immunoglobulins imprinted on a solid matrix in multiple concentrations. The allergen mixture is applied to the array and the pattern of protein binding to each spot is analyzed quantitatively and qualitatively. Thus, large numbers of component allergenic proteins can be assayed quickly and simultaneously.

**Epitopes of Ebola Virus Glycoproteins Useful for Vaccine Development**

Carolyn A. Wilson et al. (FDA)
U.S. Provisional Application No. 60/532,677 filed 23 Dec 2003 (DHHS Reference No. E–271–2003/0–US–01)
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov*

The current technology describes the identification of amino acid residues on Ebola glycoprotein (GP) critical for virus infection through mutation of residues in the glycoprotein-1 (GP1) of Ebola virus (Zaire strain). The amino acid residues identified through mutational analysis are conserved and can be found in all published sequences of strains of Ebola and Marburg viruses, making them a good target for development into a cross-protective vaccine or antiviral therapy. The mutations could be used to generate non-infectious Ebola viral particles for use in vaccines. These residues in wild-type filoviruses could also be targeted by compounds to prevent viral entry into cells or could potentially represent an epitope (or part of an epitope) for use as an immunogen in a vaccine. Vaccines utilizing these non-infectious particles may be safer than vaccines that use other common approaches, *e.g.* live-attenuated virus vaccines. In addition to the non-infectious particles, this technology describes the polypeptides that form them, the polynucleotide sequences encoding the polypeptides, and vectors comprising the polynucleotides. These additional materials could also form the basis of an Ebola vaccine or antiviral therapy. Also claimed are kits for detection of antibodies to Ebola involving contacting the sample containing antibodies to the polypeptides described in the invention.

**Haplotypes of Human Bitter Taste Receptor Genes**

Dennis Drayna, Un-Kyung Kim (NIDCD)
U.S. Provisional Application No. 60/480,035 filed 11 Jul 2003 (DHHS Reference No. E–222–2003/0–US–01); PCT Application filed 18 Jun 2004 (DHHS Reference No. E–222–2003/1–PCT–01)
Licensing Contact: Susan Carson; 301/435–5020; *carsonsu@mail.nih.gov*

Bitter taste has evolved in mammals as a crucial, important warning signal against ingestion of poisonous or toxic compounds. However, many beneficial compounds are also bitter and taste masking of bitter tasting pharmaceutical compounds is a billion dollar industry. The diversity of compounds that elicit bitter-taste sensations is very large and more than two dozen members of the T2R bitter taste receptor gene family have been identified. How individuals are genetically predisposed to respond or not to respond to the bitter taste of substances like nicotine and certain foods like broccoli may have broad implications for nutritional status and tobacco use. Large individual differences in the perception of bitterness of these compounds have been well documented, and common allelic variants of a member of the T2R bitter taste receptor gene family have been shown to underlie variation in the ability to taste the bitter compound phenylthiocarbamide (PTC) [DHHS Ref. No. E–169–2001/0–PCT–02].

Scientists at the NIDCD have extended these results to other bitter taste receptors and have sequenced 22 of the 24 known T2R genes in a series of populations worldwide, including Hungarians, Japanese, Cameroonians, Pygmies and South American Indians, and the present invention includes these isolated sequences and their variants. This includes a total of 127 SNPs and 109 different protein coding haplotypes, including those defined for the PTC Receptor (T2R38) [E–169–2001/0]. The inventors showed that 77% of the SNPs identified caused an amino acid substitution in the encoded receptor protein, giving rise to a high degree of receptor protein variation in the population. The frequencies of these different haplotypes have been shown to differ in different populations which will aid in population-specific studies, such as those targeting differences in taste perception between Europeans and Asians, for example.

The invention available for licensing includes these novel SNPs and haplotypes and methods of use, which can be used to better identify and characterize different groups of individuals within and between populations that vary in the their bitter taste abilities. This is important to the food and flavoring industry, for example, where these variants can be used to aid in the development of a variety of taste improvements in foods and orally administered medications.

A related technology also available for licensing is DHHS Ref. No. E–169–2001/0–PCT–02, Phenylthiocarbamide Taste Receptor, International Publication No. WO 03/008627.

Dated: June 24, 2004.

**Mark L. Rohrbaugh,**

*Director, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–14777 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Maleiimide Anti-Tumor Phosphatase Inhibitors**

Christophe Michejda *et al.* (NCI).

U.S. Provisional Application No. 60/546,841 filed 22 Feb 2004 (DHHS Reference No. E–110–2004/0–US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov*.

The present invention describes novel phosphatase inhibitors that appear to target the CDC25 family of phosphatases. The new compounds have potent activity against human liver cancer cells in vitro and in vivo against an orthotopic liver cancer in rats. In tumor cells, these new inhibitors appear to target the phosphorylation status of several cell cycle proteins that are important for cell survival and thus could represent a novel class of chemotherapeutic agents targeting cancer cells.

**New Building Blocks for DNA Binding Agents**

Zoltan Szekely, Christophe Michejda (NCI).

U.S. Provisional Application No. 60/508,543 filed 03 Oct 2003 (DHHS Reference No. E–291–2003/0-US–01).

Licensing Contact: George Pipia; 301/435–5560; *pipiag@mail.nih.gov*.

There remains a need for therapeutic conjugates that have improved antitumor selectivity and nucleic acid sequence-binding specificity. Ideally such conjugates will have fewer side effects and lower cytotoxicity to healthy cells and tissues. The knowledge of the geometry of conjugates allows for a rational design of therapeutic conjugates, ones that have increased specificity of binding to a minor groove of the DNA, while maintaining maximum activity of the alkylating subgroup of the conjugates. The present invention provides such conjugates. The conjugates of the present invention bind to the minor grove of DNA in a sequence-specific manner and deliver an alkylating moiety to a specific site on the DNA. The present invention provides a pharmaceutical composition comprising a pharmaceutically or pharmacologically acceptable carrier and compounds of the present invention. The present invention also provides a method of preventing or treating a disease or condition by the use of the compound. The NIH inventors currently are testing the conjugates in *in vitro* assay and are starting pre-clinical studies of the conjugates using animal cancer models.

**Use of Cripto-1 as a Biomarker for Neurodegenerative Disease and Method of Inhibiting Progression Thereof**

David S. Salomon (NCI), Berman Nancy (EM), Edward B. Stephens (EM).

U.S. Provisional Application No. 60/508,750 filed 03 Oct 2003 (DHHS Reference No. E–075–2003/0–US–01).

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov*.

Cripto-1 is a gene that is currently thought to play an important role in several cancers, and is being developed in clinical trials as a cancer therapeutic.

The current invention relates to another use of Cripto-1 as a biomarker and possible therapeutic target for a variety of neurodegenerative diseases, including NeuroAids, Alzheimer's disease, MS, ALS, Parkinson's disease and encephalitis. Cripto-1 appears to be overexpressed by 20-fold or more in NeuroAids and as such may be enhanced in other inflammatory neurological diseases, and thus assist in the early detection of neurological changes associated with these diseases, as well as a possible therapeutic target for slowing progression.

**Antibodies That Bind POTE and Uses Thereof**

Ira H. Pastan, Tapan Y. Bera, and Byungkook Lee (NCI).

U.S. Provisional Application No. 60/546,058 filed 18 Feb 2004 (DHHS Reference No. E–325–2002/0–US–01).

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov*.

The current invention describes a family of genes, termed Prostate, Ovary, Testis and Prostate cancer genes (POTE). POTE is highly expressed in prostate cancer and ovarian cancer, but not in essential normal tissues. Antibodies to POTE and immunotoxins that selectively bind POTE are also described.

POTE appears to be a membrane protein with at least one extracellular domain, and is therefore a desirable target for antibody or immunoconjugate therapies.

Immunogenic peptide fragments might be used to generate an immune response in a patient. This invention might also be useful as an antibody-based or immunoconjugate therapeutic to treat prostate and ovarian cancers.

**DNA Encoding CAI Resistance Proteins and Uses Thereof**

Elise Kohn *et al.* (NCI).

U.S. Patent 5,652,223 issued 29 Jul 1997 (DHHS Reference No. E–112–1994/0–US–01); U.S. Patent 5,981,712 issued 09 Nov 1999 (DHHS Reference No. E–112–1994/0–US–02); Serial No. 09/436,469 filed 08 Nov 1999 (DHHS Reference No. 112–1994/0–US–03).

Licensing Contact: Jesse S. Kindra; 301/435–5559; *kindraj@mail.nih.gov*.

Novel targets for therapeutic intervention in cancer proliferation and invasion are needed. Calcium influx has been shown to be required for invasion. Carboxyamid-triazole (CAI), a synthetic blocker of calcium influx in nonexcitable cells, inhibits tumor and endothelial cell motility and decreases the expression of matrix metalloproteinases involved in invasion and angiogenesis. Thus, CAI plays a role in the inhibition of malignant proliferation, invasion, and metastasis of cancer cells. The effectiveness of CAI as a cancer therapeutic agent is currently being tested in clinical trials.

The technology which is available for licensing relates to the CAI resistance (CAIR–1) gene that encodes a protein identified in CAI conditioned cells. The CAIR–1 gene provides a potential source of information about the mechanism of drug conditioning and could also be useful as a marker for detecting the acquisition of a drug conditioned phenotype and/or as a target for intervention.

In addition, CAIR was also independently identified as BAG–3 and Bis. CAIR/BAG–3/Bis has been shown to play a role in protein folding inside the cell and to modulate programmed cell death (apoptosis). Thus, the CAIR/BAG–3/Bis protein serves as an important link between pathways regulating calcium influx, protein folding, and apoptosis and may be a valuable drug discovery target for therapeutic intervention in cancer proliferation and invasion.

**Circularly Permuted Ligands and Circularly Permuted Fusion Proteins**

Ira H. Pastan, Robert J. Kreitman, Raj K. Puri (NCI).

U.S. Patent 5,635,599 issued 03 Jun 1997 (DHHS Reference No. E–047–1994/0–US–01). U.S. Patent 6,011,002 issued 04 Jan 2000 (DHHS Reference No. E–047–1994/1–US–01).

Licensing Contact: Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov*.

Circularly permuted proteins are ligands wherein the amino and carboxy ends have been joined together and new amino and carboxy ends are formed at a different location in the ligand. The modified ligands are as fully active as the original. The circularly permuted ligands are especially useful when employed as a component in a fusion protein of interest. Fusion proteins are polypeptide chains of two or more proteins fused together in a single polypeptide chain. A fusion protein may act as a potent cell-killing agent or as a linker to bind and enhance the interaction between cells or cellular components to which the protein binds, depending on the nature of the proteins being fused. Therefore, fusion proteins

have functional utility as a specific targeting moiety to either kill or direct an immune response to cancer cells. While some targeting moieties have shown lower specificity and affinity for their targets when incorporated into fusion proteins, the use of circularly permuted ligands improves the binding affinity of certain fusion proteins. This invention provides novel ligands and ligand fusion proteins that have a binding specificity and affinity comparable to or greater than native ligand fusion proteins.

Dated: June 22, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–14778 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

*Date:* August 5–6, 2004.

*Time:* 7:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* David E. Maslow, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393,Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14745 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel; NEI Institutional Training Grant Applications (T32 and K12).

*Date:* July 15, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Park Hyatt Washington, 24th at M Street, Washington, DC 20037.

*Contact Person:* Anne E. Schaffner, PhD, Scientific Review Administrator, Division of Extramural Research, National Eye Institute, 6120 Executive Blvd., Suite 350, Bethesda, MD 20892. (301) 451–2020.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS.)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14739 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Eye Institute Special Emphasis Panel, Review of Small Grants for Data Analysis.

*Date:* July 22–23, 2004.

*Time:* 8:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Samuel Rawlings, PhD, Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, Bethesda, MD 20892, (301) 451–2020.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14742 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, July 28, 2004, 1:30 p.m. to July 28, 2004, 3:30 p.m., NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC, 27709 which was published in the **Federal Register** on June 4, 2004, FR 69 31617–31618.

The meeting will be held on July 29, 2004 instead of July 28, 2004. Time and location remain the same. The meeting is closed to the public.

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14735 Filed 6–29–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, PD–DOC.

*Date:* July 13, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Katherine Woodbury, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5980, *kw47o@nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14740 Filed 6–29–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Roybal Centers.

*Date:* July 7–8, 2004.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Proteomics in Aging.

*Date:* July 13–14, 2004.

*Time:* 6 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Alessandra M. Bini, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7708.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; New Drugs To Treat AD and Other Diseases.

*Date:* July 14, 2004.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., 2C212, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* Ramesh Vemuri, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 402–7700, *rv23r@nih.gov.*

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Longevity.

*Date:* July 22, 2004.

*Time:* 11 a.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

*Contact Person:* Alicja L. Markowska, PhD, DSC, Health Science Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, (301) 402–7703, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14741 Filed 6–29–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel; Medications Development for Cannabis-Related Disorder.

*Date:* July 15, 2004.

*Time:* 9 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 200, MSC

8401, 6101 Executive Boulevard, Bethesda, MD 20892–8401, (301) 443–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS.)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14743 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Howard University Special Neuroscience Program.

*Date:* July 13–14, 2004.

*Time:* 7:30 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Willard Intercontinental, 1401 Pennsylvania Ave., NW., Washington, DC 20004.

*Contact Person:* Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93–853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14744 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Short Term Research Training of Medical Students SEP.

*Date:* July 20, 2004.

*Time:* 2 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* D. G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Short Programs for Interdisciplinary Research Training.

*Date:* July 21, 2004.

*Time:* 10 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 751, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7798, *muston@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Small Clinical Grant in Digestive Diseases and Nutrition.

*Date:* July 29, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14747 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Crainiofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–63, Review of R13s.

*Date:* July 14, 2004.
*Time:* 2 p.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4627.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–64, Review of K22s, R03s.
*Date:* July 28, 2004.
*Time:* 10:30 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Lynn M King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–62, Review of R13s.
*Date:* July 29, 2004.
*Time:* 2 p.m. to 3 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).
*Contact Person:* Sooyoun (Sonia) Kim, MS, Associate SRA, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institute of Health, Bethesda, MD 20892, (301) 594–4627.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 22, 2004.

**LaVerne Y. Stringfield**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14748 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Minority Biomedical Research Support Thematic Project Grants (S11s).
*Date:* July 26, 2004.
*Time:* 1 p.m. to 3 p.m.
*Agenda:*To review and evaluate grant applications.
*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, Telephone Conference Call).
*Contact Person:* Yan Z Wang, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14749 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 28, 2004, 1 p.m. to June 28, 2004, 2:30 p.m., Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007 which was published in the **Federal Register** on June 10, 2004, 69 FR 32600–32604.

The meeting will be held June 29, 2004 from 8:30 a.m. to 1 p.m. The location remains the same. The meeting is closed to the public.

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14736 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 25, 2004, 8:30 a.m. to June 25, 2004, 3 p.m., Latham Hotel, 3000 M Street, NW., Washington, DC 20007 which was published in the **Federal Register** on June 10, 2004, 69 FR 32600–32604.

The meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street, NW., Washington, DC 20008. The meeting date and time remain the same. The meeting is closed to the public.

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14737 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Genome Study Section, June 20, 2004, 8:30 a.m. to June 22, 2004, 5 p.m., Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on June 10, 2004, 69 FR 32600–32604.

The meeting will be held June 21, 2004 to June 22, 2004. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14738 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBMI 11: Small Business Medical Imaging: Optical and Video.

*Date:* June 29, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBMI 10: Small Business Medical Imaging: PET/MRI/X-ray.

*Date:* June 30, 2004.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, BMRD Members.

*Date:* July 6, 2004.

*Time:* 11 a.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Yvette M. Davis, MPH, VMD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–0906, *davisy@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Predoctoral Fellowships (F31) Minority/Disability: DIG, CVS, MOSS, IFCN, RES, RUS, HEME.

*Date:* July 7, 2004.

*Time:* 8 a.m. to 4 p.m.

*Agenda:* To review and evaluate fellowships.

*Place:* Courtyard by Marriott-Embassy Row, 1600 Rhode Island Ave., Lafayatte Boardroom, Washington, DC 20036.

*Contact Person:* Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Instititues of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Pathophysiology of the Retina.

*Date:* July 7, 2004.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Kinases in DNA Damage.

*Date:* July 9, 2004.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Microscopic Imaging.

*Date:* July 12–13, 2004.

*Time:* 8 a.m to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

*Contact Person:* Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, (301) 435–1159, *ameros@csr.nih.gov.*

*Name of Committee:* Renal and Urological Studies Integrated Review Group, Pathobiology of Kidney Disease Study Section.

*Date:* July 12–13, 2004.

*Time:* 8 a.m to 1 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

*Contact Person:* Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198, *hildens@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Developmental Disabilities, Communication and Science Education.

*Date:* July 12–13, 2004.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suite at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

*Contact Person:* Thomas A Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Risks for Drug Abuse.

*Date:* July 12, 2004.

*Time:* 11:30 a.m. to 12:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBMI 50: Small Business Medical Imaging: Nanotechnology.

*Date:* July 12, 2004.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118,

MSC 7854, (301) 435–1175, *nordstrr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1: SBMI (51): Small Business Medical Imaging: Nanotechnology.

*Date:* July 12, 2004.

*Time:* 2:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Biophysical and Biochemical Sciences.

*Date:* July 13–14, 2004.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* Nuria E. Assa-Munt, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3120, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Review of NMR S10 Proposals.

*Date:* July 13, 2004.

*Time:* 8:30 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Sergei Ruvinov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, (301) 435–1180, *ruvinser@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Biophysical and Biochemical Sciences.

*Date:* July 13, 2004.

*Time:* 9 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

*Contact Person:* David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 MOSS–G 01S: Reparative Medicine Study Section.

*Date:* July 13–14, 2004.

*Time:* 10 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

*Contact Person:* Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors Special Review.

*Date:* July 13, 2004.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892 (301) 435–1037, *dayc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Visual Systems: Member Conflict.

*Date:* July 13, 2004.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Christine L. Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20982, (301) 435–1713, *melchioc@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Calcium Transport and Mitochondria Dynamics.

*Date:* July 13, 2004.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Pain.

*Date:* July 13, 2004.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Colon Cancer Biology.

*Date:* July 13, 2004.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Hungyi Sahu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1720, *shauhung@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–D–02 Endocrinology and Neurobiology of Sleep.

*Date:* July 13, 2004.

*Time:* 2 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 SSMI 50R: PA02–125 & PAR03–119: Bioengineering Nanotechnology Initiative BISTI.

*Date:* July 13, 2004.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Maggiano's Restaurant, 5333 Wisconsin Avenue, Second Floor, Washington, DC 20015.

*Contact Person:* Pushpa Tando, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892, (301) 435–2397, *tandonp@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, HOP N 60 C Applications.

*Date:* July 13, 2004.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel Member, Conflicts for NSAA–01.

*Date:* July 13, 2004.

*Time:* 4 p.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

*Contact Person:* Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 451–1017, *helmersk@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Clinical and Integrative CV.
*Date:* July 14–15, 2004.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
*Contact Person:* Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Insitutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Bacterial Toxins.
*Date:* July 14, 2004.
*Time:* 10 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).
*Contact Person:* Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Deferred Review.
*Date:* July 14, 2004.
*Time:* 1 p.m. to 2:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).
*Contact Person:* Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Genomic Instability in Lung Cancer.
*Date:* July 14, 2004.
*Time:* 12:30 p.m. to 2:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).
*Contact Person:* Eun Ah Cho, PhD, Scientific ReviewAdministrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, (301) 451–4467, *choe@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: June 22, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–14746 Filed 6–29–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[USCG–2004–18473]**

### Chemical Transportation Advisory Committee

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of open teleconference meeting.

**SUMMARY:** This notice announces a teleconference meeting of the Subcommittee of the Chemical Transportation Advisory Committee (CTAC) on the National Fire Protection Association (NFPA) 472 Standard. The NFPA 472 Subcommittee will meet to discuss the future draft of a marine emergency responder chapter in NFPA 472, Professional Competence of Responders to Hazardous Materials Incidents. This meeting will be open to the public.

**DATES:** The teleconference call will take place on Tuesday, July 20, 2004, from 9:30 a.m. to 11:30 a.m. e.s.t. Written comments may be submitted on or before July 19, 2004.

**ADDRESSES:** Members of the public may participate by either calling in (*see* **SUPPLEMENTARY INFORMATION**) or by coming to Room 2100, U.S. Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593. We request that members of the public who plan to attend this meeting notify LT Matt Barker at (202) 267–1217 so that he may notify building security officials. Written comments should be sent to CDR Robert J. Hennessy, Executive Director, CTAC, Commandant (G–MSO–3), 2100 Second Street, SW., Washington DC 20593–0001 or Fax: 202 267–4570. This notice is available on the Internet at *http://dms.dot.gov*.

**FOR FURTHER INFORMATION CONTACT:** Commander Robert J. Hennessy, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202 267–1217, fax 202 267–4570.

**SUPPLEMENTARY INFORMATION:** Members of the public may participate by dialing 202 366–3920, Pass code: 7686. Public participation is welcomed; however, the number of teleconference lines is limited and are available on a first-come, first-served basis. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

**Tentative Agenda**

(1) Introduction of Subcommittee members and attendees.

(2) Discussion on draft chapter for future incorporation into the NFPA 472.

(3) Discussion on the formation of Workgroups within the Subcommittee that will be tasked to write specific parts of the draft chapter.

(4) Public comment period.

**Public Participation**

The Chairman of this NFPA 472 Subcommittee shall conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During the teleconference, the Subcommittee welcomes public comment.

Members of the public will be heard during the public comment period. The committee will make every effort to hear the views of all interested parties. Please note that the teleconference may close early if all business is finished. Written comments may be submitted on or before the day of the teleconference (*see* **ADDRESSES**).

**Minutes**

The teleconference will be recorded, and a summary will be available for public review and copying in the docket approximately 30 days following the teleconference meeting.

Dated: June 23, 2004.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety, Security and Environmental Protection.*

[FR Doc. 04–14868 Filed 6–29–04; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### *Exxon Valdez* Oil Spill Trustee Council; Notice of Meeting

**AGENCY:** Office of the Secretary, Department of the Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

**DATES:** July 21, 2004, at 10:30 a.m.

**ADDRESSES:** Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

**SUPPLEMENTARY INFORMATION:** The Public Advisory Committee was created

by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The meeting agenda will feature discussions about the Trustee Council's proposed projects and work plan for fiscal year 2005.

**Willie R. Taylor,**

*Director, Office of Environmental Policy and Compliance.*

[FR Doc. 04–14765 Filed 6–29–04; 8:45 am]

**BILLING CODE 4310–RG–Q**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Endangered Species Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permits.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species. We provide this notice pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**DATES:** We must receive written data or comments on these applications at the address given below, by July 30, 2004.

**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 to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist).

**FOR FURTHER INFORMATION CONTACT:** Victoria Davis, telephone 404/679–4176; facsimile 404/679–7081.

**SUPPLEMENTARY INFORMATION:** The public is invited to comment on the following applications for permits to conduct certain activities with endangered species. If you wish to comment, you may submit comments by any one of the following methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES** section) or via electronic mail (e-mail) to *victoria_davis@fws.gov.* Please submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at the telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT** section). Finally, you may hand deliver comments to the Service office listed above (*see* **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

*Applicant:* Archbold Expeditions, Archbold Biological Station, MacArthur Agro-Ecology, Lake Placid, Florida, TE088035–0

The applicant requests authorization to harass the Florida scrub jay (*Aphelocoma coerulescens*), Audubon's crested caracara (*Polyborus plancus audubonii*), wood stork (*Mycteria americana*), American alligator (*Alligator mississippiensis*), eastern indigo snake (*Drymarchon corais couperi*), bluetail mole skink (*Eumeces egregius lividus*), sand skink (*Neoseps reynoldsi*), and the Florida panther (*Puma* (=*Felis*) *concolor coryi*). The applicant also requests authorization to destroy or remove *Cladonia perforata* (Perforate reindeer lichen), *Clitoria fragrans* (Pigeon-wing butterfly-pea), *Dicerandra frutescens* (Lake Placid scrub mint), *Liatris ohlingerae* (Scrub blazing star), *Nolina brittoniana* (Scrub beargrass), *Paronychia chartacea* (Papery Whitlow-wort), *Polygonella basiramia* (Hairy jointweed), *Polygonella myriophylla* (Small's jointweed), *Prunus geniculata* (Florida scrub plum), and *Warea carteri* (Carter's Mustard). Take would occur while conducting prescribed burns for habitat management, restoration, and research in Highland's County, Florida.

*Applicant:* Stuart L. Pimm, Duke University, Durham, North Carolina, TE088850–0

The applicant requests authorization to take (capture, identify, band, release) the Cape Sable Seaside Sparrow rulea (*Ammodramus maritimus mirabilis*) while conducting long term population presence and absence surveys. The proposed activities would throughout the species range in the State of Florida.

*Applicant:* Alan David Christian, Arkansas State University, State University, Arkansas TE088891–0

The applicant requests authorization to take (capture, identify, temporarily hold in captivity, collect tissue samples, translocate, and release) Ouachita rock pocketbook (*Arkansia wheeleri*), Curtis' pearlymussel (*Epioblasma florentina curtisii*), turgid blossom (*Epioblasma turgidula*), pink mucket (*Lampsilis abrupta*), Arkansas fatmucket (*Lampsilis powelli*), speckled pocketbook (*Lampsilis streckeri*), scaleshell (*Leptodea leptodon*), fat pocketbook (*Potamilus capax*), and winged mapleleaf (*Quadrula fragosa*) while conducting presence and absence studies, genetic studies, and/or control propagation activities. The proposed activities would occur throughout the species range in Arkansas.

*Applicant:* U.S. Forest Service, National Forest in North Carolina, Steven A. Simon, Asheville, North Carolina TE088906–0

The applicant requests authorization to take (capture, band, release, and monitor nests) of the red-cockaded woodpecker (*Picoides borealis*) while conducting nest monitoring and bird banding. The proposed activities would take place on the Croatan National Forest; Craven, Carteret, and Jones Counties, North Carolina.

*Applicant:* Leslie J. Rissler, Tuscaloosa, Alabama, TE088913–0

The applicant requests authorization to take (harass) red-cockaded woodpeckers (*Picoides borealis*) and take (capture and release) flattened musk turtle (*Sternotherus depressus*) while conducting presence and absence surveys. The proposed activities would take place throughout the species ranges in Alabama.

*Applicant:* Martha J. Flanagan, North Carolina State University, Raleigh, North Carolina, TE088941–0

The applicant requests authorization to take (capture, hold, release) Puerto Rican Boas (*Epicrates inornatus*) while studying the feeding ecology of juveniles. The proposed activities

would occur throughout the species range in Puerto Rico.

*Applicant:* Dr. Charles Lydeard, Tuscaloosa, Alabama, TE089039–0

The applicant requests authorization to take (capture, identify, release) the following species: ovate clubshell (*Pleurobema perovatum*), southern clubshell (*Pleurobema decisum*), southern combshell (*Epioblasma penita*), upland combshell (*Epioblasma metastriata*), Alabama (=inflated) heelsplitter (*Potamilus inflatus*), triangular kidneyshell (*Ptychobranchus greeni*), Alabama moccasinshell (*Medionidus acutissimus*), Coosa moccasinshell (*Medionidus parvulus*), gulf moccasinshell (*Medionidus penicillatus*), orangenacre mucket (*Lampsilis perovalis*), dark pigtoe (*Pleurobema furvum*), flat pigtoe (*Pleurobema marshalli*), heavy pigtoe (*Pleurobema taitianum*), fined-lined pocketbook (*Lampsilis altilis*), stirrupshell (*Quadrula stapes*), lacy (snail) elimia (*Elimia crenatella*), cylindrical (snail) lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), painted rocksnail (*Leptoxis taeniata*), plicate rocksnail (*Leptoxis plicata*), round rocksnail (*Leptoxis ampla*), and tulotoma snail (*Tulotoma magnifica*) while conducting presence/absence surveys. The proposed activities would occur in western Alabama.

Dated: June 14, 2004.

**Sam D. Hamilton,**

*Regional Director.*

[FR Doc. 04–14780 Filed 6–29–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Letters of Authorization To Take Marine Mammals

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance.

**SUMMARY:** In accordance with the Marine Mammal Protection Act of 1972 (MMPA) as amended, notice is hereby given that Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued.

**FOR FURTHER INFORMATION CONTACT:** Mr. Craig Perham at the Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

**SUPPLEMENTARY INFORMATION:** A Letter of Authorization has been issued to the following companies in accordance with Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (68 FR 66744; November 28, 2003)'' under section 101(a)(5)(A) of the MMPA and the Fish and Wildlife Service implementing regulations at 50 CFR 18.27(f)(3):

| Company | Activity | Location | Date issued |
|---|---|---|---|
| ConocoPhillips Alaska, Inc | Production | Kuparuk, Alpine | Mar. 5, 2004. |
| Kerr-McGee Oil and Gas Corp | Exploration | NW Milne | Feb. 6, 2004. |
| ExxonMobil Prod. Co | Development | Pt. Storkersen #1 | Feb. 10, 2004. |
| ExxonMobil Prod. Co | Development | Canning River A–1 | Feb. 10, 2004. |
| Chevron U.S.A. Inc | Development | W. Kavik Unit #1 | Feb. 12, 2004. |
| Western Geco | Development | Lonely | Mar. 12, 2004. |
| ConocoPhillips Alaska, Inc | Development | Gwydyr Bay State #2 | Feb. 27, 2004. |
| U.S. Bureau of Land Management. | Development | Umiat Legacy Well | Mar. 22, 2004. |

Dated: June 16, 2004.

**Gary Edwards,**

*Acting Regional Director.*

[FR Doc. 04–14802 Filed 6–29–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day notice of information collection under review:

Permanent Provisions of the Brady Handgun Violence Prevention Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for ''sixty days'' until August 30, 2004. 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 Bernard Teyssier, Brady Operations Branch, 244 Needy Road, Martinsburg, West Virginia 25401.

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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Permanent Provisions of the Brady Handgun Violence Prevention Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the*

*collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individual or households. The information collection is submitted to implement the permanent provisions of the Brady Law. These provisions provide for the establishment of a national instant criminal background check system (NICS), which requires that a firearms licensee must contact NICS before transferring any firearm to unlicensed individuals. Section 478.150 provides for an alternative to NICS in certain geographical locations.

(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 106,000 respondents will comply with the provisions of the Brady Handgun Violence Prevention Act.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Since 1994, no licensee has qualified for an exception from the provisions of the Brady Act based on geographical location. Therefore, the total annual burden associated with this information collection is 1 hour.

*If additional information is required contact:* Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 24, 2004.

**Brenda E. Dyer,**

*Deputy Clearance Officer, Department of Justice.*

[FR Doc. 04–14773 Filed 6–29–04; 8:45 am]

**BILLING CODE 4410–FY–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review; Comment Request

June 24, 2004.

The Department of Labor (DOL) has submitted 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 each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

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:* Employment and Training Administration.

*Type of Review:* Extension of a currently approved collection.

*Title:* Workforce Investment Act Cumulative Quarterly Financial Reporting for Funds Allotted to States for: (1) Services to Youth, (2) Services to Adults, (3) Services to Dislocated Workers, (4) Local Administration, (5) Statewide Activities (15% of total Federal Allotment), and (6) Statewide Rapid Response.

*OMB Number:* 1205–0408.

*Frequency:* Quarterly.

*Affected Public:* Business or other for-profit; State, Local, or Tribal government.

*Number of Respondents:* 56.

*Number of Annual Responses:* 672.

*Burden Summary Below:*

| Requirements | PY 2001 | PY 2002 | PY 2003 |
|---|---|---|---|
| Number of Reports Per Entity Per Quarter | 3 | 3 | 3 |
| Total Number of Reports Per Entity Per Year | 12 | 12 | 12 |
| Number of Hours Required Per Report | 1 | 1 | 1 |
| Total Number of Hours Required for Reporting Per Entity Per Year | 12 | 12 | 12 |
| Number of Entities Reporting | 56 | 56 | 56 |
| Total Number of Hours Required for Reporting Burden Per Year | 672 | 672 | 672 |

**Note:** Number of reports required per entity per quarter/per year is impacted by the 3-year life of each year of appropriated funds.

*Total Burden Hours:* 672.

*Estimated Time Per Response:* 1 Hour.

*Burden Hours Total:* 672.

*Total annualized capital/startup costs:* $0.

*Total annual costs (operating/maintaining systems or purchasing services):* $0.

*Description:* A continuance of the currently approved WIA financial reporting instructions is requested pursuant to Public Law 105–220, dated August 7, 1998 and Interim Final Rule (IFR), 20 CFR part 652, *et al.*, dated August 11, 2000. Section 185(e) and (f) require that States report quarterly all program and activity costs by cost category and by year of appropriation, any income or profits earned, and any cost incurred such as stand-in costs that are otherwise allowable except for funding limitations. Sec. 185(g) requires that costs only be categorized as administrative or programmatic costs. The Regulations at 20 CFR 667.300 require that DOL issue financial reporting instructions to the States. To comply with the financial reporting requirements in the statute and the regulations, a continuance of the currently approved collection is requested as it is the Department's only means of obtaining the required data. States are currently reporting all required data electronically and will continue to do so under the continuance.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 04–14783 Filed 6–29–04; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,833]**

### Bayer Clothing Group, Inc., Clearfield, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 3, 2004, applicable to workers of Bayer Clothing Group, Inc., Clearfield, Pennsylvania. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of men's suits and pants.

New findings show that there was a previous certification, TA–W–40,516, issued on May 7, 2002, for workers of Bayer Clothing, Target Square Facility, Clearfield, Pennsylvania who were engaged in employment related to the production of men's suits and pants. That certification expired on May 7, 2004. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from May 3, 2003 to May 8, 2004, for workers of the subject firm.

The amended notice applicable to TA–W–54,833 is hereby issued as follows:

''All workers of Bayer Clothing Group, Inc., Clearfield, Pennsylvania, who became totally or partially separated from employment on or after May 8, 2004, through June 3, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 14th day of June 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14786 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,761]**

### Detroit Diesel A Division of DaimlerChrysler Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 3, 2004, applicable to the workers of Detroit Diesel, a division of DaimlerChrysler, Detroit, Michigan. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of diesel engines.

Information shows that the petitioner, the International Union, United Automobile, Aerospace & Agricultural Workers of America (UAW), requested Alternative Trade Adjustment Assistance (ATAA) on behalf of the workers of the subject firm but that request was not addressed in the decision document.

Information obtained from the company indicates that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions within the industry are adverse. Review of this information shows that all eligibility criteria under section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met.

Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–54,761 is hereby issued as follows:

All workers of Detroit Diesel, a division of DaimlerChrysler, Detroit, Michigan who became totally or partially separated from employment on or after April 19, 2003, through June 3, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 14th day of June 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14787 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,169]**

### Dresser, Inc., Dresser Piping Specialties Division, Bradford, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of January 23, 2004, a company official requested administrative reconsideration of the Department's determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm.

The Department's negative determination was issued on December 24, 2003, and the notice of determination was published in the **Federal Register** on January 16, 2004 (69 FR 2622).

In a March 11, 2004, communication, the petitioner alleged that the Department incorrectly interpreted previously submitted information. In various subsequent submissions, the petitioner provided new information that indicated that the Department may have conducted the initial investigation on the wrong product.

The Department has reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 16th day of June 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14791 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,841]**

### Elastex, Inc.; a Division of the Elastic Corporation of America, Asheboro, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on June 9, 2004, applicable to the workers of Elastex, Inc., a division of the Elastic Corporation of America, Asheboro, North Carolina. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of knitted narrow elastic bands and gauge.

Information shows that the petitioner, a company official, requested Alternative Trade Adjustment Assistance (ATAA) on behalf of the workers of the subject firm but that request was not addressed in the decision document.

Information obtained from the company indicates that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions within the industry are adverse. Review of this information shows that all eligibility criteria under section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met.

Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–54,841 is hereby issued as follows:

''All workers of Elastex, Inc., a division of the Elastic Corporation of America, Asheboro, North Carolina who became totally or partially separated from employment on or after June 3, 2003 through June 9, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 16th day of June 2004.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14785 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,310]**

### Intermet Havana Foundry, a Division of Intermet; Havana, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application of April 27, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on March 26, 2004, and published in the **Federal Register** on May 24, 2004 (69 FR 29575).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Intermet Havana Foundry, a division of Intermet, Havana, Illinois engaged in the production of ductile iron castings was denied because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974 was not met. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of ductile iron castings during 2002, 2003 and January 2004. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of ductile iron castings during the relevant period, nor did it shift production to a foreign source.

The petitioner alleges that the layoffs at the subject firm are attributable to a shift in production to Mexico. To support this allegation, a petitioner attached copies of Intermet employees' correspondence regarding transfers of assets from Havana facility to Mexico.

A review of the initial investigation and a further contact with a company official confirmed that Intermet Havana Foundry, a division of Intermet, Havana, Illinois did plan a shift of production from Havana, Illinois to Mexico. The company official stated that Intermet began planning to construct a facility in Mexico in 2003 and planned to move assets to that newly constructed facility. However, the subject firm decided to put plans for a new facility in Mexico on hold for an indefinite period of time. Therefore, as of today, no production has been shifted to Mexico and the work performed at the Havana facility is being shifted to other Intermet facilities in the United States.

Should the shift to Mexico occur, the petitioners are encouraged to file a new petition on behalf of workers at the Intermet Havana Foundry, a division of Intermet, Havana, Illinois, thereby creating a relevant period of investigation that would include changing conditions.

#### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 15th day of June 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14789 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,862]**

### Irwin Industrial Tool Company, Division of Newell Rubbermaid, Plant #3, Including Leased Workers of Aerotek, Inc., Wilmington, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and

Alternative Trade Adjustment Assistance on June 9, 2004, applicable to workers of Irwin Industrial Tool Company, a division of Newell Rubbermaid, including leased workers of Aerotek, Inc., Wilmington, Ohio. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The information provided by the State agency shows that the Department failed to include the plant number in the certification. Accordingly, the Department is amending the certification to specifically identify the workers as those in Plant #3 of the subject firm.

The amended notice applicable to TA–W–54,862 is hereby issued as follows:

''All workers of Irwin Industrial Tool Company, Plant #3, a division of Newell Rubbermaid, including leased workers of Aerotek, Inc., Wilmington, Ohio, who became totally or partially separated from employment on or after May 5, 2003, through June 9, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 22nd day of June 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14784 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–54,361]**

### Kimberly Clark Corporation; Kimtech Plant; Neenah, WI; Notice of Negative Determination on Reconsideration

On May 25, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on June 8, 2004 (69 FR 32047).

The petition for the workers of Kimberly Clark Corporation, Kimtech Plant, Neenah, Wisconsin engaged in the production of paper industry machinery and equipment was denied because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met. The subject firm did not increase its reliance on imports of paper industry machinery and equipment during the relevant period, nor did it shift production to a foreign source.

In the request for reconsideration, the petitioner alleges that the layoffs at the subject firm are attributable to a shift in production to Mexico.

A company official was contacted regarding the above allegations. The company official stated that layoffs at the Kimtech Plant were attributed to a reduction in capital expenditures by Kimberly-Clark. The official also stated that no production has been shifted from the subject firm to Mexico and currently, there are no such plans.

Should the shift to Mexico occur, the petitioners are encouraged to file a new petition on behalf of workers at the Kimberly Clark Corporation, Kimtech Plant, Neenah, Wisconsin, thereby creating a relevant period of investigation that would include changing conditions.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 18th day of June, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance Assistance.*

[FR Doc. 04–14788 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,285]**

### Mastercraft Fabrics, LLC; Joan Fabrics Corporation; Oakland Plant; Including Leased Workers of Coxe Personnel Services and Personnel Services Unlimited; Spindale, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 10, 2003, applicable to workers of Mastercraft fabrics, LLC, Oakland Plant, including leased workers of Coxe Personnel Services and Personnel Services Unlimited, Spindale, North Carolina. The notice was published in the **Federal Register** on December 29, 2003 (68 FR 74978).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of jacquard furniture fabric.

New information shows that Joan Fabrics Corporation is the parent firm of Mastercraft Fabrics, LLC, Oakland Plant. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax accounts for Joan Fabrics Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Mastercraft Fabrics, LLC, Joan Fabrics, Corporation, Oakland Plant, including leased workers of Coxe Personnel Services and Personnel Services Unlimited, Spindale, North Carolina who were adversely affected by increased imports of jacquard furniture fabrics.

The amended notice applicable to TA–W–53,285 is hereby issued as follows:

All workers of Mastercraft Fabrics, LLC, Joan Fabrics Corporation, Oakland Plant, including leased workers of Coxe Personnel Services and Personnel Services Unlimited producing jacquard furniture fabrics at Mastercraft Fabrics, LLC, Joan Fabrics Corporation, Oakland Plant, Spindale, North Carolina, who became totally or partially separated from employment on or after September 20, 2002, through November 10, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of June 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14790 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,803 and TA–W–52,803A]**

### Mastercraft Fabrics, LLC, Joan Fabrics Corporation, Norwood Yarn Sales, Norwood, NC; Mastercraft Fabrics, LLC, Joan Fabrics Corporation, Norwood Yarn Sales, Troy, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 20, 2003, applicable to workers of Mastercraft Fabrics LLC, Norwood Yarn Sales, Norwood, North Carolina and Troy, North Carolina. The notice was published in the **Federal Register** on November 6, 2003 (68 FR 62834).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of jacquard furniture fabric.

New information shows that Joan Fabrics Corporation is the parent firm of Mastercraft Fabrics LLC, Norwood Yarn Sales. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax accounts for Joan Fabrics Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Mastercraft Fabrics LLC, Norwood Yarn Sales, Norwood North Carolina and Troy, North Carolina who were adversely affected by a shift in production of jacquard furniture fabric to Mexico.

The amended notice applicable to TA–W–52,803 and TA–W–52,803A are hereby issued as follows:

All workers of Mastercraft Fabrics LLC, Joan Fabrics Corporation, Norwood Yarn Sales, Norwood, North Carolina (TA–W–52,803) and Mastercraft Fabrics LLC, Joan Fabrics Corporation, Norwood Yarn Sales, Troy, North Carolina (TA–W–52,803A), who became totally or partially separated from employment on or after August 11, 2002, through October 20, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 15th day of June 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14792 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–52,835]**

### Southeastern Adhesives Company Currently Known as Neptune, Inc., Lenoir, NC; Amended Notice of Revised Determination on Reopening

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reopening on November 17, 2003, applicable to workers of Southeastern Adhesives Company, Lenoir, North Carolina. The notice was published in the **Federal Register** on November 28, 2003 (68 FR 66883).

At the request of the company, the Department reviewed the revised determination for workers of the subject firm. The workers produce adhesives for the furniture industry.

New information provided by the company shows that in April 2004 the subject firm's name changed from Southeastern Adhesives Company to Neptune, Inc. Accordingly, the Department is amending the certification to properly reflect this name change.

The intent of the Department's certification is to include all workers of Southeastern Adhesives Company, Lenoir, North Carolina, who were adversely affected by increased imports.

The amended notice applicable to TA–W–52,835 is hereby issued as follows:

All workers of Southeastern Adhesives Company, currently known as Neptune, Inc., Lenoir, North Carolina, who became totally or partially separated from employment on or after September 2, 2002, through November 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 16th day of June 2004.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. 04–14793 Filed 6–29–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Security Programs: Unemployment Insurance Program Letter Interpreting Federal Law

The Employment and Training Administration interprets Federal law requirements pertaining to unemployment compensation. These interpretations are issued in Unemployment Insurance Program Letters (UIPLs) to the State Workforce Agencies. UIPL 7–04 is published in the **Federal Register** in order to inform the public.

This UIPL advises states of the Federal law requirements applicable to the use of unemployment fund money to repay loans obtained from non-Federal sources that were used to pay unemployment compensation under state law.

Dated: June 24, 2004.

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*Assistant Secretary of Labor.*

**Employment and Training Administration Advisory System, U.S. Department of Labor, Washington, D.C. 20210**

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| None ..... | Continuing. |

*Advisory:* Unemployment Insurance Program Letter No. 7–04
*To:* State Workforce Agencies
*From:* Cheryl Atkinson
Administrator
Office of Workforce Security
*Subject:* Repayment of Non-Federal Loans Used to Pay Unemployment Compensation

1. *Purpose.* To provide the Department of Labor's position on the use of unemployment fund money to repay loans obtained from non-federal sources that were used to pay unemployment compensation (UC) under state law.

2. *References.* Sections 3304(a)(4) and 3306(h) of the Federal Unemployment Tax Act (FUTA); Section 303(a)(5) of the Social Security Act (SSA); Title XII, SSA; Unemployment Insurance Program Letter No. 39–87; and Training and Employment Guidance Letters Nos. 18–01 and 18–01, Change 1.

3. *Background.* Instead of obtaining advances from the Federal Unemployment Account as provided under Title XII of the SSA, states may obtain loans from other sources to pay UC. These loans may come from state revenues or from selling bonds. Some states have asked whether these loans

(including bonds) may be repaid with unemployment fund money in view of the requirement in Federal law that a state not withdraw money from its unemployment fund for any purpose other than the payment of UC.

Specifically, Section 3304(a)(4), FUTA, provides, as a condition of employers in a state receiving credit against the Federal unemployment tax, that ''all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation * * *.'' (The sole germane exception—Reed Act money—is discussed below.) A similar ''withdrawal standard'' is found in Section 303(a)(5), SSA, as a condition of states receiving grants for the administration of their UC laws. ''Compensation'' is defined in Section 3306(h), FUTA, as ''cash benefits payable to individuals with respect to their unemployment.''

4. *Repayment of Principal.* The Department's position is that the principal on a loan from any source that is used to pay UC may be repaid from unemployment fund money if the following conditions are met:

a. The loan is made for the purpose of paying UC under the state law, and the proceeds of the loan have either actually been used for the payment of UC or have been deposited in the state's account in the Unemployment Trust Fund from which they may be withdrawn only for the payment of UC. Because there is a direct relationship between the loan and the payment of UC, the withdrawal standard's requirement that money be withdrawn only for the payment of compensation is met.

If the loan is not limited to the payment of UC (for example, if a bond issuance also finances workers compensation or temporary disability payments), the amount that may be repaid from the state's unemployment fund is limited to the amount actually used for the payment of UC plus any amount deposited in the state's account in the Unemployment Trust Fund that is limited to the payment of UC.

b. The money used for the payment of UC is explicitly characterized as a loan for the payment of UC at the time it is dedicated to the payment of UC. If it is not so characterized, there is no loan for the payment of UC. To be permissible under the withdrawal standard, there must be a direct relationship between the payment of UC and any withdrawal from the unemployment fund. A withdrawal to ''repay'' money not initially characterized as a loan will not clearly be for the payment of UC, but instead could be for another purpose such as making up a shortfall in the fund from which the money came.

c. The loan and repayment are consistent with the state law as interpreted by competent state authority. This assures that the expenditure of the loan for UC was lawful and that repayment of the loan is a proper withdrawal from the unemployment fund.

5. *Payment of Interest and Fees.* Unemployment fund money may not be used to pay interest, loan/bond fees, or other administrative costs. However, a state may use Reed Act money, if appropriated by its state legislature, to pay any of these costs associated with the principal described in ''a.'' above. Since these interest/administrative costs are related to obtaining sufficient funds to cover the costs of paying UC, they are costs of administering a state's UC law and permissible under the Reed Act. (See Unemployment Insurance Program Letter No. 39–87; and Training and Employment Guidance Letter Nos. 18–01 and 18–01, Change 1, for discussions of Reed Act money and their permissible uses.)

Note, however, that grants received from the Department of Labor for the administration of a state's UC law may not be used to pay interest. Unlike Reed Act money, UC grants are subject to 29 CFR 97.22, which provides that allowable costs will be determined under OMB Circular No. A–87. Item 26 of Attachment B of the Circular provides that ''[c]osts incurred for interest * * * however represented, are unallowable'' with certain exceptions related to real property and equipment.

6. *Use of Title XII Advances.* The Department will not approve requests for Title XII advances to pay outstanding loans/bonds. The intent of Title XII is to allow states to continue to pay UC even though their accounts in the Unemployment Trust Fund are at zero. Thus, to obtain these advances, there must be an immediate need for money to pay benefits directly to individuals. This immediate need is expressed in Section 1201(a)(1)(B), SSA, which limits the amount that may be requested to a ''3-month period;'' and Section 1201(a)(3)(B), SSA, which requires that, in requesting an advance, the state take ''into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month.''

This reverses the position taken in Field Memorandum No. 64–83, a 1983 communication from the National to the Regional Offices, which apparently did not take this analysis into account.

7. *Action required.* Administrators should provide this information to appropriate staff and assure that unemployment fund money is used consistent with this advisory.

8. *Inquiries.* Direct questions to the appropriate Regional Office.

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## NATIONAL ENDOWMENT FOR THE ARTS

### Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

**AGENCIES:** National Endowment for the Arts.

**ACTION:** Notice of proposed guidance.

**SUMMARY:** The National Endowment for the Arts (''the Endowment'') publishes for public comment proposed Policy Guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons. This policy guidance is intended to replace policy guidance published on the Endowment Web site, *www.arts.gov,* in November of 2000.

**DATES:** Comments must be submitted on or before July 30, 2004. The Endowment will review all comments and will determine what modifications, if any, to this policy guidance are necessary.

**ADDRESSES:** Interested persons should submit written comments to: Claudia Nadig, Office of General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone 202/682–5418. E-mail *nadigc@arts.endow.gov.*

**FOR FURTHER INFORMATION CONTACT:** Claudia Nadig, Office of General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone 202/682–5418. E-mail *nadigc@arts.endow.gov.*

**SUPPLEMENTARY INFORMATION:** Under Endowment regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* (Title VI), recipients of federal financial assistance have a responsibility to ensure meaningful access to their programs and activities by persons with limited English proficiency (LEP). See 45 CFR 1110. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice, guidance for its respective recipients clarifying that obligation. Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice (DOJ) Policy Guidance entitled ''Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency.'' See 65 FR 50123 (August 16, 2000).

Endowment Guidance regarding obligations under Title VI to take reasonable steps to ensure access to programs and activities by persons with limited English proficiency was originally published on the Endowment Web site in November of 2000. See *www.arts.gov.* On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress entitled ''Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with

Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients which was drafted and organized to function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). Consistent with this directive, the Endowment has developed this proposed Guidance which is designed to reflect the application of the DOJ Guidance standards to particular classes of Endowment recipients.

It has been determined that the proposed guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

The text of the complete proposed guidance document appears below.

**Murray Welsh,**

*Director of Administrative Services, National Endowment for the Arts.*

## I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ''LEP.'' While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English ''not well'' or ''not at all'' in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria the Endowment will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

Before discussing these criteria in greater detail, it is important to note two basic underlying principles. First, we must ensure that federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive federal financial assistance.

There are many productive steps that the federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the National Endowment for the Arts, in conjunction with the Department of Justice (DOJ), plans to continue to provide assistance and guidance in this important area. In addition, the Endowment plans to work with its recipients and LEP persons to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, the Endowment intends to explore how language assistance measures, resources and cost-containment approaches developed with respect to their own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, *www.lep.gov,* to assist in disseminating this information to recipients, federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval,* 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. The Endowment and the Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

## II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall ''on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.'' Section 602 authorizes and

[1] The Endowment recognizes that many recipients may have had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take reasonable steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

directs federal agencies that are empowered to extend federal financial assistance to any program or activity ''to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability.'' 42 U.S.C. 2000d–1.

In pertinent part, the Endowment's regulations promulgated pursuant to section 602 forbid recipients from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.'' See 45 CFR 1110.3(b)(2).

The Supreme Court, in *Lau* v. *Nichols,* 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including language substantially similar to that of the Endowment quoted above, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national-origin discrimination. In *Lau,* a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. ''Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ''restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program'' or from ''utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.''

On that same day, DOJ issued a general guidance document addressed to ''Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ''Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (''DOJ LEP Guidance'').

Subsequently, federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval,* 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ''Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of *Sandoval.*[3] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to federally assisted programs and activities—the Executive Order remains in force. This Guidance is thus published pursuant to Executive Order 13166.

## III. Who Is Covered?

The Endowment's regulations at 45 CFR 1110.3(b)(2) require all recipients of federal financial assistance from the Endowment to provide meaningful access to LEP persons.[4] Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of assistance from the Endowment typically include, but are not limited to, for example:

- State arts agencies,
- Nonprofit arts organizations, and
- Educational programs pertaining to the arts.

Subrecipients likewise are covered when federal funds are passed through from one recipient to a subrecipient.

Coverage extends to a recipient's entire program or activity; *i.e.,* to all parts of a recipient's operations. This is true even if only one part of the recipient receives the federal assistance.[5] For example, once the Endowment provides assistance to a state arts agency, all of the state-wide operations of the entire state arts agency—not just the particular projects receiving federal assistance—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

## IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or ''LEP,'' entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by the Endowment's recipients and should be considered when planning language services include, but are not limited to:

- Community members who may attend performances or exhibits
- Persons participating in programs or activities administered or supported by local arts organizations, museums, or cultural centers
- Students and their parents or guardians subject to or serviced by educational programs dealing with the arts

[3] The memorandum noted that some commentators have interpreted *Sandoval* as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. *See, e.g., Sandoval,* 532 U.S. at 286, 286 n.6 (''[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with ' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. *Sandoval* holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of federal grant agencies to enforce their own implementing regulations.

[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the DOJ LEP Guidance are to additionally apply to the federally conducted programs and activities of federal agencies, including the Endowment.

[5] However, if a federal agency were to decide to terminate federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

**V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?**

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. The Endowment's recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

*(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population*

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons ''eligible to be served, or likely to be directly affected, by'' a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a federal grant agency as the recipient's service area. When considering the number or proportion of LEP individuals in a service area, recipients providing educational services to minor LEP students should also include the students' LEP parent(s) or primary caretakers among those likely to be encountered.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[6] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

*Examples:*

- A museum in a city with a large Hispanic population including a significant number of LEP members should consider translating exhibit labels and/or audio tours into Spanish (or offering regular bilingual tours)
- A visual arts organization in a community with a very small number of Vietnamese LEP residents but a significant Chinese LEP population should consider translating its brochures in Chinese, but need not necessarily translate those brochures into Vietnamese.

[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

*(2) The Frequency With Which LEP Individuals Come in Contact With the Program*

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily.

*Examples:*

- A dance company that regularly performs in a Korean cultural center is more likely to encounter Korean LEP persons, and thus have a greater need for appropriate language services, than a visiting dance troupe scheduled to perform at the Korean cultural center on a single occasion. However, if the cultural center itself is a recipient of assistance from the Endowment or another federal agency, it may have its own obligation, apart from that of the performing troupes it sponsors or hosts, to provide appropriate language services regardless of the number of performances by individual dance companies.
- A local arts agency that operates a job referral directory of local artists in a community that includes a significant Hmong population, a language group known to include a large percentage of LEP persons. The recipient should consider translating the application form into Hmong or, because Hmong is traditionally an oral rather than written language, offering an interpreter to assist Hmong-speaking LEP individuals in filling out the application.

It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available

telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

*(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program*

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. For example, the obligations of a federally assisted school or hospital to LEP constituents are generally far greater than those of a federally assisted zoo or theater. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a federal, state, or local entity to make an activity compulsory, such as a particular educational program, can serve as strong evidence of the program's importance. While all situations must of course be analyzed on a case-by-case basis, the following general observations may be helpful to the Endowment's recipients considering the implications of applying this factor of the four-factor test to their respective programs:

With respect to the nature of a program, it should be emphasized that the message of visual art, dance, and orchestral music is generally conveyed independent of the written or spoken word and thus can be accessible regardless of language. Moreover, in certain cases, the source language in which a play, song, opera, or poem is written may be essential to its nature. Thus, while librettos, subtitles, and synopses may be appropriate in English or another language, translation of the entire performance may not be consistent with the nature or fundamental purpose of the work as an art form. However, to the extent that a recipient determines that additional written or oral explanatory information is helpful to understand performances or exhibits, it should ensure that this information is, when warranted under the four-factor analysis, also made available in appropriate languages other than English.

With respect to the importance of a program, activity, or service provided by one of the Agency's recipients, the obligation to provide translation services will most likely be greatest in educational or training situations. Entities that receive federal financial assistance from both the Department of Education and the Endowment may rely on the Department of Education's more particularized LEP Guidance to ensure compliance with the obligation to provide meaningful access in an educational context.

Examples:

- A local arts agency administering an ''artist in residence'' program that places one or more sub-recipients in local elementary and secondary schools with a relatively small Haitian LEP student population should consider the provision of appropriate Haitian language services (including the possible selection of an artist who speaks Haitian Creole) in light of the frequent, possibly daily, interactions with this otherwise small student and parent LEP population.
- A state arts agency rural arts apprenticeship program should consider matching students with limited English skills to bilingual mentors.
- A filmmaker making a film or television program for national distribution may dub or subtitle the film in other languages, but is not required to do so.
- A theater company need not offer a play in translation even if it serves a large LEP population, but may wish to present a synopsis in other languages.
- A Chinese opera company in a heavily Hispanic area need not offer surtitles in Spanish (or English) but may consider translating a synopsis of the libretto.
- A literary center might offer a program of poetry readings in Japanese, and offer written versions in English.

*(4) The Resources Available to the Recipient and Costs*

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. For example, a multi-million dollar orchestra receiving a $75,000 grant from the Endowment would obviously have a much greater ability to address the language needs of a LEP audience than a small chamber ensemble for whom that same grant amount represents its principal budget. In addition, ''reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ''fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

The Endowment is well aware of the fact that many of its grant recipients may experience difficulties with resource allocation. The Endowment emphasizes that reasonable translation and interpretation costs are appropriately included in grant and award budget requests.

This four-factor analysis necessarily implicates the ''mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ''interpretation'') and written translation (hereinafter ''translation''). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an

[7] Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

## VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

### *A. Oral Language Services (Interpretation)*

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

*Competence of Interpreters.* When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person;[8] and, if applicable, understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into any other role such as counselor or advisor.

Some recipients may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged.[9] Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters. The Endowment recognizes, however, that such situations are infrequent in the types of programs and activities it typically funds.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in compulsory educational classes, for example, must be quite high while the quality and accuracy of language services in translation of a dance company's program notes need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for ''timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

*Hiring Bilingual Staff.* When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients and sub-recipients can, for example, fill public contact positions, such as box office personnel or program directors, with staff who are bilingual and competent to communicate directly with LEP persons in their language and at the appropriate level of competency. Similarly, a state arts agency serving an area with a significant LEP population could seek to match students with limited English skills with language-appropriate bilingual mentors. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual member of a formal review panel adjudicating allegations of program or fiscal noncompliance would probably not be able to perform effectively the role of interpreter and adjudicator at the same time, even if the bilingual employee were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

*Hiring Staff Interpreters.* Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

*Contracting for Interpreters.* Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and

[8] Many languages have ''regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages which do not have an appropriate direct interpretation of some terms, the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[9] For those languages in which no formal accreditation or certification currently exists, courts and law enforcement agencies should consider a formal process for establishing the credentials of the interpreter.

processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

*Using Telephone Interpreter Lines.* While of limited value for live performances or museum exhibits, telephone interpreter service lines often offer speedy interpreting assistance in many different languages in other public-contact situations. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

*Using Community Volunteers.* In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules, if any. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

*Use of Family Members or Friends as Interpreters.* Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person.

While issues of competency, confidentiality, and conflict of interest in the use of family members or friends often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this might be a gift shop or cafeteria associated with a small art museum or an unstaffed historical site, either of which might attract many tourists from a multitude of language groups. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

*B. Written Language Services (Translation)*

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

*What Documents Should be Translated?* After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

- Notices advising LEP persons of free language assistance
- Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required
- Applications to participate in a recipient's program or activity or to receive recipient benefits, grants, or services.

Whether or not a document (or the information it solicits) is ''vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ''vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ''meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

*Into What Languages Should Documents be Translated?* The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

*Safe Harbor.* Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

*Example:* Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

*Safe Harbor Standards.* The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations: (a) The recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or (b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable.

The Endowment acknowledges that it provides assistance to a wide range of programs and activities serving different geographic areas with varying populations. Moreover, as noted above, the obligation to consider translations applies only to a recipient's vital documents having a significant impact on access rather than all types of documents used or generated by a recipient in the course of its activities. For these reasons, a strict reliance on the numbers or percentages set out in the safe harbor standards may not be appropriate for all of the Endowment's recipients and for all their respective programs or activities. While the safe harbor standards outlined above offer a common guide, the decision as to what documents should be translated should ultimately be governed by the underlying obligation under Title VI to provide meaningful access by LEP persons by ensuring that the lack of appropriate translations of vital documents does not adversely impact upon an otherwise eligible LEP persons

ability to access its programs or activities.

*Competence of Translators.* As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[10] Competence can often be ensured by having a second, independent translator ''check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ''back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[11] Community organizations may be able to help consider whether a document is written at a good level for the audience. Likewise, consistency in the words and phrases used to translate terms of art or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no significant consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences. The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

## VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons (''LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

### *(1) Identifying LEP Individuals Who Need Language Assistance*

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ''I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ''I speak Spanish'' in both Spanish and English, ''I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. The Census Bureau ''I speak card'' can be found and downloaded at *http://www.usdoj.gov/crt/cor/13166.htm.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

### *(2) Language Assistance Measures*

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

- Types of language services available.
- How staff can obtain those services.
- How to respond to LEP callers.
- How to respond to written communications from LEP persons.
- How to respond to LEP individuals who have in-person contact with recipient staff.
- How to ensure competency of interpreters and translation services.

[10] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[11] For instance, there may be languages which do not have an appropriate direct translation of some terms and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already-created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

*(3) Training Staff*

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

• Staff know about LEP policies and procedures.

• Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

*(4) Providing Notice to LEP Persons*

Once an organization has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

• Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[12]

• Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ''tagged'' onto the front of common documents.

• Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

• Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

• Including notices in local newspapers in languages other than English.

• Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

• Presentations and/or notices at schools and religious organizations.

*(5) Monitoring and Updating the LEP Plan*

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

• Current LEP populations in service area or population affected or encountered.

• Frequency of encounters with LEP language groups.

• Nature and importance of activities to LEP persons.

• Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

• Whether existing assistance is meeting the needs of LEP persons.

• Whether staff knows and understands the LEP plan and how to implement it.

• Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

**VIII. Voluntary Compliance Effort**

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by the Endowment through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that the Endowment will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, the Endowment will inform the recipient in writing of this determination, including the basis for the determination. The Endowment uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, the Endowment must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, the Endowment must secure compliance through the termination of federal assistance after the recipient has been given an opportunity for an administrative hearing and/or by referring the matter to a DOJ litigation section to seek injunctive relief or pursue other enforcement proceedings. The Endowment engages in voluntary compliance efforts and provide technical assistance to recipients at all stages of an investigation. During these efforts, the Endowment proposes reasonable timetables for achieving compliance and consult with and assist recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, the Endowment's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, the Endowment acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients

[12] The Social Security Administration has made such signs available at *www.ssa.gov/multilanguage/langlist1.htm*. These signs could, for example, be modified for recipient use.

take reasonable steps to provide meaningful access to federally assisted programs and activities for LEP persons, the Endowment will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to federally assisted programs and activities.

In cases where a recipient of federal financial assistance from the Endowment also receives assistance from one or more other federal agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans. The Endowment, in discharging its compliance and enforcement obligations under Title VI, will look to analyses performed and plans developed in response to similar detailed LEP guidance issued by other federal agencies. Accordingly, as an adjunct to this Guidance, recipients may, where appropriate, also rely on guidance issued by other agencies in discharging their Title VI LEP obligations.

In determining a recipient entity's compliance with Title VI, the Endowment's primary concern is to ensure that the entity's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient entity's appropriate use of the methods and options discussed in this policy guidance is viewed by the Endowment as evidence of that entity's willingness to comply voluntarily with its Title VI obligations.

[FR Doc. 04–14752 Filed 6–29–04; 8:45 am]

BILLING CODE 7537–01–P

## NATIONAL SCIENCE FOUNDATION

### Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Science Foundation

**ACTION:** Notice.

**SUMMARY:** Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed information collection.

**DATES:** Written comments on this notice must be received by August 30, 2004, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Submit written comments to Bijan Gilanshah, Assistant General Counsel, through surface mail (National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230); e-mail (*bgilansh@nsf.gov*) or fax (703–292–9041).

**FOR FURTHER INFORMATION CONTACT:** Call or write, Bijan Gilanshah, Assistant General Counsel, at the National Science Foundation, 4201 Boulevard, Room 1265, Arlington, Virginia 22230; call (703) 292–8060, or send e-mail to *bgilansh@nsf.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Antarctic emergency response plan and environmental protection information.

*OMB Approval Number:* 3145–0180.

*Expiration Date of Approval:* August 31, 2004.

*Abstract:* The NSF, pursuant to the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) (''ACA'') regulates certain non-governmental activities in Antarctica. The ACA was amended in 1996 by the Antarctic Science, Tourism, and Conservation Act. On September 7, 2001, NSF published a final rule in the **Federal Register** (66 FR 46739) implementing certain of these statutory amendments. The rule requires non-governmental Antarctic expeditions using non-U.S. flagged vessels to ensure that the vessel owner has an emergency response plan. The rule also requires persons organizing a non-governmental expedition to provide expedition members with information on their environmental protection obligations under the Antarctic Conservation Act.

*Expected Respondents:* Respondents may include non-profit organizations and small and large businesses. The majority of respondents are anticipated to be U.S. tour operators, currently estimated to number twelve.

*Burden on the Public.* The Foundation estimates that a one-time paperwork and recordkeeping burden of 40 hours or less, at a cost of $500 to $1400 per respondent, will result from the emergency response plan requirement contained in the rule. Presently, all respondents have been providing expedition members with a copy of the Guidance for Visitors to the Antarctic (prepared and adopted at the Eighteenth Antarctic Treaty Consultative Meetings as Recommendation XVIII–1). Because this Antarctic Treaty System document satisfies the environmental protection information requirements of the rule, no addition burden shall result from the environmental information requirements in the rule.

Dated: June 25, 2004.

**Lawrence Rudolph,**

*General Counsel, National Science Foundation.*

[FR Doc. 04–14858 Filed 6–29–04; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 03005980 and 03005982]**

### Notice of License Renewal Application for Safety Light Corporation, Bloomsburg, PA and Opportunity to Request a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license renewal applications request and opportunity to request a hearing.

**DATES:** A request for a hearing must be filed by August 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Robert Prince, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406; telephone (610) 337–5376 or e-mail *rjp4@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Nuclear Regulatory Commission (NRC) has received, by letter dated April 22, 2004, a request to renew NRC License Nos. 37–00030–02 and 37–00030–08 for the Safety Light Corporation (Safety Light or the licensee), Bloomsburg, PA. License Nos. 37–00030–02 and 37–00030–08 authorize Safety Light to manufacture devices containing tritium at a facility

located at 4150–A Old Berwick Road, Bloomsburg, PA, and to decommission portions of that same facility. These license renewals would authorize the continued manufacture of electron tubes, self-luminous devices, foils, targets, rods, and pins and the characterization and decommissioning of contaminated facilities, equipment and land.

An NRC administrative review, documented in a letter to Safety Light dated April 30, 2004, found the application acceptable to begin a review. If the NRC approves the amendment and renews these licenses, the approval will be documented in an amendment to NRC license Nos. 37–00030–02 and 37–00030–08. If the NRC renews the license, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report. These license renewals appear to qualify for a categorical exclusion pursuant to 10 CFR 51.22(c)(14).

**II. Opportunity to Request a Hearing**

The NRC hereby provides notice that this is a proceeding on an application to renew NRC License Nos. 37–00030–02 and 37–00030–08, authorizing Safety Light to continue to manufacture electron tubes, self-luminous devices, foils, targets, rods, and pins and to characterize and decommission portions of its Bloomsburg facility. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal workdays;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, Safety Light Corporation, 4150–A Old Berwick Road, Bloomsburg, Pennsylvania 17815, Attention: Bill Lynch; and,

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e), must be met. However, in accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by August 30, 2004.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application or other supporting documents filed by the applicant, or otherwise available to the petitioner. Contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the

selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

### III. Further Information

Documents related to this action, including the applications for renewals and supporting documentation, 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: Safety Lights renewal requests for NRC License No. 37–00030–02, ADAMS accession no. ML041310318: and NRC License No. 37–00030–08, ADAMS accession no. ML041310328. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at (800) 397–4209 or (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 Public Document Room (PDR), O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. They are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406.

Dated in King of Prussia, Pennsylvania, this 23rd day of June, 2004.

For the Nuclear Regulatory Commission.

**Marie Miller,**

*Chief, Decommissioning Branch, Division of Nuclear Materials Safety Region I.*

[FR Doc. 04–14772 Filed 6–29–04; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the U.S. Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

Questions regarding this matter should be directed to Rosetta O. Virgilio, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (Internet Address: *rov@nrc.gov*) or at (301) 415–2367.

Dated in Rockville, Maryland this 14th day of June 2004.

For the U.S. Nuclear Regulatory Commission.

**Paul H. Lohaus,**

*Director, Office of State and Tribal Programs.*

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

| State | Part 71 | Part 73 |
|---|---|---|
| Alabama | Colonel W.M. Coppage, Director, Alabama Department of Public Safety, 500 Dexter Avenue, Montgomery, AL 36102–1511, (334) 242–4394, 24 hours: (334) 242–4128. | Same. |
| Alaska | Douglas Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643, (907) 451–2172, 24 hours: (907) 457–1421. | Same. |
| Arizona | Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, 24 hours: (602) 223–2212. | Same. |
| Arkansas | Bernard Bevill, Division of Radiation Control and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136. | Same. |
| California | Captain Andrew R. Jones, California Highway Patrol, Enforcement Services Division, 444 North 3rd St., Suite 310, P.O. Box 942898, Sacramento, CA 94298–0001, (916) 445–1865, 24 hours: 1–(916) 845–8931. | Same. |
| Colorado | Captain Tommy Wilcoxen, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5865, (303) 239–4546, 24 hours: (303) 239–4501. | Same. |
| Connecticut | Edward L. Wilds, Jr., Ph.D., Director, Division of Radiation, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127, (860) 424–3029, 24 hours: (860) 424–3333. | Same. |
| Delaware | James L. Ford, Jr., Department of Safety & Homeland Security, P.O. Box 818, Dover, DE 19903, (302) 744–2665, 24 hours: pager (302) 222–6586. | Same. |
| Florida | Harlan W. Keaton, Administrator, Bureau of Radiation Control, Environmental Radiation Program, Department of Health, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2095. | Same. |
| Georgia | Captain Bruce Bugg, Special Projects Coordinator, Law Enforcement Division, Georgia Department of Motor Vehicle Safety, P.O. Box 80447, 2206 East View Parkway, Conyers, GA 30013, (678) 413–8825, 24 hours: (404) 655–7484. | Same. |
| Hawaii | Laurence Lau, Deputy Director for Environmental Health, State of Hawaii Department of Health, P.O. Box 3378, 1250 Punchbowl Street, Honolulu, HI 96813, (808) 586–4424, 24 hours: (808) 247–2191. | Same. |

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|---|---|---|
| Idaho | Lieutenant William L. Reese, Deputy Commander, Commercial Vehicle Safety, Idaho State Police, P.O. Box 700, Meridian, ID 83680–0700, (208) 884–7222, 24 hours: (208) 846–7500. | Same. |
| Illinois | Gary N. Wright, Assistant Director, Illinois Emergency Management Agency, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 hours: (217) 782–7860. | Same. |
| Indiana | Superintendent Melvin J. Carraway, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248. | Same. |
| Iowa | Ellen M. Gordon, Administrator, Homeland Security Advisor, Iowa Emergency Management Division, Hoover Street Office Building, Level A 1305 East Walnut Street, Des Moines, IA 50319, (515) 281–3231. | Same. |
| Kansas | Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1408, 24 hours: (785) 296–8013. | Same. |
| Kentucky | Robert Johnson, Manager, Radiation Health and Toxic Agents Branch, Cabinet for Health Services, 275 East Main Street, Mail Stop HS–2E–D, Frankfort, KY 40621–0001, (502) 564–7818, ext. 3697, 24 hours: (502) 330–7660. | Same. |
| Louisiana | Captain Robert Pinero, Louisiana State Police, 7919 Independence Boulevard, P.O. Box 66614 (#A2621), Baton Rouge, LA 70896–6614, (225) 925–6113, ext. 270, 24 hours: (877) 925–6595. | Same. |
| Maine | Colonel Craig Poulin, Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624–7000. | Same. |
| Maryland | Michael Bennett, Director, Maryland State Police, Electronic Systems Division, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4229, 24 hours: (410) 653–4200. | Same. |
| Massachusetts | Robert J. Walker, Director, Radiation Control Program, Massachusetts Department of Public Health, 90 Washington Street, Dorchester, MA 02121, (617) 427–2944 ext. 2001, 24 hours: (617) 427–2913. | Same. |
| Michigan | Captain Dan Smith, Commander, Special Operations Division, Michigan State Police, 714 South Harrison Road, East Lansing, MI 48823, (517) 336–6187, 24 hours: (517) 336–6100. | Same. |
| Minnesota | John R. Kerr, Assistant Director, Administration and Recovery, Minnesota Division of Homeland Security, & Emergency Management, 444 Cedar Street, Suite 223, St. Paul, MN 55101, (651) 296–0481, 24 hours: (651) 649–5451. | Same. |
| Mississippi | Robert R. Latham, Jr., Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296–4501, (601) 960–9020, 24 hours: (601) 352–9100. | Same. |
| Missouri | Jerry B. Uhlmann, Director, Emergency Management Agency, P.O. Box 116, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748. | Same. |
| Montana | Dan McGowan, Administrator, Montana Disaster & Emergency ServicesDivision, 1900 Williams Street, #4789, P.O. Box 4789, Helena, MT 59604–4789, (406) 841–3911. | Same. |
| Nebraska | Major Bryan J. Tuma, Nebraska State Patrol, P.O. Box 94907, Lincoln, NE 68509–4907, (402) 479–4950, 24 hours: (402) 471–4545. | Same. |
| Nevada | Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Health Protection Services, Nevada State Health Division, 1179 Fairview Drive, Suite 102, Carson City, NV 89701–5405, (775) 687–5394, ext. 276, 24 hours: (775) 688–2830. | Same. |
| New Hampshire | Lieutenant Stephen Kace, New Hampshire Department of Safety, James H. Hayes Building, 33 Hazen Drive, Concord, NH 03305, (603) 271–6369, 24 hours: (603) 271–3636. | Same. |
| New Jersey | Kent Tosch, Chief, Bureau of Nuclear Engineering, Department of Environmental Protection, P.O. Box 415, Trenton, NJ 08625–0415, (609) 984–7700, 24 hours: (609) 658–3072. | Same. |
| New Mexico | Derrith Watchman-Moore, Deputy Secretary, New Mexico Department of Environment, Office of the Secretary, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM 87502–6110, (505) 827–2855, 24 hours: (505) 249–0157. | Same. |
| New York | Edward F. Jacoby, Jr., Executive Deputy Director, New York State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251, (518) 457–2222, 24 hours: (518) 457–2200. | Same. |
| North Carolina | First Sergeant Mark Dalton, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 4702 Mail Service Center, Raleigh, NC 27699–4702, (919) 733–5282, 24 hours: (919) 733–3861. | Same. |
| North Dakota | Terry O'Clair, Director, Division of Air Quality, North Dakota Department of Health, 1200 Missouri Avenue, P.O. Box 5520, Bismarck, ND 58506–5520, (701) 328–5188, 24 hours: (701) 328–9921. | Same. |
| Ohio | Carol A. O'Claire, Chief, Radiological Branch, Ohio Emergency Management Agency, 2855 West Dublin Granville Road, Columbus, OH 43235–2206, (614) 799–3915, 24 hours: (614) 889–7150. | Same. |

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|---|---|---|
| Oklahoma | Commissioner Kevin L. Ward, Oklahoma Department of Public Safety, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–2001, 24 hours: (405) 425–2323. | Same. |
| Oregon | David Stewart-Smith, Administrator, Energy Resources Division, Oregon Office of Energy, 625 Marion Street, NE, Suite 1, Salem, OR 97301–3742, (503) 378–6469, 24 hours: (503) 378–6377. | Same. |
| Pennsylvania | John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110–9364, (717) 651–2001. | Same. |
| Rhode Island | Terrence Mercer, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888, (401) 941–4500, Ext. 150, 24 hours: (401) 444–1183. | Same. |
| South Carolina | Henry J. Porter, Assistant Director, Division of Waste Management, Bureau of Land and Waste Management, Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4245, 24 hours: (803) 253–6488. | Same. |
| South Dakota | Kristi Turman, Director, Emergency Management Agency, 118 W. Capitol Avenue, Pierre, SD 57501–5070, (605) 773–3231. | Same. |
| Tennessee | Elgan H. Usrey, Manager, Preparedness and Mitigation Division, Tennessee Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204–1502, (615) 741–2879, After hours: (Inside TN) 1–800–262–3400, (Outside TN) 1–800–258–3300. | Same. |
| Texas | Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756–3189, (512) 834–6679, (512) 458–7460. | Colonel Thomas A. Davis, Director, Texas Department of Public Safety, Attn: EMS Preparedness Section, P.O. Box 4087, Austin, TX 78773–0223, (512) 424–7771, 24 hours: (512) 424–2208. |
| Utah | Dane Finerfrock, Director, Division of Radiation Control, Department of Environmental Quality, 168 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4250, After hours: (801) 536–4123. | Same. |
| Vermont | Colonel Thomas A. Powlovich, Director, Division of State Police, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671–2101, (802) 244–7345. | Same. |
| Virginia | Brett A. Burdick, Director, Technological Hazards Division, Department of Emergency Management, Commonwealth of Virginia, 10501 Trade Court, Richmond, VA 23236, (804) 897–6500, ext. 6569, 24 hours: (804) 674–2400. | Same. |
| Washington | Steven L. Kalmbach, Assistant State Fire Marshal, Washington State Patrol Fire Protection Bureau, P.O. Box 42600, Olympia, WA 98504–2600, (360) 750–3119, 24 hours: 1–800–409–4755. | Same. |
| West Virginia | Colonel H.E. Hill, Jr., Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111. | Same. |
| Wisconsin | Edward J. Gleason, Administrator, Division of Emergency Management, 2400 Wright Street, P.O. Box 7865, Madison, WI 53707–7865, (608) 242–3232. | Same. |
| Wyoming | Captain Vernon Poage, Support Services Officer, Commercial Carriers, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82009–3340, (307) 777–4317, 24 hours: (307) 777–4321. | Same. |
| District of Columbia | Gregory B. Talley, Program Manager, Radiation Protection Division, Bureau of Food, Drug & Radiation Protection, Department of Health, 51 N Street, NE, Room 6025, Washington, DC 20002, (202) 535–2320, 24 hours: (202) 535–2180. | Same. |
| Puerto Rico | Esteban Mujica, Chairman, Environmental Quality Board, P.O. Box 11488, San Juan, PR 00910, (787) 767–8056 or (787) 767–8181. | Same. |
| Guam | Fred M. Castro, Administrator, Guam Environmental Protection Agency, P.O. Box 22439 GMF, Barrigada, Guam 96921, (671) 457–1658 or 1659, 24 hours: (671) 635–9500. | Same. |
| Virgin Islands | Dean C. Plaskett, Esq., Commissioner, Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building—Second Floor, St. Thomas, Virgin Islands 00802, (340) 774–3320, 24 hours: (340) 774–5138. | Same. |
| American Samoa | Peter Peshut, Manager, Technical Services, American Samoa Environmental Protection Agency, P.O. Box PPA, Pago Pago, American Samoa 96799, (684) 633–2304, 24 hours: (684) 622–7106. | Same. |
| Commonwealth of the Northern Mariana Islands. | John Castro, Director, Department of Environmental Quality, Commonwealth of Northern Mariana Islands Government, P.O. Box 501304, Saipan, MP 96950, (670) 664–8500 or 8501, 24 hours: (670) 287–1526. | Same. |

[FR Doc. 04–14162 Filed 6–29–04; 8:45 am]
BILLING CODE 7590–01–P

## POSTAL RATE COMMISSION

**[Docket No. MC2004–3; Order No. 1409]**

## Negotiated Service Agreement

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order on a new negotiated service agreement proposal.

**SUMMARY:** This document establishes a docket for consideration of the Postal Service's filing a request for approval of a negotiated settlement agreement with Bank One Corporation. It identifies key elements of the proposed agreement, its relationship to the Capital One Services, Inc. negotiated agreement, and addresses preliminary matters. In a separate notice and order (No. 1410), also issued June 24, 2004, the Commission announces the establishment of a docket for consideration of a separate proposal for a negotiated service agreement with Discover Financial Services, Inc. Issuance of this document provides the public with notice of the Service's filing and of certain key decisions the Commission has made to date, but does constitute a decision on the merits.

**DATES:** Key dates are:

1. July 12, 2004: deadline for filing notices of intervention.
2. July 14, 2004: settlement conference.
3. July 15, 2004: prehearing conference (10 a.m.).

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, general counsel, at 202–789–6818.

**SUPPLEMENTARY INFORMATION:**

### Procedural History

*Capital One Services, Inc. Negotiated Settlement Agreement,* 67 FR 61355 (September 30, 2002).

*Negotiated Service Agreement Proposed Rule,* 68 FR 52546 (September 4, 2003).

*Negotiated Service Agreement Final Rule,* 69 FR 7574 (February 19, 2004).

On June 21, 2004, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a negotiated service agreement with Bank One Corporation.[1] The negotiated service agreement is proffered as functionally equivalent to the Capital One Services, Inc. negotiated service agreement (baseline agreement) as recommended by the Commission in docket no. MC2002–2. The Request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

The Postal Service has identified Bank One Corporation (Bank One), along with itself, as parties to the negotiated service agreement. This identification serves as notice of intervention by Bank One. It also indicates that Bank One shall be considered a co-proponent, procedurally and substantively, of the Postal Service's Request during the Commission's review of the negotiated service agreement. Rule 191(b) [39 CFR 3001.191b]. An appropriate notice of appearance and filing of testimony as co-proponent by Bank One, June 21, 2004, also has been filed.

In support of the Request, the Postal Service has filed direct testimony of Michael K. Plunkett on behalf of United States Postal Service, June 21, 2004 (USPS–T–1). Bank One has separately filed direct testimony of Brad Rappaport on behalf of Bank One Corporation, June 21, 2004 (BOC–T–1). The Postal Service has reviewed the Bank One testimony and, in accordance with rule 192(b) [39 CFR 3001.192b], states that such testimony may be relied upon in presentation of the Postal Service's direct case.[3]

The Request relies substantially on record evidence entered in the baseline docket, docket no. MC2002–2. The Postal Service's Compliance Statement, Request Attachment E, identifies the baseline docket material on which it proposes to rely.

Requests that are proffered as functionally equivalent to baseline negotiated service agreements are handled expeditiously, until a final determination has been made as to their proper status. The Postal Service's Compliance Statement, Request Attachment E, is noteworthy in that it is required to identify information to facilitate rapid review of the Request to aid participants in evaluating whether or not the procedural path suggested by the Postal Service is appropriate.

The Postal Service submitted several contemporaneous related filings with its Request. The Postal Service has filed a proposal for limitation of issues in this docket.[4] Rule 196(a)(6) [39 CFR 3001.196a(6)]. The proposal identifies issues that were previously decided in the baseline docket, and a limited number of issues that remain in the instant Request.

Rule 196(b) [39 CFR 3001.196b] requires the Postal Service to provide written notice of its Request, either by hand delivery or by First-Class Mail, to all participants in the baseline docket, MC2002–2. This requirement provides additional time, due to an abbreviated intervention period, for the most likely participants to decide whether or not to intervene. A copy of the Postal Service's notice was filed with the Commission on June 21, 2004.[5]

The Postal Service has filed a request to establish settlement procedures.[6] The Postal Service believes that there is a distinct possibility of settlement as the agreement is likely to be found functionally equivalent to the Capital One negotiated service agreement.

The Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 196 [39 CFR 3001.67–3001.193, 196]. It has filed a motion requesting that if the Commission concludes that the submitted materials and incorporations are not sufficient, that those requirements be waived.[7]

The Postal Service's Request, the accompanying testimonies of witnesses Plunkett (USPS–T–1) and Rappaport (BOC–T–1), the baseline docket no. MC2002–2 material, and other related material are available for inspection at the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's Web site (*http://www.prc.gov*).

[1] Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement Functionally Equivalent Negotiated Service Agreement with Bank One Corporation, June 21, 2004 (Request).

[2] Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the negotiated service agreement.

[3] Request at 2–3, fn. 2.

[4] United States Postal Service Proposal for Limitation of Issues, June 21, 2004.

[5] Notice of the United States Postal Service Concerning the Filing of a Request for a Recommended Decision on a Functionally Equivalent Negotiated Service Agreement, June 21, 2004.

[6] Request of the United States Postal Service for Establishment of Settlement Procedures, June 21, 2004.

[7] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 21, 2004 (Request for Waiver).

**I. Background: The Baseline Capital One Negotiated Service Agreement, Docket No. MC2002–2**

If a request predicated on a negotiated service agreement is found to be functionally equivalent to a previously recommended and currently in effect negotiated service agreement, it will be afforded accelerated review. Rule 196 [39 CFR 3001.196]. The Postal Service asserts that the negotiated service agreement in its instant Request is functionally equivalent to the now in effect Capital One negotiated service agreement recommended by the Commission in docket no. MC2002–2.[8] The Capital One negotiated service agreement will remain in force from September 1, 2003 to September 1, 2006.[9]

The Capital One negotiated service agreement is based upon two significant mail service features—an address correction service feature, and a declining block rate volume discount feature.

The address correction service feature provides Capital One, at certain levels of volume, electronic address corrections without fee for First-Class Mail solicitations that are undeliverable as addressed (UAA). In return for receipt of electronic address correction, Capital One will no longer receive physical return of its UAA First-Class solicitation mail that cannot be forwarded. Capital One will also be required to maintain and improve the address quality for its First-Class Mail.

Use of the address correction service feature is a prerequisite to use of the second feature of the negotiated service agreement, a declining block rate volume discount. This feature provides Capital One with a per-piece discount for bulk First-Class Mail volume above an annual threshold volume. The per-piece discount varies from 3 to 6 cents under a ''declining-block'' rate structure. Should first-year mail volume decline under a predetermined quantity, a reduced threshold and lower initial discounts take effect. To account for several unknowns, total discounts pursuant to this agreement are limited by a stop-loss provision in the amount of $40.637 million.

**II. The Bank One Negotiated Service Agreement**

The Postal Service proposes to enter into a three-year negotiated service agreement with Bank One. It asserts that the Bank One negotiated service agreement is based on the same two substantive functional elements that are central to the Capital One negotiated service agreement—an address correction element and a declining block rate volume discount element.

The address correction element provides, at certain levels of volume, electronic address corrections without fee for properly endorsed First-Class Mail solicitations. Bank One will receive the services associated with Change Service Requested, Option 2, which include forwarding. In return, Bank One agrees to forgo physical return of undeliverable mail, which otherwise is provided under the existing service features of First Class Mail for mail that cannot be forwarded.

The declining block rate volume discount element provides Bank One with per-piece discounts on those portions of its First-Class Mail that exceed specified volume thresholds. The initial volume threshold, which must be exceeded to receive any discount, is 535 million pieces. The discounts range from 2.5 cents to 5.0 cents depending on the block volume.

The Postal Service estimates it will benefit by $11.6 million over the life of the negotiated service agreement. This is based on estimates of $7.7 million in savings due to the address correction feature, $6.8 million in increased contribution due to increased First-Class Mail volume, and a net leakage of minus $2.9 million due to the discount feature of the agreement. The agreement provides an annual adjustment mechanism to the volume thresholds. The agreement does not establish a limit on the maximum cumulative discount available to Bank One.

Bank One has announced plans to merge with J.P. Morgan Chase. The agreement provides a customer-specific merger and acquisitions clause, which has been designed to account for the possibility of this merger.

**III. Commission Response**

*Applicability of the rules for functionally equivalent negotiated service agreements.* For administrative purposes, the Commission has docketed the instant filing as a request predicated on a negotiated service agreement functionally equivalent to a previously recommended and ongoing negotiated service agreement. A final determination regarding the appropriateness of characterizing the negotiated service agreement as functionally equivalent to the Capital One negotiated service agreement, docket no. MC2002–2, and application of the expedited rules for functionally equivalent negotiated service agreements, rule 193 [39 CFR 3001.67–3001.193], will not be made until after the prehearing conference.

*Request for waiver of certain filing requirements.* Although the Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 196 [39 CFR 3001.67–3001.193, 196], it has filed a request for waiver if the Commission concludes that the submitted materials and incorporations are not sufficient. Such requests sometimes serve a purpose under the Commission's general filing rules, when compliance with the standard filing requirements far exceeds what is required to justify a particular proposal. However, the rules promulgated for negotiated service agreements attempt to narrow the filing requirements to only what is necessary, and are specific as to what is required. Because the rules are narrow and specific, a request for waiver should also be narrow and specific as to the request to waive a particular item. General requests for waivers of filing requirements do not meet this standard. The Postal Service's request for waiver is denied. If, at a later time, it is concluded that a specific filing requirement has not, need not, or cannot be met, the Postal Service may, without prejudice, request a waiver of that requirement.

*Settlement.* The Commission has established rules for expeditiously issuing recommendations in regard to requests predicated on functionally equivalent negotiated service agreements. If, after a prehearing conference, it is determined that the Postal Service's request is properly submitted as a functionally equivalent request, and there are no outstanding issues, the Commission will promptly issue its recommendations. In such instances, conducting a settlement conference for the purpose of eventually developing a proposed stipulation and agreement is both unnecessary and could interfere with the intent of the rules to expedite the schedule.

However, the Commission encourages communications among the Postal Service and other participants to facilitate resolving issues early in a proceeding. These communications can be either informal, or formally sanctioned settlement conferences. Settlement conferences early in a proceeding have substantial value in exploring the various positions of the different participants.

The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service

[8] *See*, Opinion and Recommended Decision, Docket No. MC2002–2, May 15, 2003.

[9] Notice of the United States Postal Service of Decision of the Governors, June 3, 2003.

shall report on the status of settlement discussions at the prehearing conference. The Commission authorizes the settlement coordinator to hold settlement conferences on July 14, 2004, in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

*Representation of the general public.* In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*Intervention.* Those wishing to be heard in this matter are directed to file a notice of intervention on or before July 12, 2004. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (*http//www.prc.gov*), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9a and 10a]. Notices should indicate whether participation will be on a full or limited basis. *See* rules 20 and 20a [39 CFR 3001.20 and 20a], and shall indicate if a hearing on this Request is desired.

*Prehearing conference.* A prehearing conference will be held July 15, 2004, at 10 a.m. in the Commission's hearing room. Participants shall be prepared to address whether or not it is appropriate to proceed under rule 196 [39 CFR 3001.196], on the Postal Service's proposal for limiting issues, and any issue(s) that justify scheduling a hearing. Rule 196(c) [39 CFR 3001.196c].

The Commission strongly urges participants intending to object to proceeding under rule 196 [39 CFR 3001.196] to file supporting written argument in advance of the prehearing conference. It would also greatly assist the Commission if participants file supporting written argument in advance of the prehearing conference in regard to the identification of any issue(s) that would indicate the need to schedule a hearing, and any objection to the Postal Service's proposal for limiting issues. The Commission intends on deciding upon these issues shortly after the prehearing conference.

**Ordering Paragraphs**

It is ordered:

1. The Commission establishes Docket No. MC2004–3 to consider the Postal Service Request referred to in the body of this order.
2. The Commission will sit en banc in this proceeding.
3. Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 21, 2004, is denied, without prejudice.
4. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for settlement conferences on July 14, 2004, and at such times deemed necessary by the settlement coordinator.
5. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
6. The deadline for filing notices of intervention is July 12, 2004.
7. A prehearing conference will be held July 15, 2004, at 10 a.m. in the Commission's hearing room.
8. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

*Issued:* June 24, 2004.
By the Commission.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 04–14845 Filed 6–29–04; 8:45 am]

**BILLING CODE 7710–FW–P**

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## POSTAL RATE COMMISSION

**[Docket No. MC2004–4; Order No. 1410]**

## Negotiated Service Agreement

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order on new negotiated service agreement case.

**SUMMARY:** This document establishes a docket for consideration of the Postal Service's request for approval of a negotiated service agreement with Discover Financial Services, Inc. It identifies key elements of the proposed agreement, its relationship to the Capital One Services, Inc. negotiated service agreement, and addresses preliminary procedural matters. Issuance of this document provides the public with notice of the Service's filing, but does not constitute a decision on the merits. In a separate notice and order (No. 1409), also issued June 24, 2004, the Commission announces the establishment of a docket for consideration of a separate proposal for a negotiated service agreement with Bank One, Inc.

**DATES:** Key dates are:

1. July 12, 2004: Deadline for filing notices of intervention.
2. July 14, 2004: Settlement conference.
3. July 15, 2004: Prehearing conference (11 a.m.).

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, general counsel, at 202–789–6818.

**SUPPLEMENTARY INFORMATION:**

**Procedural History**

Capital One Services, Inc. Negotiated Service Agreement, 67 FR 61355 (September 30, 2002).

Negotiated Service Agreement Proposed Rule, 68 FR 52546 (September 4, 2003).

Negotiated Service Agreement Final Rule, 69 FR 7574 (February 19, 2004).

On June 21, 2004, the United States Postal Service filed a request seeking a recommended decision from the Postal Rate Commission approving a negotiated service agreement with Discover Financial Services, Inc.[1] The negotiated service agreement is proffered as functionally equivalent to the Capital One Services, Inc. negotiated service agreement (baseline agreement) was recommended by the Commission in docket No. MC2002–2. The Request, which includes six attachments, was filed pursuant to chapter 36 of the Postal Reorganization Act, 39 U.S.C. 3601 *et seq.*[2]

The Postal Service has identified Discover Financial Services, Inc. (DFS), along with itself, as parties to the negotiated service agreement. This identification serves as notice of intervention by DFS. It also indicates that DFS shall be considered a co-proponent, procedurally and substantively, of the Postal Service's

[1] Request of the United States Postal Service for a Recommended Decision on Classifications, Rates and Fees to Implement Functionally Equivalent Negotiated Service Agreement with Discover Financial Services, Inc., June 21, 2004 (Request).

[2] Attachments A and B to the Request contain proposed changes to the Domestic Mail Classification Schedule and the associated rate schedules; Attachment C is a certification required by Commission rule 193(i) specifying that the cost statements and supporting data submitted by the Postal Service, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; Attachment D is an index of testimony and exhibits; Attachment E is a compliance statement addressing satisfaction of various filing requirements; and Attachment F is a copy of the negotiated service agreement.

Request during the Commission's review of the negotiated service agreement. Rule 191(b) [39 CFR 3001.191b]. An appropriate notice of appearance as co-proponent of Discover Financial Services, Inc., June 21, 2004, also has been filed.

In support of the Request, the Postal Service has filed direct testimony of Ali Ayub on behalf of United States Postal Service, June 21, 2004 (USPS–T–1). DFS has separately filed direct testimony of Karin Giffney on behalf of Discover Financial Services, Inc., June 21, 2004 (DFS–T–1). The Postal Service has reviewed the DFS testimony and, in accordance with rule 192(b) [39 CFR 3001.192b], states that such testimony may be relied upon in presentation of the Postal Service's direct case.[3]

The Request relies substantially on record evidence entered in the baseline docket, docket no. MC2002–2. The Postal Service's Compliance Statement, Request Attachment E, identifies the baseline docket material on which it proposes to rely.

Requests that are proffered as functionally equivalent to baseline negotiated service agreements are handled expeditiously, until a final determination has been made as to their proper status. The Postal Service's Compliance Statement, Request Attachment E, is noteworthy in that it is required to identify information to facilitate rapid review of the Request to aid participants in evaluating whether or not the procedural path suggested by the Postal Service is appropriate.

The Postal Service submitted several contemporaneous related filings with its Request. The Postal Service has filed a proposal for limitation of issues in this docket.[4] Rule 196(a)(6) [39 CFR 3001.196a(6)]. The proposal identifies issues that were previously decided in the baseline docket, and a limited number of issues that remain in the instant Request. DFS has filed a pleading in support of the Postal Service's proposal for limitation of issues.[5]

Rule 196(b) [39 CFR 3001.196b] requires the Postal Service to provide written notice of its Request, either by hand delivery or by First-Class Mail, to all participants in the baseline docket, MC2002–2. This requirement provides additional time, due to an abbreviated intervention period, for the most likely participants to decide whether or not to intervene. A copy of the Postal Service's notice was filed with the Commission on June 21, 2004.[6]

The Postal Service has filed a request to establish settlement procedures.[7] The Postal Service believes that there is a distinct possibility of settlement as the agreement is likely to be found functionally equivalent to the Capital One negotiated service agreement. DFS has filed a statement in support of the Postal Service's request for settlement procedures.[8]

The Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 196 [39 CFR 3001.67–3001.193, 196]. It has filed a motion requesting that if the Commission concludes that the submitted materials and incorporations are not sufficient, that those requirements be waived.[9]

The Postal Service's Request, the accompanying testimonies of witnesses Ayub (USPS–T–1) and Giffney (DFS–T–1), the baseline docket no. MC2002–2 material, and other related material are available for inspection at the Commission's docket section during regular business hours. They also can be accessed electronically, via the Internet, on the Commission's website (*http://www.prc.gov*).

## I. Background: The Baseline Capital One Negotiated Service Agreement, Docket No. MC2002–2

If a request predicated on a negotiated service agreement is found to be functionally equivalent to a previously recommended and currently in effect negotiated service agreement it will be afforded accelerated review. Rule 196 [39 CFR 3001.196]. The Postal Service asserts that the negotiated service agreement in its instant Request is functionally equivalent to the now in effect Capital One negotiated service agreement recommended by the Commission in Docket No. MC2002–2.[10] The Capital One negotiated service agreement will remain in force from September 1, 2003 to September 1, 2006.[11]

The Capital One negotiated service agreement is based upon two significant mail service features—an address correction service feature, and a declining block rate volume discount feature.

The address correction service feature provides Capital One, at certain levels of volume, electronic address corrections without fee for First-Class Mail solicitations that are undeliverable as addressed (UAA). In return for receipt of electronic address correction, Capital One will no longer receive physical return of its UAA First-Class solicitation mail that cannot be forwarded. Capital One will also be required to maintain and improve the address quality for its First-Class Mail.

Use of the address correction service feature is a prerequisite to use of the second feature of the negotiated service agreement, a declining block rate volume discount. This feature provides Capital One with a per-piece discount for bulk First-Class Mail volume above an annual threshold volume. The per-piece discount varies from 3 to 6 cents under a ''declining-block'' rate structure. Should first-year mail volume decline under a predetermined quantity, a reduced threshold and lower initial discounts take effect. To account for several unknowns, total discounts pursuant to this agreement are limited by a stop-loss provision in the amount of $40.637 million.

## II. The DFS Negotiated Service Agreement

The Postal Service proposes to enter into a three year negotiated service agreement with DFS. It asserts that the DFS negotiated service agreement is based on the same two substantive functional elements that are central to the Capital One negotiated service agreement—an address correction element and a declining block rate volume discount element.

The address correction element provides, at certain levels of volume, electronic address corrections without fee for properly endorsed First-Class Mail solicitations. DFS will receive the services associated with Change Service Requested, Option 2, which include forwarding. In return, DFS agrees to forgo physical return of undeliverable mail, which otherwise is provided under the existing service features of First-Class Mail for mail that cannot be forwarded.

[3] Request at 2, fn. 2.

[4] United States Postal Service Proposal for Limitation of Issues, June 21, 2004.

[5] Statement of Support of Discover Financial Services, Inc. (DFS) for the Postal Service's Request to Establish Settlement Procedures and for the Postal Service's Proposal for Limitation of Issues, July 21, 2004 (DFS Statement of Support).

[6] Notice of the United States Postal Service Concerning the Filing of a Request for a Recommended Decision on a Functionally Equivalent Negotiated Service Agreement, June 21, 2004.

[7] Request of the United States Postal Service for Establishment of Settlement Procedures, June 21, 2004.

[8] DFS Statement of Support.

[9] Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 21, 2004 (Request for Waiver).

[10] See Opinion and Recommended Decision, Docket No. MC2002–2, May 15, 2003.

[11] Notice of the United States Postal Service of Decision of the Governors, June 3, 2003.

The declining block rate volume discount element provides DFS with per-piece discounts on those portions of its First-Class Mail that exceed specified volume thresholds. The initial volume threshold, which must be exceeded to receive any discount, is 405 million pieces. The discounts range from 2.5 cents to 4.5 cents depending on the block volume.

The Postal Service estimates it will benefit by $6.8 million over the life of the Negotiated Service Agreement. This is based on estimates of $8.0 million in savings due to the address correction feature, $2.0 million in increased contribution due to increased First-Class Mail volume, and a net leakage of minus $3.2 million due to the discount feature of the agreement. The agreement establishes a $13 million discount cap over the life of the agreement. The agreement further provides an annual adjustment mechanism to both the volume thresholds and the cap.

**III. Commission Response**

*Applicability of the rules for functionally equivalent negotiated service agreements.* For administrative purposes, the Commission has docketed the instant filing as a request predicated on a negotiated service agreement functionally equivalent to a previously recommended and ongoing negotiated service agreement. A final determination regarding the appropriateness of characterizing the negotiated service agreement as functionally equivalent to the Capital One negotiated service agreement, docket no. MC2002–2, and application of the expedited rules for functionally equivalent negotiated service agreements, rule 193 [39 CFR 3001.67–3001.193], will not be made until after the prehearing conference.

*Request for waiver of certain filing requirements.* Although the Postal Service believes that it has met the specific filing requirements set forth in rules 193 and 196 [39 CFR 3001.67–3001.193, 196], it has filed a Request for Waiver if the Commission concludes that the submitted materials and incorporations are not sufficient. Such requests sometimes serve a purpose under the Commission's general filing rules, when compliance with the standard filing requirements far exceeds what is required to justify a particular proposal. However, the rules promulgated for negotiated service agreements attempt to narrow the filing requirements to only what is necessary, and are specific as to what is required. Because the rules are narrow and specific, a request for waiver should also be narrow and specific as to the request to waive a particular item. General requests for waivers of filing requirements do not meet this standard. The Postal Service's Request for Waiver is denied. If, at a later time, it is concluded that a specific filing requirement has not, need not, or cannot be met, the Postal Service may, without prejudice, request a waiver of that requirement.

*Settlement.* The Commission has established rules for expeditiously issuing recommendations in regard to requests predicated on functionally equivalent negotiated service agreements. If, after a prehearing conference, it is determined that the Postal Service's request is properly submitted as a functionally equivalent request, and there are no outstanding issues, the Commission will promptly issue its recommendations. In such instances, conducting a settlement conference for the purpose of eventually developing a proposed stipulation and agreement is both unnecessary and could interfere with the intent of the rules to expedite the schedule.

However, the Commission encourages communications among the Postal Service and other participants to facilitate resolving issues early in a proceeding. These communications can be either informal, or formally sanctioned settlement conferences. Settlement conferences early in a proceeding have substantial value in exploring the various positions of the different participants.

The Commission authorizes settlement negotiations in this proceeding. It appoints Postal Service counsel as settlement coordinator. In this capacity, counsel for the Service shall report on the status of settlement discussions at the prehearing conference. The Commission authorizes the settlement coordinator to hold settlement conferences on July 14, 2004, in the Commission's hearing room. Authorization of settlement discussions does not constitute a finding on the proposal's procedural status or on the need for a hearing.

*Representation of the general public.* In conformance with section 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate (OCA), to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

*Intervention.* Those wishing to be heard in this matter are directed to file a notice of intervention on or before July 12, 2004. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (*http://www.prc.gov*), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR 3001.9a and 10a]. Notices should indicate whether participation will be on a full or limited basis. See rules 20 and 20a [39 CFR 3001.20 and 20a], and shall indicate if a hearing on this Request is desired.

*Prehearing conference.* A prehearing conference will be held July 15, 2004, at 11 a.m. in the Commission's hearing room. Participants shall be prepared to address whether or not it is appropriate to proceed under rule 196 [39 CFR 3001.196], on the Postal Service's proposal for limiting issues, and any issue(s) that justify scheduling a hearing. Rule 196(c) [39 CFR 3001.196c].

The Commission strongly urges participants intending to object to proceeding under rule 196 [39 CFR 3001.196] to file supporting written argument in advance of the prehearing conference. It would also greatly assist the Commission if participants file supporting written argument in advance of the prehearing conference in regard to the identification of any issue(s) that would indicate the need to schedule a hearing, and any objection to the Postal Service's proposal for limiting issues. The Commission intends on deciding upon these issues shortly after the prehearing conference.

**Ordering Paragraphs**

It is ordered:

1. The Commission establishes Docket No. MC2004–4 to consider the Postal Service Request referred to in the body of this order.

2. The Commission will sit en banc in this proceeding.

3. Statement of the United States Postal Service Concerning Compliance with Filing Requirements and Conditional Motion for Waiver, June 21, 2004, is denied, without prejudice.

4. Postal Service counsel is appointed to serve as settlement coordinator in this proceeding. The Commission will make its hearing room available for settlement conferences on July 14, 2004, and at such times deemed necessary by the settlement coordinator.

5. Shelley S. Dreifuss, director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.

6. The deadline for filing notices of intervention is July 12, 2004.

7. A prehearing conference will be held July 15, 2004 at 11 a.m. in the Commission's hearing room.

8. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

Issued: June 24, 2004.

By the Commission.

**Steven W. Williams,**

*Secretary.*

[FR Doc. 04–14846 Filed 6–29–04; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 26487; 812–12458]**

## Dreyfus Founders Funds, Inc., et al.; Notice of Application

June 24, 2004.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 18(f) and 21(b) of the Act, under section 12(d)(1)(J) of the Act for an exemption from section 12(d)(1) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

**SUMMARY:** Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

*Applicants:* Dreyfus Founders Funds, Inc. (''Company'') and Founders Asset Management LLC (''Founders'').

**DATES:** *Filing Dates:* The application was filed on March 1, 2001, and amended on March 22, 2004, and June 14, 2004. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 19, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 210 University Boulevard, Suite 800, Denver, Colorado 80206.

**FOR FURTHER INFORMATION CONTACT:** Courtney S. Thornton, Senior Counsel, at (202) 942–0699, or Annette M. Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. The Company is registered under the Act as an open-end management investment company and is organized as a Maryland corporation. The Company is comprised of ten series (each a ''Fund'', and together the ''Funds''). Founders is registered under the Investment Advisers Act of 1940. The Company, on behalf of each Fund, has entered into an investment advisory agreement with Founders under which Founders exercises discretion to purchase and sell securities for the Funds. Founders is an indirect wholly-owned subsidiary of Mellon Financial Corporation (''MFC'').[1]

2. Some Funds may lend money to banks or other entities by purchasing debt instruments. Other Funds may borrow money for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade ''fail'' in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have committed lines of credit.

3. If the Funds were to borrow money under the lines of credit, the Funds would pay interest on the borrowed cash at a rate that would be higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. In addition, the Funds would have to pay commitment fees up front to obtain the bank's commitment to lend money.

4. Applicants request an order that would permit the Funds to enter into lending agreements (''Interfund Lending Agreements'') under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility (''Interfund Loan''). Applicants believe that the proposed credit facility would reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to establish and/or continue committed lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the proposed credit facility would provide a borrowing Fund with savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are paid immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances beyond a Fund's control, such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the Fund typically obtains credit to cover the shortfall and the Fund incurs charges for such credit. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional costs to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would

[1] Applicants request that the relief also apply to any other existing or future registered open-end management investment company, or series thereof, for which Founders, or any person controlling, controlled by, or under common control with Founders acts or may act in the future as an investment adviser (each a ''Future Fund'' and, together with the Funds, the ''Funds''). The Company is the only investment company that presently intends to rely on the requested relief. Any Future Funds that subsequently rely on the order will comply with the terms and conditions in the application.

enable the Fund to have access to immediate short-term liquidity without incurring line of credit or other charges.

7. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in short-term debt investments. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to the Funds on any Interfund Loan (the ''Interfund Loan Rate'') would be the average of the ''Repo Rate'' and the ''Bank Loan Rate,'' both as defined below. The Repo Rate for any day would be the highest rate available to the Funds from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by Founders on each day an Interfund Loan is made according to a formula adopted by each Fund's board of directors (''Board'') intended to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The Board periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Board.

9. The proposed credit facility would be administered by Founders' money market investment professionals (including the portfolio manager of a money market Fund (the ''Money Market Manager'')) and Founders' fund accounting department (collectively, the ''Cash Management Team''). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. Founders on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodian. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Cash Management Team would allocate loans among borrowing Funds without any further communication from portfolio managers (other than the Money Market Manager in his or her capacity as the Cash Management Team member). Applicants expect far more available uninvested cash each day than borrowing demand. All allocations will require approval of at least one member of the Cash Management Team who is not the Money Market Manager. After allocating cash for Interfund Loans, Founders will invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts for investment directly by the portfolio manager of the applicable Fund. Money market Funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

10. The Cash Management Team would allocate borrowing demand and cash available for lending among the Funds on what the Cash Management Team believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each Interfund Loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

11. Founders would (a) monitor the interest rates charged and the other terms and conditions of the loans, (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (c) ensure equitable treatment of each Fund, and (d) make quarterly reports to each Fund's Board concerning any transactions by the Funds under the credit facility and the interest rates charged. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of directors who are not ''interested persons'' of the Fund, as defined in section 2(a)(19) of the Act (''Independent Directors''), to ensure that both borrowing and lending Funds participate on an equitable basis.

12. Founders would administer the proposed credit facility as part of its duties under its advisory contract with each Fund and would receive no additional fee as compensation for its services.

13. No Fund may participate in the proposed credit facility unless (a) the Fund has obtained shareholder approval for its participation, if such approval is required by law, (b) the Fund has fully disclosed all material information concerning the credit facility in its prospectus and/or statement of additional information, and (c) the Fund's participation in the credit facility is consistent with its investment objectives, limitations, and organizational documents.

14. In connection with the proposed credit facility, applicants request an order under (a) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

**Applicants' Legal Analysis**

1. Section 17(a)(3) of the Act generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having Founders as their common investment adviser, and/or by reason of having common officers and/or directors.

2. Section 6(c) of the Act provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (a) Founders would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that a Fund otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than it could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1) of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1) of the Act are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) of the Act and for the reasons discussed below.

5. Applicants state that section 12(d) of the Act was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve those abuses. Applicants note that there would be no duplicative costs or fees to the Funds or to Fund shareholders, and that Founders would receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) of the Act prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300% for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) of the Act is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) of the Act that all borrowings of a Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1) of the Act.

8. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the proposed credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the proposed credit facility would be on terms no different from or less advantageous than that of other participating Funds.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Interfund Loan Rate to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day Founders will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund

borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Cash Management Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds (other than the Money Market Manager acting in his or her capacity as a member of the Cash Management Team). All allocations will require approval of at least one member of the Cash Management Team who is not the Money Market Manager. The Cash Management Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers (except to the extent that the Money Market Manager has access to loan demand data in his or her capacity as a member of the Cash Management Team). Founders will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment directly by the portfolio manager of the applicable Fund.

13. Founders will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board of each Fund concerning the participation of the Fund in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Board of each Fund, including a majority of the Independent Directors: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting such transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Founders will promptly refer such loan for arbitration to an independent arbitrator selected by the Board of any Fund involved in the loan who will serve as the arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Board of each Fund setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Board in connection with the review required by conditions 13 and 14.

17. Founders will prepare and submit to the Board of each Fund for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operation of the

[2] If the dispute involves Funds with different Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

credit facility, Founders will report on the operations of the credit facility at the quarterly meetings of each Fund's Board. In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund shall prepare an annual report that evaluates Founders' assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N–SAR as such Statements or Form may be revised, amended, or superseded from time to time. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, the Fund's external auditors in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility unless it has fully disclosed in its statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–14812 Filed 6–29–04; 8:45 am]

**BILLING CODE 8010–01–U**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49900; File No. SR–CHX–2004–16]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc. Relating to Minimum Price Variation for Issues Customarily Trading at a Per Share Price of $100,000 or Greater

June 22, 2004.

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 June 16, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CHX. The CHX submitted Amendment No. 1 to the proposal on June 17, 2004.[3] The CHX filed the proposal pursuant to Section 19(b)(3)(A) under the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] 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 CHX proposes to amend CHX Article XX, Rule 22, ''Minimum Variations,'' which governs minimum variations for bids and offers. Specifically, the CHX seeks to add Interpretation and Policy .02, which provides that for issues that customarily trade at a per share price of $100,000 or greater, the minimum variation will be $.10. The text of the proposed rule change appears below; additions are *italicized.*

ARTICLE XX

Regular Trading Sessions

* * * * *

Minimum Variations

RULE 22. Bids and offers in specific securities or classes of securities traded on the Exchange shall not be made in variations less than the minimum variation of $.01, or such other minimum variation as may be established for a security or class of security by the Board of Governors from time to time.

* * * *Interpretations and Policies:*

* * * * *

*.02 With respect to bids and offers for any issue that customarily trades at a per share price of $100,000 or greater, the minimum variation shall be $.10.*

* * * * *

### 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 CHX 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. The CHX 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 proposed rule change would add Interpretation and Policy .02 to CHX Article XX, Rule 22. Interpretation and Policy .02 provides that for issues that customarily trade at a per share price of $100,000 or greater, the minimum variation will be $.10.

In 2000, the securities industry made the transition to decimal pricing. In connection with ''decimalization,'' the Exchange and all other national securities exchanges amended their rules to provide for a minimum variation of $.01.

Recently, the New York Stock Exchange (''NYSE'') amended NYSE Rule 62, ''Variations,'' to establish a minimum price variation of $.10 for issues that trade at a per share price of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kathleen M. Boege, Vice President and Associate General Counsel, CHX, to Nancy J. Sanow, Division of Market Regulation, Commission, dated June 17, 2004 (''Amendment No. 1''). In Amendment No. 1, the CHX stated that it had requested a waiver of the 30-day operative delay to help to avoid possible investor confusion by eliminating any inconsistency in the minimum price variation used by the primary market and the CHX. For purposes of calculating the 60-day abrogation period, the Commission considers the proposal to have been filed on June 17, 2004, the date the CHX filed Amendment No. 1. *See* Rule 19b–4(f)(6), 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The CHX has asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii), 17 CFR 240.19b–4(f)(6)(iii).

$100,000 or greater.[7] The CHX believes that the principal purpose of this change was to accommodate the NYSE's trading system technology. As of the date of this submission, the CHX is informed that only one issue is affected.

The CHX believes that to preserve consistency, and avoid potential investor confusion, the CHX should institute a similar interpretation. Accordingly, the language of the CHX's new Interpretation and Policy is substantially identical to the NYSE interpretation.[8]

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[9] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act [10] in that it is designed to promote just and equitable principles of trade, to remove impediments and to 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 believes that no burden will be placed on competition as a result of the proposed rule change.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The CHX has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) Does not impose any significant burden on competition; and (3) Does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Rule 19b–4(f)(6)(iii) also requires a self-regulatory organization to provide the Commission with written notice of its intent to file a proposed rule change pursuant to Rule 19b–4(f)(6), along with a brief description and text of the proposed rule change, at least five business days prior to filing the proposed rule change, or such shorter time as the Commission designates. The CHX provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposed rule change.

The CHX has asked the Commission to waive the 30-day operative delay. The CHX believes that waiving the 30-day operative delay will help to avoid possible investor confusion by eliminating any inconsistency in the minimum price variation utilized by the NYSE and the CHX.[13]

Although the Commission ordinarily would expect a proposed rule change to modify the minimum price variation to be filed pursuant to Section 19(b)(2) of the Act,[14] the Commission believes that, under the narrow circumstances presented by the current proposal, it is appropriate for the CHX to file the proposal pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. In this regard, the Commission notes that the proposed ten-cent minimum price variation would apply solely to issues that customarily trade at a per share price of $100,000 or greater. In addition, the proposal is substantially identical to a rule adopted previously by the NYSE.[15] For the same reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and the Commission designates the proposal to be operative upon filing with the Commission.[16]

At any time within 60 days of the filing of such 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 E-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX–2004–16 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–16. 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. Copies of such filing also will be

[7] *See* Securities Exchange Act Release No. 49374 (March 8, 2004), 69 FR 11923 (March 12, 2004) (notice of filing and immediate effectiveness of File No. SR–NYSE–2004–10). (''NYSE Notice'').

[8] To provide for further clarification, the CHX interpretation makes reference to issues that ''customarily'' trade at per share prices of $100,000 or greater. This reference contemplates the possibility that on a given trading day, an issue might spike above $100,000 per share; in such case, the CHX would not deem such an issue eligible for a minimum variation of $.10. As a corollary, to the extent that an issue customarily traded at a per share price of above $100,000 but dipped below $100,000 on a given trading day, the CHX would not reduce the minimum variation from $.10 to $.01 (the CHX's standard minimum variation) based on a typical share prices.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] *See* Amendment No. 1, *supra* note 3.

[14] 15 U.S.C. 78s(b)(2).

[15] *See* NYSE Notice, *supra* note 7.

[16] For purposes of waiving the 30–day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

available for inspection and copying at the principal office of the CHX.

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–CHX–2004–16 and should be submitted on or before July 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–14756 Filed 6–29–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49905; File No. SR–NASD–2004–077]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto to Eliminate Certain Transaction Charges for ITS Securities

June 23, 2004.

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 April 29, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), 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 by Nasdaq. Nasdaq has filed this proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On June 18, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[5] 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

Nasdaq proposes to amend NASD Rule 7010(d)(2) (''Computer Assisted Execution Service'') to modify certain transaction charges and credits related to the trading of Intermarket Trading System (''ITS'') securities on the Nasdaq market center. In particular, Nasdaq proposes to eliminate transaction charges for the trading of all securities listed on the American Stock Exchange LLC (''Amex''), except for Exchange Traded Funds (''ETFs'').

The text of the proposed rule change appears below. New language is in italics. Deleted text is in brackets.

* * * * *

**7010. System Services**

(a) through (c) No change.

(d) Computer Assisted Execution Service

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) No change.

(2) Transaction Charges and Credits

(A) [Orders to buy or sell securities listed on the New York Stock Exchange: no charge and no credit.]

[(B)] Orders to buy or sell *Exchange Traded Funds* [securities not] listed on the *American Stock Exchange* [New York Stock Exchange]:

| | |
|---|---|
| Average daily share volume executed in CAES or through the ITS/CAES linkage during a month (both NYSE & AMEX listed securities): | Fee per share executed for orders enetered into CAES or commitments sent through the ITS/CAES linkage if such an order or commitment is executed in whole or in part: |
| 0 to 499,999 | $0.0027, with a maximum of $75 per execution. |
| 500,000 or more | $0.0025, with a maximum of $75 per execution. |
| Average daily share volume executed in CAES or through the ITS/CAES linkage (both NYSE & AMEX listed securities): | Liquidity rebate per share executed for orders/quotes posted into CAES, if such an order/quote is executed in whole or in part: |
| 1 or more | $0.002, with a maximum of $37.50 per execution. |

*The term ''Exchange Traded Funds'' shall mean Portfolio Depository Receipts, Index Fund Shares, and Trust Issued Receipts as such terms are defined in Rule 4420 (i), (j), and (l), respectively.*

*(B) There shall be no charge or credit for orders to buy or sell all other listed securities.*

(C) There shall be no charge for an order entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member.

(e) through (u) No change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq 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 purpose of this proposed rule change is to eliminate transaction charges under NASD Rule 7010(d) for the trading of all ITS securities, except ETFs listed on the Amex. According to Nasdaq, the elimination of these charges will encourage members to make greater use of the Nasdaq market center to trade exchange-listed securities, thereby increasing competition in this market segment, and benefiting members as well as the investing public. Nasdaq is

[17] 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. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* letter from Edward S. Knight, Executive Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 17, 2004. Amendment No. 1 clarifies the proposed rule text and the statutory basis of the proposed rule change, and replaces the proposed rule change in its entirety.

also proposing to eliminate the liquidity provider credit under NASD Rule 7010(d), since there will be no transaction charges for ITS securities. Under the proposed rule change the current transaction charges for Amex-listed ETFs will remain the same. Nasdaq expects that the proposal will make the Nasdaq market center more economically feasible for members and encourage greater use of these systems for the trading of ITS securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general and with Section 15A(b)(5) of the Act,[7] in particular, which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the market for trading listed securities, other than Amex-listed ETFs, has favored the elimination of transaction fees to remain competitive with other markets with similar fee structures.[8] Nasdaq seeks to eliminate transaction fees for ITS securities to increase competition in this market segment, and to encourage its members to use Nasdaq's systems to trade exchange listed securities, thereby increasing liquidity. According to Nasdaq, the trading of Amex-listed ETFs in electronic venues, such as Nasdaq, is more prevalent than the trading of other exchange-listed securities. Nasdaq believes that its current fee schedule is already competitive with other markets that trade Amex-listed ETFs. Therefore, Nasdaq is retaining the current fee schedule for Amex-listed ETFs. In addition, Nasdaq believes that the proposed pricing structure is equitable and reasonable because it offers to all market participants a competitive pricing option in the trading of ITS securities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, 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 were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.[11]

**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 for (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–077 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–077. 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. Copies of the filing also will be available for inspection and copying at the principal office of NASD. 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–NASD–2004–077 and should be submitted on or before July 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–14813 Filed 6–29–04; 8:45 am]

**BILLING CODE 8010–01–P**

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(5).

[8] For example, according to Nasdaq, Inet ATS, Inc.'s pricing structure does not assess any execution fees for the trading of New York Stock Exchange, Inc. and Amex-listed securities, other than Amex-listed ETFs. *See* Inet ATS, Inc. Fee Schedule available at *http://www.inetats.com/prodserv/bd/fee/fee1504.asp* (visited on June. 16, 2004).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on June 18, 2004, the date Nasdaq submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49910; File No. SR–NASD–2004–087]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Technical Amendments to Section 4 of Schedule A to the NASD By-Laws and to Rule 10308(d) of the NASD Code of Arbitration Procedure

June 24, 2004.

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 June 8, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD filed the proposed rule change pursuant

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal 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

NASD is filing with the Commission a proposed rule change to: (1) amend Section 4 of Schedule A to the NASD By-Laws to re-label a subparagraph that inadvertently was not correctly re-labeled as part of a recent rule filing, and (2) amend Rule 10308(d) of the NASD Code of Arbitration Procedure to provide a title for recently approved rule language and to replace and re-label rule language that inadvertently was omitted in a recent rule filing. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are [bracketed].[5]

* * * * *

### Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Section 1 through 3—No Change.

Section 4—Fees

(a) through (l) No Change.

(m) There shall be a session fee of $65.00 assessed as to each individual who is required to complete the Regulatory Element of the Continuing Education Requirements pursuant to the provisions of Rule 1120.

(n) No Change.

[(m)] *(o)* NASD shall assess each member a fee of $10 per day, up to a maximum of $300, for each day that a new disclosure event or a change in the status of a previously reported disclosure event is not timely filed as required by NASD on an initial Form U5, an amendment to a Form U5, or an amendment to a Form U4, with such fee to be assessed starting on the day following the last date on which the event was required to be reported.

* * * * *

### 10300. UNIFORM CODE OF ARBITRATION

* * * * *

### 10308. Selection of Arbitrators

(a) through (c) No change.

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

(1)–(2) No change.

(3) *Standards for Deciding Challenges for Cause*

The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

[(3)] *(4)* ¶ Vacancies Created by Disqualification or Resignation ¶

¶ Prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if an arbitrator appointed to an arbitration panel is disqualified or is otherwise unable or unwilling to serve, the Director shall appoint from the consolidated list of arbitrators the arbitrator who is the most highly ranked available arbitrator of the proper classification remaining on the list. If there are no available arbitrators of the proper classification on the consolidated list, the Director shall appoint an arbitrator of the proper classification subject to the limitation set forth in paragraph (c)(4)(B). The Director shall provide the parties information about the arbitrator as provided in paragraph (b)(6), and the parties shall have the right to object to the arbitrator as provided in paragraph (d)(1).¶

* * * * *

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. The NASD 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

Technical Amendment to the NASD By-Laws

On December 22, 2003, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish a late fee to be assessed against NASD members that fail timely to pay their yearly renewal fees to the Central Registration Depository. On January 29, 2004, NASD submitted Amendment No. 1 to the proposed rule change. The Commission published notice of the proposed rule change and Amendment No. 1 in the **Federal Register** on February 19, 2004.[6] The proposed rule change added paragraph (m) to Section 4.

On March 19, 2004, NASD filed with the Commission for immediate effectiveness a proposed rule change to amend Section 4 of Schedule A to the NASD By-Laws to establish an examination fee for the new Research Analyst Qualification Examination program.[7] Among other changes, NASD re-labeled the existing paragraph (k) in Section 4 as paragraph (m), but it inadvertently did not correctly re-label the existing paragraph (m). As a result, Section 4 has two provisions identified as paragraph (m). NASD is filing this proposed rule change to re-label the paragraph (m) that was added pursuant to SR–NASD–2003–192 as paragraph (o).

Technical Amendment to the NASD Code of Arbitration Procedure

On June 12, 2003, NASD filed a notice of proposed rule change with the Commission to amend Rules 10308 and 10312 of the NASD Code of Arbitration Procedure (''Code'') to modify arbitrator classification. The Commission published the notice in the **Federal Register** on August 21, 2003.[8] The Commission approved the proposed rule change on April 16, 2004.[9]

The proposed rule change added, among other things, a provision to Rule

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The language between paragraph marks (¶) in Rule 10308(d)(4) (Vacancies Created by Disqualification or Resignation) is already existing language. The language previously was approved by the Commission, but inadvertently was not reflected in the publication of a recent rule filing, as discussed below. The language is designated in this manner in order to reflect its omission from the previous rule filing.

[6] *See* Securities Exchange Act Release No. 49224 (February 11, 2004), 69 FR 7833 (notice of filing and immediate effectiveness of File No. SR–NASD–2003–192).

[7] *See* Securities Exchange Act Release No. 49527 (April 2, 2004), 69 FR 19255 (April 12, 2004) (notice of filing and immediate effectiveness of File No. SR–NASD–2004–049).

[8] *See* Securities Exchange Act Release No. 48347 (August 14, 2003), 68 FR 50563 (notice of filing of File No. SR–NASD–2003–95).

[9] *See* Securities Exchange Act Release No. 49573, 69 FR 21871 (April 22, 2004).

10308(d) of the Code concerning a party's request to disqualify an arbitrator. When this provision was inserted as new subparagraph (3) of the rule, the existing subparagraph (3) was inadvertently omitted from the notice that was published in the **Federal Register**. NASD is filing this proposed rule change to reflect the omitted subparagraph, and to provide a title for the new subparagraph (to maintain uniformity within the rule). Thus, the title for the new language in subparagraph (3) will be ''Standards for Deciding Challenges for Cause,'' and the omitted subparagraph will be re-labeled as subparagraph (4).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD's rules must be 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. NASD believes that the technical changes are consistent with the protection of investors and the public interest in that they will avoid any confusion when reading the provisions of Section 4 of Schedule A to the NASD By-Laws and Rule 10308(d) of the Code.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD 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, as amended.

*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

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of such 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.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[13] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[14] Waiving the pre-filing requirement and accelerating the operative date will merely permit the immediate implementation of changes that are technical in nature. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

## 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–NASD–2004–087 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–087. 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, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. 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–NASD–2004–087 and should be submitted on or before July 21, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–14814 Filed 6–29–04; 8:45 am]

**BILLING CODE 8010–01–P**

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3590]**

### Commonwealth of Kentucky (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 21, 2004, the above numbered declaration is hereby amended to include Bath, Daviess, Fleming, Hancock, Lewis, Mason, Nicholas, and Robertson Counties as disaster areas due to damages caused by severe storms, tornadoes, flooding, and mudslides

occurring on May 26, 2004 and continuing through June 18, 2004. In addition, applications for economic injury loans from small businesses located in the contiguous county of Bracken in the Commonwealth of Kentucky; and Adams, Brown, and Scioto Counties in the State of Ohio may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared. The number assigned to this disaster for economic injury is 9ZK200 for Ohio. All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 9, 2004, and for economic injury the deadline is March 10, 2005.

Dated: June 23, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

**Cheri L. Cannon,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 04–14803 Filed 6–29–04; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 4753]**

### Bureau of Educational and Cultural Affairs Request for Grant Proposals: Edmund S. Muskie Graduate Fellowship Program

**SUMMARY:** The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the FY 2005 Edmund S. Muskie Graduate Fellowship Program (Muskie Program). Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) (3) may submit proposals to administer the selection, placement, monitoring, evaluation, follow-on, and alumni activities for the Edmund S. Muskie Graduate Fellowship Program (Muskie Program). Organizations with less than four years experience in conducting international exchange programs are not eligible for this competition.

*Overview:* The Bureau will consider awarding one or more grants for this program. Should more than one organization be selected to administer the Muskie Program, the Bureau will decide on the distribution of fellows and funding amounts between applicant organizations.

Should an applicant organization wish to work with other organizations in the implementation of this program, the Bureau prefers that a sub-grant agreement be developed. However, the Bureau will entertain separately submitted proposals from two or more organizations for joint program management, as long as the proposals demonstrate a value-added relationship and clearly delineate responsibilities. Program responsibilities should not be duplicated and the arrangement should not produce prohibitive administrative expenses.

The Muskie Program selects outstanding citizens from the Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Ukraine, Uzbekistan, Tajikistan and Turkmenistan (herein referred to as Eurasia) to receive fellowships for Master's level study in the United States in the fields of business administration, economics, education, environmental management, international affairs, law, library and information science, journalism/mass communications, public administration, public health, and public policy. Muskie Program fellows will be enrolled in graduate degree, certificate, and non-degree programs lasting one to two academic years. It is estimated that approximately 170 fellows will receive Master's level fellowships under the FY 2005 program. Additionally, the Muskie Program will sponsor approximately four Ph.D. fellows from Ukraine, Georgia, Russia and Kazakhstan in the fields of public administration, public policy, business administration and economics.

The Muskie Program is designed to promote mutual understanding, build democracy and foster the transition to market economies in Eurasia through intensive academic study and professional training. The academic component of the program begins in the fall semester of the year following the award (academic year 2005–2006). Fellows may participate in a nine, twelve, eighteen, or twenty-four month academic program leading to a Master's degree or may participate in the Ph.D. program. Masters fellows also take part in an eight to twelve week internship during the summer following the first academic year, with an option for a second internship following the second year of study. At the end of their designated academic and/or internship programs, Masters and Ph.D. fellows are required to immediately return to their home countries.

Applicant organizations must demonstrate the ability to administer all aspects of the Muskie Program—recruitment, selection, university placements, orientation, monitoring and support of FY 2005 fellows including all logistics, financial management, evaluation, follow-on, and alumni. Applicant organizations must demonstrate the ability to recruit and select a diverse pool of candidates from various geographic regions in Eurasia. Organizations will serve as the principal liaison with Muskie Program host institutions for the Bureau. Further details on specific program responsibilities can be found in the Project Objectives, Goals, and Implementation (POGI) Statement, which is part of the formal solicitation package available from the Bureau. Interested organizations should read the entire **Federal Register** announcement for all information prior to preparing proposals.

*Guidelines:* Pending the availability of funds, the award to the applicant organization will begin on or about October 1, 2005 and will be approximately five years in duration. The level of funding for FY 2005 is uncertain, but is anticipated to be approximately $10,450,000. Based on this figure, applicant organizations should submit a budget to fund approximately 174 fellows, including four Ph.D. fellows. Applicant organizations are encouraged, through cost sharing and other methods, to provide for as many fellowships as possible above and beyond the minimum numbers suggested by the Bureau.

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is the Bureau's intent to renew this grant for two additional fiscal years. Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further information.

*Budget Guidelines:* Grants awards to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Therefore, organizations with less than four years experience per above, are not eligible under this competition.

The Bureau encourages applicant organizations to provide maximum levels of cost sharing and funding from private sources in support of its programs. Applicant organizations must submit a comprehensive line item budget to include a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. A comprehensive narrative must accompany the budget, clearly explaining all proposed costs (staff salaries and time on task must be supported by appropriate

documentation and certified as true and accurate representations of actual costs and percentage of task).

Allowable costs for the program include the following:

(1) Program Expenses.

(2) Domestic Administration.

(3) Overseas Administration.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

*Announcement Title and Number:* All correspondence with the Bureau concerning this RFGP should reference the above title and number *ECA/A/E/EUR–05–03*.

**FOR FURTHER INFORMATION CONTACT:** The Office of Academic Exchange Programs, ECA/A/E/EUR, Room 246, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: (202) 205–7494, fax: (202) 260–7985, e-mail: *jilkalm@state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Manager Lucy Jilka on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

*To Download a Solicitation Package Via Internet:* The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

**New OMB Requirement**

AN OMB policy directive published in the **Federal Register** on Friday, June 27, 2003, requires that all organizations applying for Federal grants or cooperative agreements must provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for all Federal grants or cooperative agreements on or after October 1, 2003. The complete OMB policy directive can be referenced at *http://www.whitehouse.gov/omb/fedreg/062703_grant_identifier.pdf*. Please also visit the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm* for additional information on how to comply with this new directive.

*Shipment and Deadline for Proposals:*

**Important Note:** The deadline for this competition is July 30, 2004. In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at the Bureau more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to the Bureau via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/EUR 05–03, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must also enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instruction (PSI) document.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Sections at the U.S. Embassies for review.

*Diversity, Freedom and Democracy Guidelines:* Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to, ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals, to the full extent deemed feasible.

**Adherence to All Regulations Governing the J Visa**

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa.

Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

*Review Process:* The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The Program Office, as well as the Public Affairs Sections overseas, where appropriate, will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for

advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with a Bureau Grants Officer.

*Review Criteria:* Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's record/ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Alumni activities:* Proposals should provide a plan that integrates alumni activities into the program from start to finish, including tracking of alumni.

9. *Project evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

**Authority:** Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through Fulbright-Hays legislation.

*Notice:* The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

## Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: June 23, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04–14851 Filed 6–29–04; 8:45 am]

BILLING CODE 4710–05–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular (AC) 20–SV, Satellite Voice Equipment as a Means for Air Traffic Services Communications

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability and requests for public comment.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed Advisory Circular (AC) 20–SV, Satellite Voice Equipment as a Means for Air Traffic Services Communications. This proposed AC provides guidance for designers, manufacturers, and installers of satellite voice equipment used for Air Traffic Services. In it, we recommend how you get design and airworthiness approval for your equipment.

**DATES:** Comments must be received on or before August 2, 2004.

**ADDRESSES:** Send all comments on the proposed AC to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW., Washington, DC 20591. Attn: Mr. David W. Robinson. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. David W. Robinson, AIR–130, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 385–4650, FAX: (202) 385–4651. Or, via e-mail at: *david.w.robinson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested persons are invited to comment on the proposed AC listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed AC may be examined, before and after the

comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final Advisory Circular.

**Background**

Aircraft operators have traditionally used High Frequency (HF)/Very High Frequency (VHF) communications systems for Aeronautical Operational Control and Air Traffic Services operations. Due to frequency congestion in oceanic and remote flight operations, aircraft operators have requested the use of satellite voice communication systems as a supplement to existing HF and VHF voice systems. Therefore the objective of this proposed AC is to provide guidance to allow for the airworthiness certification and evolutionary development of satellite voice during flight operations without compromising safety.

**How To Obtain Copies**

You may get a copy of the proposed AC from the Internet at *http://www.airweb.faa.gov/rgl.* Once on the RGL Web site, select ''Advisory Circular'', then select the document by number. See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail.

Issued in Washington, DC, on June 23, 2004.

**Susan J.M. Cabler,**

*Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 04–14871 Filed 6–29–04; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Land at Shafter Airport-Minter Field, Shafter, CA

**AGENCY:** Federal Aviation Administration, Department of Transportation.

**ACTION:** Notice of Request to Release Airport Land.

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the release of approximately 34.98 acres of airport property at Shafter Airport-Minter Field, Shafter, California, from all restrictions of the surplus property agreement since the land is not needed for airport purposes. Sale of the property will generate revenue for airport development projects. Reuse of the land for commercial/light industrial purposes represents a compatible land use.

**DATES:** Comments must be received on or before July 30, 2004.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, Federal Register Comment, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Herman Ruddell, General Manager, Minter Field Airport District, Shafter Airport, 201 Aviation Street, Shafter, CA 93263.

**FOR FURTHER INFORMATION CONTACT:** Tony Garcia, Airports Compliance Specialist, Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, California 90261, telephone (310) 725–3634 and FAX (310) 725–6849. The request to release airport property may be reviewed in person by appointment at this same location or at Shafter Airport-Minter Field, Shafter, California.

**SUPPLEMENTARY INFORMATION:** In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport's interest in surplus property.

The following is a brief overview of the request:

The Minter Field Airport District requested a release from surplus property agreement obligations for approximately 34.98 acres of airport land at Shafter Airport-Minter Field, Shafter, California, originally acquired from the United States for airport purposes. The land is part of a larger parcel located east of the Friant Kern Canal in the southwest corner of the airport. The property is currently unused, undeveloped, and without structural improvements. It is located in an area that was once farmland but is now zoned for industrial use. The parcel is a considerable distance from the airfield. A water treatment plant lies between the parcel and the rest of the airport. The airport sponsor wishes to sell the land because it cannot be used for airport purposes. The property's redevelopment for non-aeronautical purposes will comply with local zoning and compatible land-use requirements. The parcel will be sold at fair market value based on the land's appraised value. The sale will provide the airport with needed revenue for airport improvement and development projects. The net proceeds of the sale will be used entirely for airport purposes, thereby providing a tangible and direct benefit to the airport and civil aviation.

Issued in Hawthorne, California, on June 3, 2004.

**John Lott,**

*Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.*

[FR Doc. 04–14872 Filed 6–29–04; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Technical Standard Order—C157, Aircraft Flight Information Services—Broadcast (FIS–B) Data Link Systems and Equipment

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability and requests for public comment.

**SUMMARY:** This notice announces the availability of and request comments on a proposed Technical Standard Order (TSO)–C157, Aircraft Flight Information Services—Broadcast (FIS–B) Data Link Systems and Equipment. The proposed TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their FIS–B Data Link System and Equipment must first meet for approval and identification with the applicable TSO markings.

**DATES:** Submit comments on or before August 3, 2004.

**ADDRESSES:** Send all comments on the proposed TSO–C157 to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN. Mr. Kevin Bridges, AIR–130. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kevin Bridges, AIR–130, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence

Avenue, SW., Washington, DC 20591, Telephone (202) 385–4627, FAX: (202) 385–4651, or e-mail: *kevin.bridges@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

You are invited to comment on the proposed TSO identified in this notice by submitting written data, views, or arguments to the address listed above. Your comments should identify ''Comments to proposed TSO–C157''. You may examine all comments revised on the proposed TSO before and after the comment closing date at the Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final TSO.

## Background

This TSO's standards apply to equipment intended to display weather and National Airspace System (NAS) status information. FIS–B equipment is intended to promote pilot awareness of reported weather and NAS status. The operational goal of FIS–B equipment is to enhance pilot decision-making during strategic flight planning. We consider FIS–B products to be advisory information only. As such, FIS–B is non-binding advice and information provided to help pilots fly safely. The standards of this TSO do not cover integration with other avionics and airborne applications, such as integration of FIS–B displays with displays of terrain, aircraft traffic information, moving maps, and flight plan overlays.

## How To Obtain Copies

You may get a copy of the proposed TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* You may also request a copy from Mr. Kevin Bridges. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued on Washington, DC, on June 23, 2004.

**Susan J.M. Cabler,**

*Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 04–14870 Filed 6–29–04; 8:45 am]

**BILLING CODE 4910–13–M**

# DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2004–17997]**

## Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** This notice solicits public comments on continuation of the requirements for the collection of information on safety standards. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of labeling information on five Federal motor vehicle safety standards, for which NHTSA intends to seek OMB approval. The labeling requirements include brake fluid warning, glazing labeling, safety belt labeling, and vehicle certification labeling.

**DATES:** Comments must be received on or before August 30, 2004.

**ADDRESSES:** Comments must refer to the docket notice number cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Ms. Lori Summers, NHTSA 400 Seventh Street, SW., Room 5320, NVS–112, Washington, DC 20590.

Ms. Summers' telephone number is (202) 366–4917. Please identify the relevant collection of information by referring to this Docket Number (Docket Number NHTSA–04–17997).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

*Title:* Consolidated Labeling Requirements for Motor Vehicles (Except the VIN).

*OMB Control Number:* 2127–0512.

*Form Number:* This collection of information uses no standard form.

*Requested Expiration Date of Approval:* Three years from the approval date.

*Type of Request:* Extension of a currently approved collection.

*Summary of the Collection of Information:* 49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulation, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act. The Secretary is authorized to invoke such rules and regulations as deemed necessary to carry out these requirements. Using this

authority, the agency issued the following FMVSS and regulations, specifying labeling requirements to aid the agency in achieving many of its safety goals:

FMVSS No. 105, ''Hydraulic and electric brake systems,''

FMVSS No. 135, ''Passenger car brake systems,''

FMVSS No. 205, ''Glazing materials,''

FMVSS No. 209, ''Seat belt assemblies,''

Part 567, ''Certification.''

This notice requests comments on the labeling requirements of these FMVSS and regulations.

*Description of the need for the information and proposed use of the information:* In order to ensure that manufacturers are complying with the FMVSS and regulations, NHTSA requires a number of specific labeling requirements in FMVSS Nos. 105, 135, 205, and 209 and Part 567.

FMVSS No. 105, ''Hydraulic and electric brake systems'' and FMVSS No. 135, ''Passenger car brake systems,'' require that each vehicle shall have a brake fluid warning statement in letters at least one-eighth of a inch high on the master cylinder reservoirs and located so as to be visible by direct view.

FMVSS No. 205, ''Glazing materials,'' requires that manufacturers mark their automotive glazing with certain label information including:

Manufacturer's distinctive trademark;

Manufacturer's ''DOT'' code number;

Model of glazing (there are currently 21 items of glazing ranging from plastic windows to bullet resistant windshields).

In addition to these requirements, which apply to all glazing, certain specialty items such as standee windows in buses, roof openings, and interior partitions made of plastic require that the manufacturer affix a removable label to each item. The label specifies cleaning instructions, which will minimize the loss of transparency. Other information may be provided by the manufacturer but is not required.

FMVSS No. 209, ''Seat belt assemblies,'' requires safety belts to be labeled with the year of manufacture, the model, and the name or trademark of the manufacturer (S4.1(j)).

Additionally, replacement safety belts that are for use only in specifically stated motor vehicles must have labels or accompanying instruction sheets to specify the applicable vehicle models and seating positions (S4.1(k)). All other replacement belts are required to be accompanied by an installation instruction sheet (S4.1(k)).

Seat belt assemblies installed as original equipment in new motor vehicles need not be required to be labeled with position/model information. This information is only useful if the assembly is removed with the intention of using the assembly as a replacement in another vehicle; this is not a common practice.

Part 567, ''Certification,'' responds to 49 U.S.C. 30111 that requires each manufacturer or distributor of motor vehicles to furnish to the dealer or distributor of the vehicle a certification that the vehicle meets all applicable FMVSS. This certification is required by that provision to be in the form of a label permanently affixed to the vehicle. Under 49 U.S.C. 32504, vehicle manufacturers are directed to make a similar certification with regard to bumper standards. To implement this requirement, NHTSA issued 49 CFR part 567. The agency's regulations establish form and content requirements for the certification labels.

**Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information)**

These labels are placed on each master cylinder reservoir, each piece of motor vehicle glazing, each safety belt and every motor vehicle intended for retail sale in the United States.

**Estimate of the Total Annual Reporting and Record Keeping Burden Resulting From the Collection of Information**

NHTSA estimates that all manufacturers will need a total of 73,071 hours to comply with these requirements, at a total annual cost of 1,096,065.

**Authority:** 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: June 23, 2004.

**Roger A. Saul,**

*Director, Office of Crashworthiness Standards for Rulemaking.*

[FR Doc. 04–14874 Filed 6–29–04; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2004–18185]**

### Initial Decision That ASTEX HID Conversion Kits Fail To Comply With Federal Motor Vehicle Safety Standard 108; Public Proceeding Scheduled

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** NHTSA will hold a public meeting regarding its Initial Decision that ASTEX USA high intensity discharge (HID) motor vehicle light sources sold in kits as replacements for non-HID light sources do not comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, Lamps, reflective devices, and associated equipment.

**DATES:** The public meeting will be held beginning at 10 a.m. on Monday, August 2, 2004, in Room 6200.

**FOR FURTHER INFORMATION CONTACT:** Jennifer T. Timian, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–5263. NHTSA's Initial Decision, and the information on which it is based, is available at NHTSA's Technical Information Services, Room PL–403, 400 Seventh Street, SW., Washington, DC 20590; Telephone: 202–366–2588. When visiting Technical Information Services or contacting it via the telephone, refer to Investigation File CI–108–010831.

**SUPPLEMENTARY INFORMATION:** Pursuant to 49 U.S.C. 30118(a) and 49 CFR 554.10, NHTSA's Associate Administrator for Enforcement has made an Initial Decision that ASTEX USA (ASTEX) high intensity discharge (HID) light sources including ballasts, which have been manufactured and sold by Mark Lee d/b/a ASTEX as replacements for non-HID light sources, fail to comply with FMVSS No. 108, Lamps, reflective devices, and associated equipment, 49 CFR 571.108.

**A. Requirements of FMVSS No. 108**

FMVSS No. 108 regulates new motor vehicles and replacement lighting equipment. To accomplish this purpose, the standard sets forth requirements that, among other things, ensure adequate illumination of the roadway, enhance the conspicuity of motor vehicles on the public roads, and limit glare.

The requirements for headlighting systems are set forth in S7 of FMVSS No. 108. For replaceable bulb headlamps, a new motor vehicle must have a two or four-headlamp system that provides two upper beams and two lower beams. Among other things, the headlamps must provide light, within a specified range of intensity in certain areas, and not provide light above specified levels in other areas. The intensity requirements are specified in one of a number of photometry tables within FMVSS No. 108, depending on the light source type and number of headlamps in the system. Each

headlamp must be designed to conform to the applicable photometry requirements, using any light source of the type intended for use in such system.

In general, vehicle manufacturers use one of a number of standard replaceable light sources to achieve the regulatory requirements. For each of these types of light sources, the dimensions and electrical characteristics must be submitted to NHTSA under 49 CFR Part 564. The vehicle manufacturer must assure and certify that the vehicle complies with all applicable FMVSSs, including FMVSS No. 108.

Each lamp and item of associated equipment such as a light source manufactured to replace any lamp or item of associated equipment must be designed to conform to FMVSS No. 108. *See* 49 CFR 571.108 S5.8.1. Under S7.7, Replaceable light sources, each replaceable light source must be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to 49 CFR Part 564. In addition, FMVSS No. 108 requires that the base of the replaceable light source be marked with the bulb marking designation, wattage, and manufacturer's name, and that the replaceable light source meet certain lighting performance requirements. If a ballast is required, additional requirements must be met.

Headlamp replaceable light sources have standard designations. NHTSA's regulations use terms for the various types of headlamp bulbs such as HB1 and HB2. Each type of replaceable light source is unique in dimensional and electrical design so as not to be interchangeable with another type of replaceable light source. Every replaceable light source must be designed to conform to the identical marking and dimensional and electrical requirements applicable to the type of replaceable light source that it replaces. The specific dimensional and electrical specifications for each type of replaceable light source are publicly available in NHTSA Docket No. 98–3397.

The reason for the standardization of replaceable light sources lies in the need for uniform, compliant performance of headlamp lighting. *See* 58 FR 3856 (January 12, 1993). In order to ensure equivalent performance of a headlamp, should the light source burn out or otherwise fail, standardization of the replaceable light source is necessary. Any replacement light source of the same type (*e.g.*, HB1) would provide equivalent and conforming performance. In other words, each ''HB1'' type of replaceable light source must be designed to conform to the identical dimensional and electrical requirements as other ''HB1'' replaceable light sources.

**B. The Agency's Investigation and the Products At Issue**

In August of 2001, the Agency's Office of Vehicle Safety Compliance (OVSC) discovered a Web site (*www.hidkits.com*) that was offering for sale HID conversion kits. A HID conversion kit contains at least one (and usually two, one for each headlamp) HID replaceable light source that has been altered, or specifically manufactured, to be physically interchangeable with non-HID (*e.g.*, incandescent) replaceable light sources of different designs. Upon investigation, OVSC discovered that Mark Lee d/b/a ASTEX operated the Web site and was the manufacturer of the products offered for sale on it.

OVSC purchased an ASTEX HID conversion kit for a 9004 light source—the trade name for an HB1 light source—in August 2001. A visual inspection and comparison of the ASTEX light source with an ordinary incandescent ''HB1'' replaceable light source demonstrated that the ASTEX replacement light source had an HB1 base and an arc discharge element on top of it. The ASTEX replacement light source was dimensionally and electrically different from the HB1 in a number of ways. For example, the ASTEX light source had a discharge arc, in place of the dual transverse coil wire filaments required in a complying HB1. The ASTEX HID conversion also incorporated a different connector than the connector provided on the bottom of the HB1 replaceable light source.

In addition to these dimensional and electrical disparities, the ASTEX conversion required the use of an additional component for operation. This component—a ballast—is not part of the design specification for a compliant HB1, as filed in Docket No. 98–3397.

OVSC engaged a test laboratory to test the ASTEX 9004 HID conversion kit in a headlamp designed to accept an HB1 replaceable light source. The primary purpose of this testing was to assess the photometric performance of a headlamp with ASTEX's HID light source and ballast. Under the test, light is measured at various test points. The lamp was first tested with an incandescent HB1 light source, and demonstrated compliance on both lower and upper beams using that replaceable light source.

The same headlamp was then tested using ASTEX's 9004 HID conversion kit, *i.e.*, the light source and ballast. With the lower beam powered, the headlamp failed to satisfy the requirements of the standard at seven test points. At these points, the headlamp discharged excessive levels of light. It exceeded maximum allowable candlepower by up to 876 percent. In addition, with the upper beam powered, the headlamp produced *zero* luminous output. Testing of the ASTEX light source with the ballast in a stand-alone mode (*i.e.*, not placed in a headlamp designed for a HB1 light source) further demonstrated the product's noncompliance. For example, the light source's lower beam luminous flux output was over 3,056 lumens—a level 279 percent over the maximum allowable lower beam luminous flux for an HB1 replaceable light source (805 lumens). Also, the ASTEX light source had no upper beam function whatsoever. An HB1 upper beam is required to emit 1,200 ± 15 percent lumens.

In addition to HID light sources designed to replace HB1 incandescent replaceable light sources, ASTEX offers for sale and sells conversion kits for other headlamp light sources. ASTEX offers for sale, among other kits, HID replaceable light sources for 9003 (HB2), 9005 (HB3), 9006 (HB4), 9007 (HB5), H1, and H7 designs. These ASTEX HID conversion kits are based on the fundamental design approach of replacing a wire coil filament in the original light source with a discharge arc filament and a ballast in the replacement light source. As discussed previously, the absence in a replacement light source of a feature that is specified dimensionally in NHTSA Docket No. 98–3397 would amount to a noncompliance with FMVSS No. 108. As such, ASTEX's kits containing replaceable light sources for the 9003 (HB2), 9005 (HB3), 9006 (HB4), 9007 (HB5), H1, and H7, exhibit and entail the same compliance issues as the 9004 conversion kit that OVSC purchased and tested.

During the course of its investigation, OVSC issued several information requests to ASTEX. Information requested included, among other things, the relationship between ASTEX and the Web site *www.hidkits.com,* the quantities and models of HID conversion kits sold, the names of suppliers of the conversion kits, information concerning ASTEX's alteration of the various components included in its kits, methods the company used to procure the kits, and copies of any compliance test data the company may have had for its kits.

In response to OVSC's inquiries, ASTEX consistently responded that FMVSS No. 108 did not apply to its

conversion kits for two reasons. First, it maintained that its products were marketed and sold strictly for ''off road use only.'' Second, it maintained that its kits are not ''replaceable light sources'' covered by FMVSS No. 108 because those kits were never designed to conform to the design specifications for the original replaceable light sources, but rather were designed to exceed the performance of that original equipment.

OVSC's Equipment Division Chief and an attorney from the agency's Office of Chief Counsel, contacted ASTEX and advised its principal, Mark Lee, that there are no exemptions under FMVSS No. 108 for ''off road'' use. Copies of five Office of Chief Counsel interpretation letters to this effect were also sent to ASTEX.

As to ASTEX's second argument, a manufacturer may not avoid compliance with regulatory requirements by claiming its product is not designed to meet those regulations. Motor vehicle lighting equipment, including replacement lighting equipment, must meet all requirements of FMVSS No. 108. While in many cases, a product may exceed minimum requirements contained in a safety standard, it may not exceed maximum limits, which is what these HID conversion kits have done.

On December 4, 2002, OVSC requested in writing that ASTEX make a determination that its conversion kits are noncompliant and voluntarily recall those products. ASTEX rejected this request.

OVSC's Report of Investigation, which contains a full description of the compliance investigation, is available at Technical Information Services, Room PL–403, 400 Seventh St., SW., Washington, DC 20590; telephone: 202–366–2588.

### C. Initial Decision

Based on all of the available information, NHTSA's Associate Administrator for Enforcement has made an Initial Decision, pursuant to 49 U.S.C. 30118(a) and 49 CFR 554.10, that ASTEX HID replaceable light sources and ballasts sold and marketed as replacements for non-HID light sources fail to comply with FMVSS No. 108. Pursuant to 49 U.S.C. 30118(b)(1) and 49 CFR 554.10(b), NHTSA will conduct a public meeting, beginning at 10 a.m., Monday, August 2, 2004 in Room 6200, Department of Transportation Building, 400 Seventh Street, S.W., Washington, DC, at which time the manufacturer and all other interested parties will be afforded an opportunity to present information, views, and arguments on the issues of whether ASTEX's HID conversion kits covered by the Initial Decision fail to comply with FMVSS No. 108.

Interested persons are invited to participate in this proceeding through written and/or oral presentations. Persons wishing to make oral presentations must notify Tilda Proctor, National Highway Traffic Safety Administration, Room 5321, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9700, or by fax at (202) 366–8065, before the close of business on Wednesday, July 28, 2004. The notifications should specify the amount of time that the presentation is expected to last. The agency will prepare a schedule of presentations. Depending upon the number of persons who wish to make oral presentations, and the anticipated length of those presentations, the agency may add an additional day or days to the meeting/hearing and may limit the length of oral presentations.

Persons who wish to file written comments should submit them to the same address, no later than Wednesday, July 28, 2004.

**Authority:** 49 U.S.C. 30118(a), (b); delegations of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: June 24, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 04–14875 Filed 6–29–04; 8:45 am]

BILLING CODE 4910–59–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2004–17794]**

### Long Range Strategic Planning

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Notice and request for comment.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) is currently conducting an environmental scan, in preparing the agency to meet the challenges it faces in the coming years in improving motor vehicle and traffic safety in the United States. This foundational work will assist the agency in shaping its 2005–2010 strategic plan.

This notice invites comments, suggestions and recommendations from all individuals and organizations that have an interest in motor vehicle and highway safety, non-safety programs administered by the agency, and/or other NHTSA activities. Respondents can choose to answer any number of questions proposed in this notice. The agency values any comments received and would also like input on the strategic planning process in general. Please include any elements believed important for NHTSA to consider in shaping its vision and building its 2005–2010 strategic plan.

**DATES:** Comments must be received no later than August 16, 2004.

**ADDRESSES:** You may submit comments identified by Long Range Strategic Planning DOT DMS Docket Number (NHTSA–2004–17794) by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number. It is suggested that commenters limit their responses to ten (10) pages with unlimited attachments. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jane S. Dion, Director, Office of Strategic and Program Planning, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, DC 20590, telephone: 202–366–1574.

**SUPPLEMENTARY INFORMATION:** NHTSA was established as the successor to the National Highway Safety Bureau in 1970, to carry out safety programs under the National Traffic and Motor Vehicle Safety Act of 1966 (chapter 301 of title 49, United States Code) and the Highway Safety Act of 1966 (chapter 4 of title 23, United States Code). The agency also administers consumer programs established by the Motor Vehicle Information and Cost Saving Act of 1972 (part C of subtitle VI

(chapters 321, 323, 325, 327, 329 and 331) of title 49, United States Code).

NHTSA's mission is to save lives, prevent injuries and reduce traffic-related health care and other economic costs. The agency develops, promotes and implements effective educational, engineering, and enforcement programs aimed at ending preventable tragedies and reducing the economic costs associated with motor vehicle use and highway travel.

As an integral part of the U.S. Department of Transportation (DOT), the agency improves public health and enhances the quality of transportation by helping to make highway travel safer. A multi-disciplinary approach is used that draws upon diverse fields such as epidemiology, engineering, biomechanics, the social sciences, human factors, economics, education, law enforcement and communication science to address one of the most complex and challenging public health problems facing our society.

NHTSA is the national and international leader in collecting and analyzing motor vehicle crash data, and in developing countermeasures relevant to preventing and mitigating vehicle crashes, thereby reducing and preventing resulting fatalities and traumatic injury. The agency regulates motor vehicle and motor vehicle equipment manufacturers through its safety standards and enforcement programs; provides national and international leadership in understanding and assessing the safety impact of advanced technologies; sponsors critical research; spurs progress in harmonizing international safety standards; and conducts innovative projects to improve traffic and motor vehicle safety. All aspects of engineering, education, enforcement and evaluation are incorporated into programs to address the challenges of crash and injury prevention involving people, vehicles, and the roadway environment.

Motor vehicle crashes are responsible for 95 percent of all transportation-related deaths and 99 percent of all transportation-related injuries, and are the leading cause of death for Americans age 2 and every age 4 through 33. The economic costs associated with these crashes also seriously impact the Nation's fiscal health. The cost to our economy of all motor vehicle crashes was approximately $230 billion in 2000, or 2.3 percent of the U.S. gross domestic product. This economic cost includes $33 billion in medical expenses, $61 billion in lost workplace productivity, and $59 billion in total property damage. Alcohol-involved crashes cost over $50 billion, accounting for 22 percent of all crash costs. In 2003, failure to wear safety belts cost $18 billion. Twenty-six percent of overall crash costs are paid by those individuals directly involved in these crashes. The remaining 74 percent is paid by the public through insurance premiums, taxes, and higher health care costs.

Over the last 38 years, the agency has had a solid record of achievement in reducing traffic crash fatalities and resulting injuries. Since 1966, the crash fatality rate has dropped from 5.5 deaths per 100 million vehicles miles of travel (VMT) to a historic low of 1.5 in 2002. Declining fatalities in passenger cars and injuries overall can be attributed to more crashworthy vehicles in the fleet and increases in safety belt use.

Despite the agency's many successes, NHTSA still has much unfinished business. Preliminary crash injury and fatality estimates for 2003 show mixed results. Injuries from motor vehicle crashes declined slightly in 2003, to the lowest levels since such data have been kept. However, fatalities on the nation's highways increased slightly to 43,220 deaths overall from 42,815 in 2002.

To prepare to meet the challenges on the horizon, NHTSA is embarking upon a long range strategic planning initiative. The initiative will have two phases. Phase I begins with this solicitation of comments from individuals and public and private organizations interested in the nation's motor vehicle and highway safety programs, non-safety programs (*e.g.*, fuel economy, vehicle theft and odometer fraud) administered by the agency, and/or other NHTSA activities. Phase I will also include an environmental scan, to collect a broad range of data and information about critical current and future trends expected to impact motor vehicle and highway safety. The information gathered from the completed environmental scan will serve as the foundation for Phase II—NHTSA's strategic plan 2005–2010. For Phase II, information and data generated from Phase I will assist the agency at shaping its future vision, mission and goals. Phase I will serve as the centerpiece by which strategies are developed and incorporated into NHTSA's 2005–2010 strategic plan.

NHTSA requests comments, suggestions and recommendations that will assist the agency in assessing and understanding the potential effects and implications that changes in demographic, economic, environmental, institutional, and technological factors will have on motor vehicle and highway traffic safety.

The following are some of the key issues that the agency would like commenters to address. In addition to general comments, the public is requested to submit documents, studies, or references relevant to the issues. The agency is particularly interested in learning about emerging or potential safety problems and in receiving recommendations for addressing such problems effectively. While the strategic plan NHTSA is developing will cover 2005–2010, the ''future'' timeframe the agency would like commenters to express their views on and consider is trends up to the year 2020.

**A. Future Factors and Issues**

(A1) What are the critical highway safety issues facing the nation?

(A2) What will future key demographic and social influences be on highway safety (*e.g.*, novice and older drivers, gender, cultural diversity, geographic distribution, alcohol consumption)?

(A3) In general, how will driving behaviors change in the United States? How will demographic and social factors change driving behaviors and impact highway safety?

(A4) What changes in the auto fleet, including size and mix, will impact highway safety?

(A5) What changes in commercial vehicle use will impact highway safety?

(A6) What international trends and technologies will influence future developments in the American automotive industry?

(A7) What changes in energy and environmental issues will impact public policy and highway safety? How will these changes impact vehicle use?

(A8) What change in the highway or energy distribution infrastructures will either affect or be needed for improved highway safety?

(A9) What changes in auto and medical insurance might affect highway safety?

(A10) What changes in the national, state and local economies will impact public policy and highway safety? Will these changes require modification in Federal funding programs or delivery systems for highway safety?

(A11) How might changes in vehicle theft and odometer fraud impact NHTSA's future program efforts in these areas?

(A12) What are new and emerging areas of automotive safety research that would enable NHTSA and the auto industry to improve motor vehicle safety?

(A13) What additional analytical data need to be collected with respect to motor vehicle and highway safety? How

might data and information be combined for more effective and valuable results? How might these data be collected, linked, analyzed and made available in a more efficient and cost-effective manner?

(A14) How can crash avoidance data be gathered?

(A15) What role will public education and consumer information play in the future of highway safety? What other cost effective tools should NHTSA use to promote motor vehicle and highway safety programs?

(A16) What changes in the area of Federal, state and local legislation are appropriate and how might that legislation affect traffic safety in the future?

(A17) How might homeland security affect traffic safety in the future?

**B. Technology**

(B1) How will vehicle-related technologies impact the future of motor vehicle and highway safety?

(B2) What future technologies should be researched and encouraged to enhance highway safety?

(B3) What changes in roadway design and infrastructure are needed? How might these changes impact motor vehicle and highway safety?

(B4) What technological changes are necessary in other modes of passenger and freight transportation to positively impact motor vehicle and highway safety?

(B5) What changes in medical technology and emergency medical services will impact motor vehicle and highway safety and health outcomes?

(B6) What changes do you envision in automation, information management and workplace alternatives (*e.g.*, telecommuting)? How will these activities impact highway safety and commuting and travel behaviors?

(B7) What changes in law enforcement practices and technologies might impact highway safety?

**C. Institutional Relationships**

(C1) How do you and/or your organization (include organization's name) interact with NHTSA? Please explain the dynamics of this relationship.

(C2) How could NHTSA improve its relationship with your organization and with other organizations and institutions?

**D. NHTSA's Role and Mission**

(D1) In your view, should there be major changes in NHTSA's role/mission in the future?

(D2) What are NHTSA's strengths? Weaknesses?

(D3) How can NHTSA have a greater impact in the reduction of injury and loss of life on the nation's highways?

(D4) What is NHTSA doing well? Not so well? How can NHTSA improve the way it does business? Please identify possible improvements or ideas for doing better.

*How Do I Prepare and Submit Comments?*

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (Long Range Strategic Planning, NHTSA–2004–17794) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. If you submit your comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov* and click on ''Help & Information'' or ''Help/Info'' to obtain instructions.

*How Can I Be Sure That My Comments Were Received?*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

*How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

*Will the Agency Consider Late Comments?*

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

*How Can I Read the Comments Submitted by Other People?*

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on ''search.''
- On the next page (*(http://dms.dot.gov/search/)* type in the five-digit Docket number shown at the beginning of this document (Long Range Strategic Planning, NHTSA–2004–17794). Click on ''search.''
- On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

**Authority:** 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

**Noble N. Bowie,**

*Associate Administrator for Planning, Evaluation & Budget.*

[FR Doc. 04–14761 Filed 6–29–04; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–03–14810; Notice 2]**

### Evenflo Company, Inc.; Grant of Application for Decision of Inconsequential Noncompliance

Evenflo Company, Inc. (''Evenflo'') of Vandalia, Ohio, determined that as many as 742,736 child restraint systems and 633 accessory tether kits may fail to comply with 49 CFR 571.213, Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child Restraint Systems,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defects and Noncompliance Reports.'' Evenflo also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** (68 FR 56375) on September 30, 2003, with a 30 day comment period. NHTSA received one comment, from Advocates for Highway and Auto Safety (Advocates).

FMVSS No. 213, Paragraph S5.9(b) requires ''In the case of each child restraint system manufactured on or after September 1, 1999 and that has components for attaching the system to a tether anchorage, those components shall include a tether hook that conforms to the configuration and geometry specified in Figure 11 of this standard.'' Figure 11 specifies that the height of the tether hook shall not exceed a maximum of 20 millimeters.

In its Part 573 Report filed with the agency on February 3, 2003, Evenflo stated that ''On the afternoon of January 28, 2003, a company seeking to supply Evenflo with tether hooks for child restraints advised Evenflo that it believed some of the tether hooks currently used by Evenflo, as well as other child restraint manufacturers, did not meet Federal Motor Vehicle Safety Standard 213 S.5.9(b). Evenflo undertook an investigation, and on January 31, 2003 determined that some tether hooks supplied by SX Industries of Canton, Massachusetts did not meet Evenflo's engineering specifications and did not meet Federal Motor Vehicle Safety Standard 213 S.5.9(b). A percentage of the hooks sampled by Evenflo measured between 20.11 and 20.39 millimeters.'' Evenflo estimates that, based on its sampling of products, between 70 percent and 80 percent of the 742,736 child restraints and 636 accessory tether kits manufactured between June 15, 2002 and January 30, 2003 contain the subject noncompliance.

Evenflo believes that the FMVSS No. 213 noncompliance described above is inconsequential to motor vehicle safety. Evenflo supported its application for inconsequential noncompliance with the following:

*Installation Testing Confirms Non-Conformance Will Not Adversely Affect Use of Tethers.* In connection with this matter, Evenflo undertook installation testing on 207 different models (after eliminating duplicate tests on the same model performed by different test engineers [1]) of vehicles to ensure that the non-compliance would have no adverse affect on the ability of consumers to use their tethers. For this testing, Evenflo chose two of the tether hooks in its possession which exhibited the greatest non-conformance (those that were furthest from the requisite 20 millimeters specified in the Standard). These hooks measured 20.30 mm and 20.38 mm. Although 207 different models of vehicles were examined, where applicable, all three tether attachment points [2] in each vehicle were separately evaluated (resulting in 586 unique data points). In every one of the 586 unique installation points the non-conforming tethers properly attached to the vehicle's tether attachment point * * *. Based upon this testing, it is clear that the non-compliance is transparent to consumers, and will in no way adversely affect the consumer's ability to use his/her tether.

*Dynamic Sled Testing Conclusively Demonstrates No Adverse Performance In Child Restraints.* Although Evenflo cannot be certain of the number, we estimate that at least one hundred (100) dynamic sled tests were conducted (using the protocol set forth in FMVSS213) on restraints which likely would have been equipped with tether hooks that did not meet the dimensional requirements of S5.9(b) and Figure 11. In none of these tests did the tether hook malfunction or improperly perform in any manner. Evenflo is confident that the non-compliance has no adverse impact of the dynamic performance of the child restraints.

Based on the above, Evenflo argued that the noncompliance is inconsequential to motor vehicle safety. Accordingly, Evenflo requested that it be exempted from the notice and remedy procedures of the Vehicle Safety Act.

[1] The testing, which was conducted by two different test engineers, resulted in 21 vehicles of the same model and model year being tested by each test engineer. The duplicates of these tests appear in the attached test reports, but were eliminated from the numbers provided herein (to prevent testing conducted on the same model vehicle from being counted twice).

[2] As can be seen from the attached test reports, some vehicles had less than three tether attachment points, and some vehicles had more than three attachment points. For each vehicle tested, the test engineers tested every tether attachment point in the vehicle which they could locate.

**Agency Decision**

NHTSA has reviewed Evenflo's application and the comment provided by Advocates, and has concluded that the noncompliance is inconsequential to safety for the following reasons.

In its comments to the receipt of application notice published by NHTSA, Advocates stated:

> Advocates appreciates the amount of testing that was conducted and the evidence supplied by Evenflo. However, we are concerned about whether purchasers and actual users of child restraints equipped with noncompliant tether hooks are able to properly attach those hooks to vehicle tether anchors without difficulty. Proper attachment and ease-of-use of the noncompliant tether hooks to vehicle tether anchors should be demonstrated by consumers in real world situations, not trained engineers. The engineers are already familiar with the design and performance of the noncompliant tether hooks and they have a technical background not shared by the average person. Engineer testing, therefore, may not accurately reflect problems confronted by untrained consumers when attempting to engage the noncompliant tether hooks. While Advocates does not wish to overstate the issue, the presentation in the agency notice provides no basis on which to conclude that purchasers and users will not encounter difficulties in attaching the noncompliant tether hooks despite the success of the Evenflo engineers.
>
> To resolve this issue, Evenflo should provide information confirming that real-world users of these tether hooks are not having difficulty attaching the tether hooks. Some form of blind test protocol using untrained consumers would be appropriate.

On November 5, 2003, Evenflo submitted supplemental information in response to the comments provided by Advocates. Evenflo observed the installation of a compliant and a non-compliant tether hook into various vehicles by 30 individuals. The candidate installers may have had some personal experience installing tether hooks to their personal vehicles, but they did not have any special training or knowledge. The installers were not told in advance the reason for the installation test, nor were the tether hooks identified in any way to differentiate them for the installer. None of the installers experienced any difficulties with either tether hook. NHTSA believes that the results of the additional tests conducted by Evenflo satisfactorily address the concerns raised by Advocates.

NHTSA agrees with Evenflo that the magnitude of the noncompliance—at most, *0.39 millimeters*—is so small that it will not adversely affect a consumer's ability to use his/her tether, and thus, will have no material effect on safety. NHTSA notes that Detail A of Figure 11

of FMVSS No. 213, ''Interface Profile of Tether Hook,'' specifies numerous dimensional limits for the tether hook, not only the overall tether hook height limit of 20 mm that is the subject of this inconsequential noncompliance application. Importantly, Detail A of Figure 11 specifies dimensional limits for the inside portion of the tether hook that actually attaches to the vehicle tether anchorage. NHTSA believes that adherence to these dimensional limits provides assurance that the tether hook will be able to be properly fastened onto the vehicle anchorage, even if the overall height of the tether hook is up to 0.39 mm greater than the 20 mm allowed in the standard. The tether hooks in question complied with these internal dimensional requirements, and NHTSA does not believe that the minor discrepancy in overall height will result in a safety problem in real-world applications.

In its application, Evenflo stated:

> Although Evenflo cannot be certain of the number, we estimate that at least one hundred (100) dynamic sled tests were conducted (using the protocol set forth in FMVSS No. 213) on restraints which likely would have been equipped with tether hooks that did not meet the dimensional requirements of S5.9(b) and Figure 11. In none of these tests did the tether hook malfunction or improperly perform in any manner. Evenflo is confident that the non-compliance has no adverse impact of the dynamic performance of the child restraints.

As noted earlier, NHTSA has determined that the magnitude of the noncompliance is so small that it will not adversely affect a consumer's ability to use (attach/detach) his/her tether. Similarly, and as demonstrated by the lack of test failures observed by Evenflo during dynamic testing conducted using tether hooks that exceed the maximum height requirement, NHTSA does not believe that the additional fraction of a millimeter in overall tether anchorage height will result in any perceptible negative affect on the performance of the child restraint in a crash scenario.

For these reasons, the agency has decided that Evenflo has met its burden of persuasion that the noncompliance at issue is inconsequential to safety and its application is granted. Accordingly, Evenflo is hereby exempted from the notification and remedy provisions of 49 U.S.C. 30118 and 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: June 24, 2004.

**Roger A. Saul,**

*Director, Office of Crashworthiness Standards.*

[FR Doc. 04–14873 Filed 6–29–04; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

### Release of Waybill Data

The Surface Transportation Board has received a request from Washington State University (WB968—6/8/04), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

*Contact:* Mac Frampton, (202) 565–1541.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–14816 Filed 6–29–04; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 24, 2004.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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 July 30, 2004 to be assured of consideration. The TRIP forms can be reviewed at *http://www.treas.gov/trip.*

**Departmental Offices/Terrorism Risk Insurance Program (TRIP)**

*OMB Number:* New.

*Form Numbers:* TRIP 01 and TRIP 02.

*Type of Review:* New collection.

*Title:* Terrorism Risk Insurance Program Loss Reporting.

*Description:* Information collection made necessary by the Terrorism Risk Insurance Act of 2002 and Treasury implementing regulations to pay Federal share to commercial property and casualty insurers for terrorism losses.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents/Recordkeepers:* 100.

*Estimated Burden Hours per Respondent/Recordkeeper:* 28 hours, 45 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 4,200 hours.

*Clearance Officer:* Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

*OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Treasury PRA Clearance Officer.*

[FR Doc. 04–14794 Filed 6–29–04; 8:45 am]

**BILLING CODE 4811–16–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1023

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

**DATES:** Written comments should be received on or before August 30, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

*OMB Number:* 1545–0056.

*Form Numbers:* 1023.

*Abstract:* Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3) of the Internal Revenue Code. IRS uses the information to determine if the applicant is exempt and whether the applicant is a private foundation.

*Current Actions:* Form 1023 is being redesigned by IRS to reduce taxpayer burden by ensuring that all information needed to make an accurate determination is available to the IRS when the application is filed, and by improving the taxpayer's understanding of the requirements for receiving tax-exempt status under section 501(c)(3).

Form 872–C is being obsoleted because the information will appear on Form 1023.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 29,409.

*Estimated Time Per Respondent:* 103 hours, 7 minutes.

*Estimated Total Annual Burden Hours:* 3,032,916.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 23, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–14863 Filed 6–29–04; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[REG–246256–96]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–246256–96 (TD 8978), Excise Taxes on Excess Benefit Transactions (§ 53.4958–6).

**DATES:** Written comments should be received on or before August 30, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Excise Taxes on Excess Benefit Transactions.

*OMB Number:* 1545–1623.

*Regulation Project Number:* REG–246256–96.

*Abstract:* This regulation relates to the excise taxes on excess benefit transactions under section 4958 of the Internal Revenue Code and affects certain tax-exempt organizations described in Code sections 501(c)(3) and (4). The collection of information entails obtaining and relying on appropriate comparability data and documenting the basis of an organization's determination that compensation is reasonable, or a property transfer (or transfer of the right to use property) a fair market value.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Not-for-profit institutions.

*Estimated Number of Respondents:* 150,427.

*Estimated Time Per Respondent:* 6 hours., 3 minutes.

*Estimated Total Annual Burden Hours:* 910,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–14864 Filed 6–29–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1041–ES

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041-ES, Estimated Income Tax for Estates and Trusts.

**DATES:** Written comments should be received on or before August 30, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Estimated Income Tax for Estates and Trusts.

*OMB Number:* 1545–0971.

*Form Number:* Form 1041–ES.

*Abstract:* Internal Revenue Code section 6654(1) imposes a penalty on trusts, and in certain circumstances, a decedent's estate, for underpayment of estimated tax. Form 1041–ES is used by the fiduciary to make the estimated tax payments. The form provides the IRS with information to give estates and trusts proper credit for estimated tax payments.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,200,000.

*Estimated Time Per Respondent:* 2 hours, 38 minutes.

*Estimated Total Annual Burden Hours:* 3,161,236.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–14865 Filed 6–29–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 13559

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13559, Rating in State-Qualified Private Plans.

**DATES:** Written comments should be received on or before August 30, 2004 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Rating in State-Qualified Private Plan.

*OMB Number:* 1545–1888.

*Form Number:* Form 13559.

*Abstract:* The Trade Reform Act of 2002, Pub. L. No. 107–210 created the Health Coverage Tax Credit (HCTC) for the purchase of private health coverage for certain individuals. Individuals who claim the credit must be enrolled in a qualified health plan. Only specific health plans qualify for the HCTC including those qualified by a state. A state qualified health plan must be submitted to the IRS by the state's Department of Insurance as meeting the legislative requirements for health insurance set forth in the Trade Act of 2002 and defined in Internal Revenue Code (IRC) Section 35(e)(2). Any State Department of Insurance submitting a plan as qualified for HCTC will submit Form 13559, Rating in State-Qualified Private Plans to provide information sufficient to determine its compliance with HCTC requirements and provide information about the health plan to those individuals who are eligible for the HCTC.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and Federal, state, local, or Tribal Government.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 24, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–14866 Filed 6–29–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Office of Research and Development; Government Owned Invention Available for Licensing

**AGENCY:** Office of Research and Development, Veterans Affairs.

**ACTION:** Notice of Government Owned Invention Available for Licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development (12TT), 810 Vermont Avenue NW., Washington, DC 20420; fax: (202) 254–0473; e-mail at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is: U.S. Patent Application No. 10/717,481 ''Externally-Powered Hand Prosthesis.''

Dated: June 23, 2004.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 04–14800 Filed 6–29–04; 8:45 am]

BILLING CODE 8320–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Office of Research and Development; Government Owned Invention Available for Licensing

**AGENCY:** Office of Research and Development, Veterans Affairs.

**ACTION:** Notice of Government Owned Invention Available for Licensing.

**SUMMARY:** The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development , 810 Vermont Avenue NW., Washington, DC 20420; fax: (202) 254–0473; e-mail at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The invention available for licensing is: U.S. Provisional Patent Application No. 60/534,365 ''Mechanical Lateral Transfer Accessory to Patient Lifting Devices.''

Dated: June 23, 2004.

**Anthony J. Principi,**

*Secretary, Department of Veterans Affairs.*

[FR Doc. 04–14801 Filed 6–29–04; 8:45 am]

BILLING CODE 8320–01–P

# Corrections

Federal Register

Vol. 69, No. 125

Wednesday, June 30, 2004

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.

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–514]**

### In the Matter of Certain Plastic Food Containers; Notice of Investigation

*Correction*

In notice document 04–14038 beginning on page 34691 in the issue of June 22, 2004, make the following correction:

On page 34691, in the third column, above the subject heading, the docket number is corrected to read as set forth above.

[FR Doc. C4–14038 Filed 6–29–04; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2003–15996; Airspace Docket 03–ANM–04]**

### Modification of Class E Airspace; Trinidad, CO

*Correction*

In rule document 04–13828 appearing on page 34055 in the issue of Friday, June 18, 2004, make the following correction:

**§71.1 [Corrected]**

On page 34055, in §71.1, in the third column, under the heading **''ANM CO E5 Trinidad, CO [Revised]''**, in the second paragraph, in the 15th and 16th lines, ''V263–378'' should read ''V263-389''.

[FR Doc. C4–13828 Filed 6–29–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 30, 2004

# Part II

# Department of the Interior

## Fish and Wildlife Service

**50 CFR Parts 31 and 32**

**2004–2005 Refuge-Specific Hunting and Sport Fishing Regulations; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 31 and 32**

**RIN 1018–AT40**

## 2004–2005 Refuge-Specific Hunting and Sport Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service proposes to add 10 additional refuges and wetland management districts to the list of areas open for hunting and/or sport fishing programs and increase the activities available at 7 other refuges. We will also develop pertinent refuge-specific regulations for those activities and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 2004–2005 season.

**DATES:** We must receive your comments on or before July 30, 2004.

**ADDRESSES:** Submit written comments to Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203. *See* **SUPPLEMENTARY INFORMATION** for information on electronic submission. For information on specific refuges' public use programs and the conditions that apply to them or for copies of compatibility determinations for any refuge(s), contact individual programs at the addresses/phone numbers given in "Available Information for Specific Refuges'' under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 closes national wildlife refuges to all uses until opened. The Secretary of the Interior (Secretary) may open refuge areas to any use, including hunting and/or sport fishing, upon a determination that such uses are compatible with the purposes of the refuge and National Wildlife Refuge System (Refuge System or we) mission. The action also must be in accordance with provisions of all laws applicable to the areas, developed in coordination with the appropriate State fish and wildlife agency(ies), consistent with the principles of sound fish and wildlife management and administration, and otherwise in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for the benefit of present and future generations of Americans.

We annually review refuge hunting and sport fishing programs to determine whether to include additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions. Changing environmental conditions, State and Federal regulations, and other factors affecting fish and wildlife populations and habitat may warrant modifications to refuge-specific regulations to ensure the continued compatibility of hunting and sport fishing programs and to ensure that these programs will not materially interfere with or detract from the fulfillment of refuge purposes or the Refuge System's mission.

Provisions governing hunting and sport fishing on refuges are in Title 50 of the Code of Federal Regulations in part 32 (50 CFR part 32). We regulate hunting and sport fishing on refuges to:

- Ensure compatibility with refuge purpose(s);
- Properly manage the fish and wildlife resource(s);
- Protect other refuge values;
- Ensure refuge visitor safety; and
- Provide opportunities for quality wildlife-dependent recreation.

On many refuges where we decide to allow hunting and sport fishing, our general policy of adopting regulations identical to State hunting and sport fishing regulations is adequate in meeting these objectives. On other refuges, we must supplement State regulations with more-restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined in the "Statutory Authority'' section. We issue refuge-specific hunting and sport fishing regulations when we open wildlife refuges to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or fish, seasons, bag or creel limits, methods of hunting or sport fishing, descriptions of areas open to hunting or sport fishing, and other provisions as appropriate. You may find previously issued refuge-specific regulations for hunting and sport fishing in 50 CFR part 32. In this rulemaking, we are also proposing to standardize and clarify the existing language of these regulations.

### Plain Language Mandate

In this rule we made some of the revisions to the individual refuge units to comply with a Presidential mandate to use plain language in regulations; as such, these particular revisions do not modify the substance of the previous regulations. These types of changes include using "you'' to refer to the reader and "we'' to refer to the Service, using the word "allow'' instead of "permit'' when we do not require the use of a permit for an activity, and using active voice.

### Statutory Authority

The National Wildlife Refuge System Administration Act (Administration Act) of 1966 (16 U.S.C. 668dd–668ee, as amended) and the Refuge Recreation Act (Recreation Act) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of refuges.

Amendments enacted by the National Wildlife Refuge System Improvement Act of 1997 (Improvement Act) build upon the Administration Act in a manner that provides an "organic act'' for the Refuge System similar to those that exist for other public Federal lands. The Improvement Act serves to ensure that we effectively manage the Refuge System as a national network of lands, waters, and interests for the protection and conservation of our Nation's wildlife resources. The Administration Act states first and foremost that we focus Refuge System mission on conservation of fish, wildlife, and plant resources and their habitats. The Improvement Act requires the Secretary, before allowing a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is compatible. The Improvement Act established as the policy of the United States that wildlife-dependent recreation, when compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The Act established six wildlife-dependent recreational uses, when compatible, as the priority general public uses of the Refuge System. These uses are: hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and

not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop specific management plans for each refuge prior to opening it to hunting or sport fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purpose(s) for which we established the refuge and the Refuge System mission. We ensure initial compliance with the Administration Act and the Recreation Act for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at or near the time of acquisition. These regulations ensure that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and sport fishing in 50 CFR part 32. We ensure continued compliance by the development of comprehensive conservation plans, specific plans, and by annual review of hunting and sport fishing programs and regulations.

**New Hunting and Sport Fishing Programs**

In preparation for new openings, we include the following documents in each refuge's "opening package'' (which the Region completes, the Regional Director reviews, and the refuge copies and sends to the Headquarters Office for review of compliance with the various opening requirements): (1) Step-down management plan; (2) appropriate National Environmental Policy Act (NEPA) documentation (*e.g.*, Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement); (3) appropriate NEPA decision documentation (*e.g.*, Finding of No Significant Impact, Record of Decision); (4) Endangered Species Act Section 7 evaluation; (5) copies of letters requesting State and, where appropriate, Tribal involvement and the results of the request(s); (6) draft news release; (7) outreach plan; and (8) draft refuge-specific regulation. Upon approval of these documents, the Regional Director(s) is certifying that the opening of these refuges to hunting and/or sport fishing has been found to be compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

In accordance with the Administration Act and Recreation Act, we have determined that these openings are compatible and consistent with the purpose(s) for which we established the respective refuges and the Refuge System mission. A copy of the compatibility determinations for these respective refuges is available by request to the Regional office noted under the heading "Available Information for Specific Refuges.''

We propose to add the following hunting and sport fishing activities:

| Unit | State | Migratory bird hunting | Upland game hunting | Big game hunting | Sport fishing |
|---|---|---|---|---|---|
| Waccamaw | SC | X | X | X | X |
| Crescent Lake | NB | X | | | |
| Mountain Longleaf | AL | X | X | X | |
| Red River | LA | X | X | X | X |
| Trinity River | TX | | X | X | |
| Cross Creeks | TN | X | | | |
| Tennessee | TN | X | | | |
| Cypress Creek | IL | | | | X |
| Big Oaks | IN | X | X | | |
| Big Branch Marsh | LA | | X | | |
| Savannah | GA/SC | X | | | |
| Devils Lake WMD | ND | X | X | X | X |
| Huron WMD | SD | X | X | X | X |
| Lake Andes WMD | SD | X | X | X | X |
| Madison WMD | SD | X | X | X | X |
| Sand Lake WMD | SD | X | X | X | X |
| Waubay WMD | SD | X | X | X | X |

Lands acquired as "waterfowl production areas,'' which we generally manage as part of wetland management districts, are open to the hunting of migratory game birds, upland game, big game, and sport fishing subject to the provisions of State law and regulations (*see* 50 CFR 32.1 and 32.4). We are adding these existing wetland management districts to the list of refuges open for all four activities in part 32 this year: Huron, Lake Andes, Madison, Sand Lake, and Waubay Wetland Management Districts in South Dakota and Devils Lake Wetland Management District in North Dakota.

DeSoto National Wildlife Refuge in Iowa is closing to migratory bird hunting this year but will continue to remain open to big game hunting and sport fishing. The refuge has offered a snow-goose-only hunt for the past four seasons with poor success, so they are stopping the hunt due to very low harvest rates. Stillwater National Wildlife Refuge in Nevada is closing to sport fishing this year due to concerns over mercury contaminants in the fish.

If finalized as proposed, the 2004–2005 hunting and sport fishing season will result in a net of eight refuges added to sport fishing and nine refuges added to hunting. This will bring our cumulative total of refuges open to hunting to 325 and refuges open to sport fishing to 283.

We are proposing to amend 50 CFR part 32 to more clearly display and give notice to the public that we remain closed to commercial fishing at the following U.S. Unincorporated Pacific Island Insular Possessions: Baker Island National Wildlife Refuge, Howland Island National Wildlife Refuge, Jarvis Island National Wildlife Refuge, Kingman Reef National Wildlife Refuge, and Palmyra Atoll National Wildlife Refuge. The National Marine Fisheries Service published a final rule on February 24, 2004 (69 FR 8336 at page 8343), which included language stipulating that fishing is not allowed within a refuge unless authorized by the Service (50 CFR 660.601). In conjunction with this action, the Service agreed that it would further notify the public of the existing boundaries of the U.S. Unincorporated Pacific-Insular Possessions and to describe the fishing prohibitions within these refuge

boundaries. None of the possessions (refuges) are currently open to commercial fishing, and we are specifically noting this in the CFR to more effectively notify the public and aid enforcement.

This document proposes to codify in the Code of Federal Regulations, all of the Service's hunting and/or sport fishing regulations that are applicable at Refuge System units previously opened to hunting and/or sport fishing. We are doing this to better inform the general public of the requirements at each refuge, to increase understanding and compliance with these requirements, and to make enforcement of these regulations more efficient. In addition to now finding these conditions in part 32, visitors to our refuges will usually find these terms and conditions reiterated in literature distributed by each refuge or posted on signs.

We have cross-referenced a number of existing regulations in 50 CFR parts 26 and 27 to assist hunting and sport fishing visitors with understanding safety and other legal requirements on refuges. This redundancy is deliberate, with the intention of improving safety and compliance in our hunting and sport fishing programs. We are not accepting public comment on the existing regulations cross-referenced in this rule for the benefit of visitors.

**Fish Advisory**

For health reasons, anglers should review and follow State-issued consumption advisories before enjoying recreational sport fishing opportunities on Service-managed waters. You can find information about current fish consumption advisories on the Internet at: *http://www.epa.gov/ost/fish/.*

**Request for Comments**

You may comment on this proposed rule by any one of several methods:

1. Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions at that site for submitting comments.

2. You may mail comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 670, Arlington, VA 22203.

3. You may comment via the Internet to: *refugesystempolicycomments@fws.gov.* Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include: "Attn: 1018–AT40'' and your full name and return mailing address in your Internet message. If you only use your e-mail address, we will consider your comment to be anonymous and will not consider it in the final rule. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–2036.

4. You may fax comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, at (703) 358–2036.

5. Finally, you may hand-deliver or courier comments to the address mentioned above. In light of increased security measures, please call (703) 358–2036 before hand-delivering comments.

We seek comments on this proposed rule and will accept comments by any of the methods described above. Our practice is to make comments, including the names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public inspection in their entirety.

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. We considered providing a 60-day, rather than a 30-day, comment period. However, we determined that an additional 30-day delay in processing these refuge-specific hunting and sport fishing regulations would hinder the effective planning and administration of our hunting and sport fishing programs. That delay would jeopardize establishment of hunting and sport fishing programs this year, or shorten their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. In addition, in order to continue to provide for previously authorized hunting opportunities while at the same time providing for adequate resource protection, we must be timely in providing modifications to certain hunting programs on some refuges.

When finalized, we will incorporate this regulation into 50 CFR parts 31 and 32. Part 31 contains general provisions for wildlife species management. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

**Clarity of This Regulation**

Executive Order (E.O.) 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information'' section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to: *Execsec@ios.doi.gov.*

**Regulatory Planning and Review**

In accordance with the criteria in E.O. 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government. A cost-benefit and full economic analysis is not required. The purpose of this rule is to add 10 refuges and wetland management districts to the list of areas open for hunting and/or sport fishing programs and increase the activities available at 7 other refuges. These units are located in the States of Alabama, Georgia, Illinois, Indiana, Louisiana, Nebraska, North Dakota, South Carolina, South Dakota, Tennessee, and Texas. Sport fishing and hunting are two of the wildlife-dependent recreational uses of refuges that Congress recognized as legitimate and appropriate and directed that we should facilitate their pursuit, subject to such restrictions or regulations as may be necessary to ensure their compatibility with the

purpose of each refuge. Many of the 544 existing refuges already have programs where we allow sport fishing and hunting. Not all refuges have the necessary resources and landscape that would make sport fishing and hunting opportunities available to the public. By opening these refuges to new activities, we have determined that we can make quality experiences available to the public. This rule establishes hunting and/or sport fishing programs and activities at the following refuges: Mountain Longleaf National Wildlife Refuge in Alabama, Savannah National Wildlife Refuge in Georgia and South Carolina, Cypress Creek National Wildlife Refuge in Illinois, Big Oaks National Wildlife Refuge in Indiana, Big Branch Marsh and Red River National Wildlife Refuges in Louisiana, Crescent Lake National Wildlife Refuge in Nebraska, Waccamaw National Wildlife Refuge in South Carolina, Cross Creeks and Tennessee National Wildlife Refuge in Tennessee, and Trinity River National Wildlife Refuge in Texas. We present impacts in 2003 dollars.

All wetland management districts are open to hunting and sport fishing activities until closed, and the proposed rulemaking reflects that Devils Lake Wetland Management District in North Dakota and Huron, Lake Andes, Madison, Sand Lake, and Waubay Wetland Management Districts in South Dakota are already open to hunting of migratory game birds, upland game, big game, and sport fishing. We do not expect any change in visitation rates at these wetland management districts because recreationists currently have the option to participate in these activities. Therefore, there are no new economic impacts from these wetland management districts.

Following a best-case scenario, if the refuges establishing new sport fishing and hunting programs were a pure addition to the current supply of such activities, it would mean a consumer surplus of approximately $885,000 annually and an estimated increase of 12,085 user days of hunting and 1,090 user days of sport fishing (Table 1). However, the participation trend is flat in sport fishing and hunting activities because the number of Americans participating in these activities has been stagnant since 1991. Any increase in the supply of these activities introduced by adding refuges where the activity is available will most likely be offset by other sites losing participants, especially if the new sites have higher quality sport fishing and/or hunting opportunities. Using the value of the difference in the upper and lower bounds of the 95 percent confidence interval for average consumer surplus to represent the estimate of the increase in consumer surplus for higher quality sport fishing and hunting (Walsh, Johnson, and McKean 1990 [1]) yields an estimated increase in consumer surplus of about $235,000 annually, which is a true estimate of the benefits. Consequently, this rule will have a small, measurable, beneficial economic impact on the U.S. economy.

TABLE 1.—ESTIMATED CHANGES IN CONSUMER SURPLUS FROM ADDITIONAL SPORT FISHING AND HUNTING OPPORTUNITIES IN 2004/05

| Unit | Current hunting and/or fishing days (FY03) | Additional fishing days | Additional hunting days | Additional fishing and hunting days combined |
|---|---|---|---|---|
| Waccamaw | | 300 | 175 | 475 |
| Crescent Lake | 1,639 | | 2,000 | 2,000 |
| Mountain Longleaf | | | 4,000 | 4,000 |
| Red River | | 40 | 110 | 150 |
| Trinity River | 12,243 | | 300 | 300 |
| Cross Creeks | 22,562 | | 100 | 100 |
| Tennessee | 233,517 | | 200 | 200 |
| Cypress Creek | 16,975 | 750 | | 750 |
| Big Oaks | 9,188 | | 300 | 300 |
| Big Branch Marsh | 6,835 | | 4,000 | 4,000 |
| Savannah | 6,856 | | 900 | 900 |
| Total days per year | 309,815 | 1,090 | 12,085 | 13,175 |
| | | In dollars | In dollars | In dollars |
| Consumer surplus per day | | 63.57 | 67.53 | |
| Consumer surplus for quality change | | 24.13 | 17.27 | |
| Change in total consumer surplus | | 69,296 | 816,052 | 885,348 |
| Change in quality consumer surplus | | 26,306 | 208,662 | 234,968 |

**Note 1:** All estimates are stated in 2003 dollars.
**Note 2:** Fiscal year 2003 visitation numbers for Waccamaw, Mountain Longleaf, and Red River were not available.

b. This proposed rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The sport fishing and hunting activities located on refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of sport fishing and hunting opportunities will not measurably impact any other agency's existing programs.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of refuges.

d. This proposed rule will not raise novel legal or policy issues. This

[1] Article presented at the Western Regional Science Association Annual meeting in Molokai, Hawaii, on February 22, 1990.

proposed rule opens 10 additional refuges and wildlife management districts for sport fishing and hunting programs and increases the activities available at 7 other refuges. This proposed rule continues the practice of allowing recreational public use of refuges. Many refuges in the Refuge System currently have opportunities for the public to hunt and fish on refuge lands.

**Regulatory Flexibility Act**

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Congress created the Refuge System to conserve fish, wildlife, plants, and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including sport fishing and hunting, as priority general public uses of refuges and to better appreciate the value of, and need for, wildlife conservation.

This proposed rule does not increase the number of recreation types allowed in the Refuge System but establishes hunting and/or sport fishing programs on ten refuges and in wetland management districts. As a result, opportunities for wildlife-dependent recreation on refuges will increase. The changes in the amount of permitted use are likely to increase visitor activity on these refuges. But, as stated above, this is likely to be a substitute site for the activity and not necessarily an increase in participation rates for the activity. To the extent visitors spend time and money in the area of the refuge that they would not have spent there anyway, they contribute new income to the regional economy and benefit local businesses.

For purposes of analysis, we will assume that any increase in refuge visitation is a pure addition to the supply of the available activity. This will result in a best-case scenario, and we expect to overstate the benefits to local businesses. The latest information on the distances traveled for sport fishing and hunting activities indicates that more than 80 percent of the participants travel less than 100 miles from home to engage in the activity. This indicates that participants will spend travel-related expenditures in their local economies. Since participation is scattered across the country, many small businesses benefit. The 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation identifies expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the expected maximum additional participation on the Refuge System as a result of this proposed rule yields the following estimates (Table 2) compared to total business activity for these sectors.

TABLE 2.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN 7 REFUGES AND THE OPENING OF 10 REFUGES AND WETLAND MANAGEMENT DISTRICTS TO FISHING AND/OR HUNTING FOR 2004/05

| | U.S. total expenditures in 2001 | Average expend. per day | Current refuge expenditures w/o duplication (FY2003) | Possible Additional Refuge Expendiitures |
|---|---|---|---|---|
| Anglers | | | | |
| Total Days Spent | $557 Mil | | $6.7 Mil | 1,090 |
| Total Expenditures | $37.0 Bil | $66 | $441.8 Mil | $72,395 |
| Trip Related | $15.2 Bil | 27 | $181.7 Mil | 29,777 |
| Food and Lodging | $6.1 Bil | 11 | $72.9 Mil | 11,949 |
| Transportation | $3.7 Bil | 7 | $43.6 Mil | 7,143 |
| Other | $5.5 Bil | 10 | $66.2 Mil | 10,685 |
| Hunters | | | | |
| Total Days Spent | $228 Mil | | $2.2 Mil | 12,085 |
| Total Expenditures | $21.4 Bil | 94 | $206.5 Mil | $1,133,205 |
| Trip Related | $5.5 Bil | 24 | $52.6 Mil | 288,770 |
| Food and Lodging | $2.5 Bil | 11 | $24.5 Mil | 134,699 |
| Transportation | $1.9 Bil | 8 | $17.9 Mil | 98,378 |
| Other | $1.1 Bil | 5 | $10.1 Mil | 55,702 |

**Note:** All estimates are in 2003 dollars.

Using a national impact multiplier for hunting activities (2.73) derived from the report "Economic Importance of Hunting in America'' and a national impact multiplier for sport fishing activities (2.79) from the report "Sportfishing in America'' for the estimated increase in direct expenditures yields a total economic impact of approximately $3.3 million (2003 dollars) (Southwick Associates, Inc., 2003). Since we know that most of the sport fishing and hunting occurs within 100 miles of a participant's residence, then it is unlikely that most of this spending would be "new'' money coming into a local economy and, therefore, this spending would be offset with a decrease in some other sector of the local economy. The net gain to the local economies would be no more than $3.3 million and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and sport fishing activities, their spending patterns would not add new money into the local economy and, therefore, the real impact would be on the order of $659,000 annually. The maximum increase (if all spending were new money) at most would be less than 2 percent for local retail trade spending (Table 3).

A large percentage of the retail trade establishments in the majority of affected counties qualifies as small businesses. With the small increase in overall spending anticipated from this proposed rule, it is unlikely that a substantial number of small entities will have more than a small benefit from the increased recreationist spending near the affected refuges.

TABLE 3.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2004/05

| Unit/county(ies) | Retail trade in 1997 (2003 dollars) | Estimated maximum addition from new refuge | Addition as a percentage of total retail trade | Total number retail establish. | Establish. with < 10 employees |
|---|---|---|---|---|---|
| Waccamaw | | | | | |
| Horry, SC | 2,872.0 Mil | $12,083 | 0.0004 | 2,270 | 1,556 |
| Georgetown, SC | 552.5 Mil | 12,083 | 0.002 | 492 | 347 |
| Marion, SC | 247.3 Mil | 12,083 | 0.005 | 212 | 156 |
| Crescent Lake | | | | | |
| Garden, NE | 11.0 Mil | 188,000 | 1.701 | 21 | 18 |
| Mountain Longleaf | | | | | |
| Calhoun, AL | 1,125.8 Mil | 376,000 | 0.033 | 723 | 489 |
| Red River | | | | | |
| Natchitoches, LA | 264.1 Mil | 12,980 | 0.005 | 191 | 122 |
| Trinity River | | | | | |
| Liberty, TX | 506.4 Mil | 28,200 | 0.006 | 257 | 177 |
| Cross Creeks | | | | | |
| Stewart, TN | 49.9 Mil | 9,400 | 0.019 | 45 | 32 |
| Tennessee | | | | | |
| Henry, TN | 280.4 Mil | 6,267 | 0.002 | 218 | 160 |
| Humphreys, TN | 127.0 Mil | 6,267 | 0.005 | 100 | 72 |
| Benton, TN | 106.0 Mil | 6,267 | 0.006 | 106 | 80 |
| Cypress Creek | | | | | |
| Pulaski, IL | 17.8 Mil | 16,500 | 0.093 | 35 | 29 |
| Union, IL | 111.0 Mil | 16,500 | 0.015 | 86 | 66 |
| Alexander, IL | 33.4 Mil | 16,500 | 0.049 | 54 | 42 |
| Big Oaks | | | | | |
| Jefferson, IN | 322.3 | 9,400 | 0.003 | 218 | 153 |
| Jennings, IN | 156.0 Mil | 9,400 | 0.006 | 100 | 70 |
| Ripley, IN | 226.2 Mil | 9,400 | 0.004 | 168 | 113 |
| Big Branch Marsh | | | | | |
| St. Tammany Parish, LA | 1,732.8 Mil | 376,000 | 0.022 | 1,068 | 713 |
| Savannah | | | | | |
| Chatham, GA | 2,828.1 Mil | 28,200 | 0.001 | 1,760 | 1,179 |
| Effingham, GA | 190.0 Mil | 28,200 | 0.015 | 114 | 79 |
| Jasper, SC | 88.2 Mil | 28,200 | 0.032 | 95 | 61 |

**Note 1:** Data are from the U.S. Census Bureau's 1997 County Business Patterns & 1997 Economic Census.

Many small businesses may benefit from some increased refuge visitation. However, we expect that much of this benefit will be offset as recreationists spend the same money in a different location. We expect that the incremental recreational opportunities will be scattered, and so we do not expect that the rule will have a significant economic effect (benefit) on a substantial number of small entities in any region or nationally.

**Small Business Regulatory Enforcement Fairness Act**

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. We anticipate no significant employment or small business effects. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The additional sport fishing and hunting opportunities at the 7 refuges would generate angler and hunter expenditures with a maximum economic impact estimated at $3.3 million per year (2003 dollars). Consequently, the maximum benefit of this rule for businesses both small and large would not be sufficient to make this a major rule. The impact would be scattered across the country and would most likely not be significant in any local area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule will have only a slight effect on the costs of hunting and sport fishing opportunities for Americans. Under the assumption that any additional hunting and sport fishing opportunities would be quality, participants would be attracted to the refuge. If the refuge were closer to the participants' residences, then a reduction in travel costs would occur and benefit the participants. The Service does not have information to quantify this reduction in travel cost but assumes that since most people travel less than 100 miles to hunt and fish, the reduced travel cost would be small for the additional days of hunting and sport fishing generated by this proposed rule. We do not expect this proposed rule to affect the supply or demand for sport fishing and hunting opportunities in the United States and, therefore, it should not affect prices for sport fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and sport fishing opportunities would account for less than 0.001 percent of the available opportunities in the United States.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This proposed rule represents only a small proportion of recreational spending of a small number of affected anglers and hunters, approximately a maximum of $3.3 million annually in impact. Therefore, this rule will have no measurable economic effect on the wildlife-dependent recreation industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. Refuges that establish hunting and sport fishing programs may

hire additional staff from the local community to assist with the programs, but this would not be a significant increase because only 10 refuges are adding new programs and only 7 refuges are increasing activities by this proposed rule.

**Unfunded Mandates Reform Act**

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (E.O. 12630)**

In accordance with E.O. 12630, the rule does not have significant takings implications. This regulation will affect only visitors at refuges and describe what they can do while they are there.

**Federalism (E.O. 13132)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. In preparing this proposed rule, we worked with State governments, and our programs are consistent to the State regulations to the degree practicable.

**Civil Justice Reform (E.O. 12988)**

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

**Energy Supply, Distribution or Use (E.O. 13211)**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule opens seven refuges to hunting and/or sport fishing programs and makes minor changes to other refuges open to those activities, it is not a significant regulatory action under E.O. 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

**Consultation and Coordination With Indian Tribal Governments (E.O. 13175)**

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects. We coordinate recreational use on refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations. This regulation is consistent with and not less restrictive than Tribal reservation rules.

**Paperwork Reduction Act**

This regulation does not contain any information collection requirements other than those already approved by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB Control Number is 1018–0102). See 50 CFR 25.23 for information concerning that approval. 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.

**Endangered Species Act Section 7 Consultation**

We reviewed the changes in hunting and sport fishing regulations herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1544, as amended) (ESA). For the refuges proposed to open for hunting and/or sport fishing, we have determined that Waccamaw National Wildlife Refuge (for wood stork, red cockaded woodpecker, peregrine falcon, and bald eagle), Mountain Longleaf National Wildlife Refuge, Red River National Wildlife Refuge, Trinity River National Wildlife Refuge, Cross Creeks National Wildlife Refuge, Tennessee National Wildlife Refuge, Cypress Creek National Wildlife Refuge, Big Oaks National Wildlife Refuge, and Big Branch National Wildlife Refuge will not likely adversely affect any endangered or threatened species or designated critical habitat, and Waccamaw National Wildlife Refuge (for shortnose sturgeon, pondberry, Canby's dropwort, and American chaffseed), Savannah National Wildlife Refuge, and Crescent Lake National Wildlife Refuge will not affect any endangered or threatened species or designated critical habitat.

We also comply with Section 7 of the ESA when developing comprehensive conservation plans and step-down management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations when required by the ESA before the addition of a refuge to the lists of areas open to hunting or sport fishing as contained in 50 CFR 32.7.

**National Environmental Policy Act**

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) (NEPA) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation applies to this amendment of refuge-specific hunting and sport fishing regulations since it is technical and procedural in nature and we otherwise comply with NEPA at the specific refuge units.

Prior to the addition of a refuge to the list of areas open to hunting and sport fishing in 50 CFR part 32, we develop specific management plans for the affected refuges. We incorporate these proposed refuge hunting and sport fishing activities in refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 FW 1, 3, and 4. We prepare CCPs and step-down plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

**Available Information for Specific Refuges**

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the Regional Offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Regional Chief, National Wildlife Refuge System, U.S.

Fish and Wildlife Service, P.O. Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–6804.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1 Federal Drive, Federal Building, Fort Snelling, Minnesota 55111; Telephone (612) 713–5400.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the Virgin Islands. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Atlanta, Georgia 30345; Telephone (404) 679–7154.

Region 5—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8302.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 134 Union Blvd., Lakewood, Colorado 80228; Telephone (303) 236–8145.

Region 7—Alaska. Regional Chief, National Wildlife Refuge System, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3354.

## Primary Author

Leslie A. Marler, Management Analyst, Division of Conservation Planning and Policy, National Wildlife Refuge System, U.S. Fish and Wildlife Service, Arlington, Virginia 22203, is the primary author of this rulemaking document.

## List of Subjects

*50 CFR Part 31*

Fish, Wildlife, Wildlife refuges.

*50 CFR Part 32*

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend Title 50, Chapter I, subchapter C of the Code of Federal Regulations as follows:

## PART 31—[AMENDED]

1. The authority citation for part 31 continues to read as follows:

**Authority:** 5 U.S.C. 301; 43 U.S.C. 315a; 16 U.S.C. 460k, 668dd–ee, 685, 725, 690d, 715i, 664, 718(b); 48 Stat. 1270; sec. 4. 76 Stat. 654.

2. Revise § 31.13 to read as follows:

### § 31.13 Do we allow commercial harvest of fishery resources?

Refuge managers may allow commercial harvest of fishery resources by issuance of a permit or by refuge-specific regulation in compliance with applicable State and Federal laws when compatible and in compliance with § 29.1 of this subchapter C.

## PART 32—[AMENDED]

3. The authority citation for part 32 continues to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

### § 32.7 [Amended]

4. Amend § 32.7 "What refuge units are open to hunting and/or sport fishing?'' by:

a. Revising the listing of "Blowing Wind Cave National Wildlife Refuge'' to read "Sauta Cave National Wildlife Refuge'' and placing it in alphabetical order, alphabetically adding "Grand Bay National Wildlife Refuge,'' and alphabetically adding "Mountain Longleaf National Wildlife Refuge'' in the State of Alabama;

b. Revising the listing of "San Francisco Bay National Wildlife Refuge'' to read "Don Edwards San Francisco Bay National Wildlife Refuge'' and placing it in alphabetical order in the State of California;

c. Alphabetically adding "Marais des Cygnes National Wildlife Refuge'' in the State of Kansas, which was previously inadvertently omitted;

d. Alphabetically adding "Red River National Wildlife Refuge'' in the State of Louisiana;

e. Removing "Lake Umbagog National Wildlife Refuge'' in the State of New Jersey;

f. Revising "MacKay Island National Wildlife Refuge'' to read "Mackay Island National Wildlife Refuge'' in the State of North Carolina;

g. Alphabetically adding "Devils Lake Wetland Management District'' in the State of North Dakota;

h. Revising the listing of "Hart Mountain National Wildlife Refuge'' to read "Hart Mountain National Antelope Refuge'' and placing it in alphabetical order in the State of Oregon;

i. Alphabetically adding "Waccamaw National Wildlife Refuge'' in the State of South Carolina;

j. Alphabetically adding "Devils Lake Wetland Management District'', "Huron Wetland Management District'','' "Lake Andes Wetland Management District'', "Madison Wetland Management District'', "Sand Lake Wetland Management District'', and "Waubay Wetland Management District'', and revising the listing of "Wauby National Wildlife Refuge'' to read "Waubay National Wildlife Refuge'' in the State of South Dakota; and

k. Revising the listing of "Johnston Atoll National Wildlife Refuge'' to read "Johnston Island National Wildlife Refuge'' in the United States Unincorporated Pacific Insular Possessions.

5. Add a new § 32.9 to read as follows:

### § 32.9 What specific areas of United States Unincorporated Pacific-Insular Possessions remain closed to commercial fishing?

*Baker Island National Wildlife Refuge.* We prohibit collection and/or fishing for pelagic species, bottomfish species, crustaceans, and coral reef-associated species, including the collection of corals, from within the marine boundaries of this refuge unit. This refuge unit includes all of Baker Island, approximately in latitude 0°13′30″ north and longitude 176°28′ west from Greenwich [See map A insert], together with its territorial sea, extending outward from land to 3 nautical miles.

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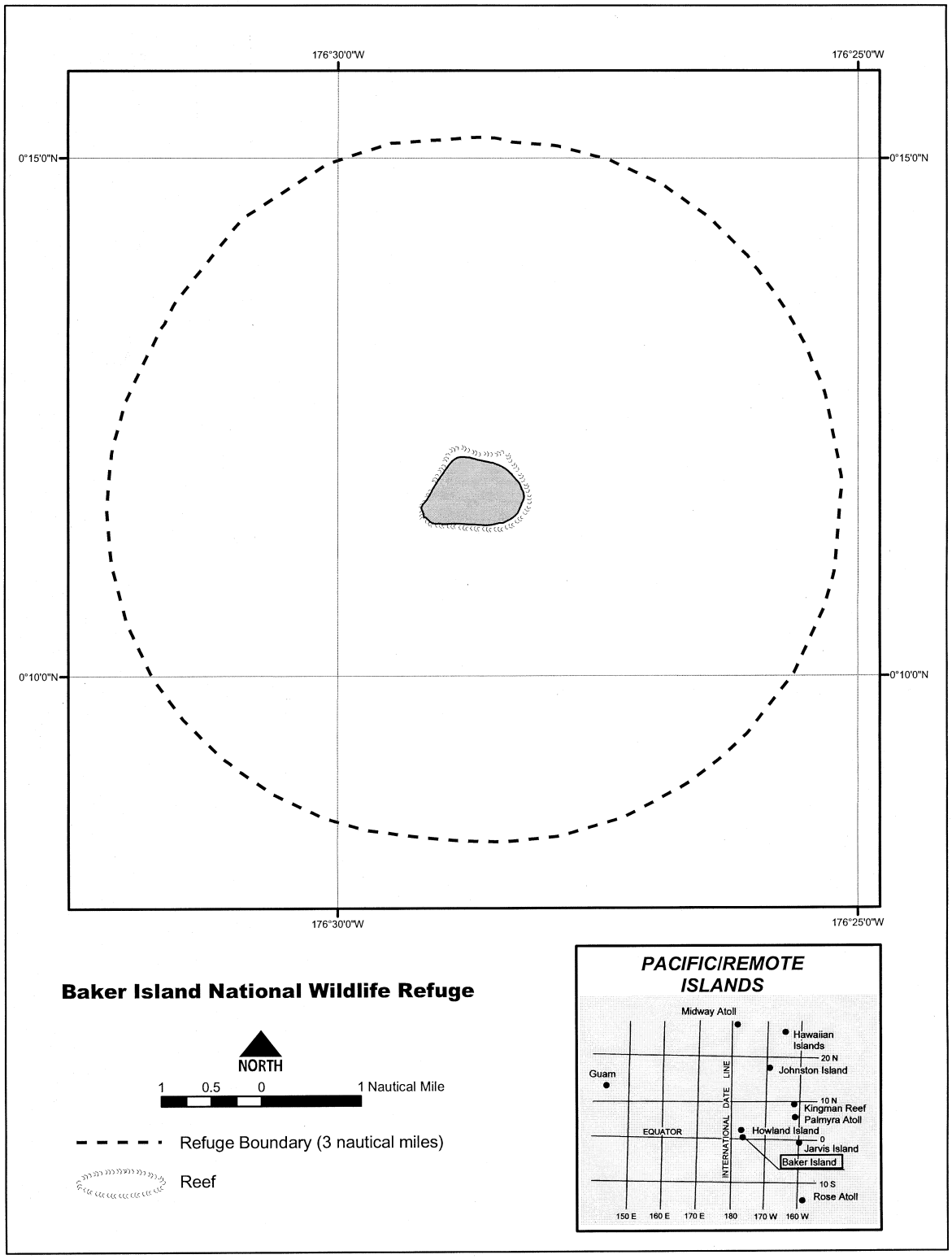
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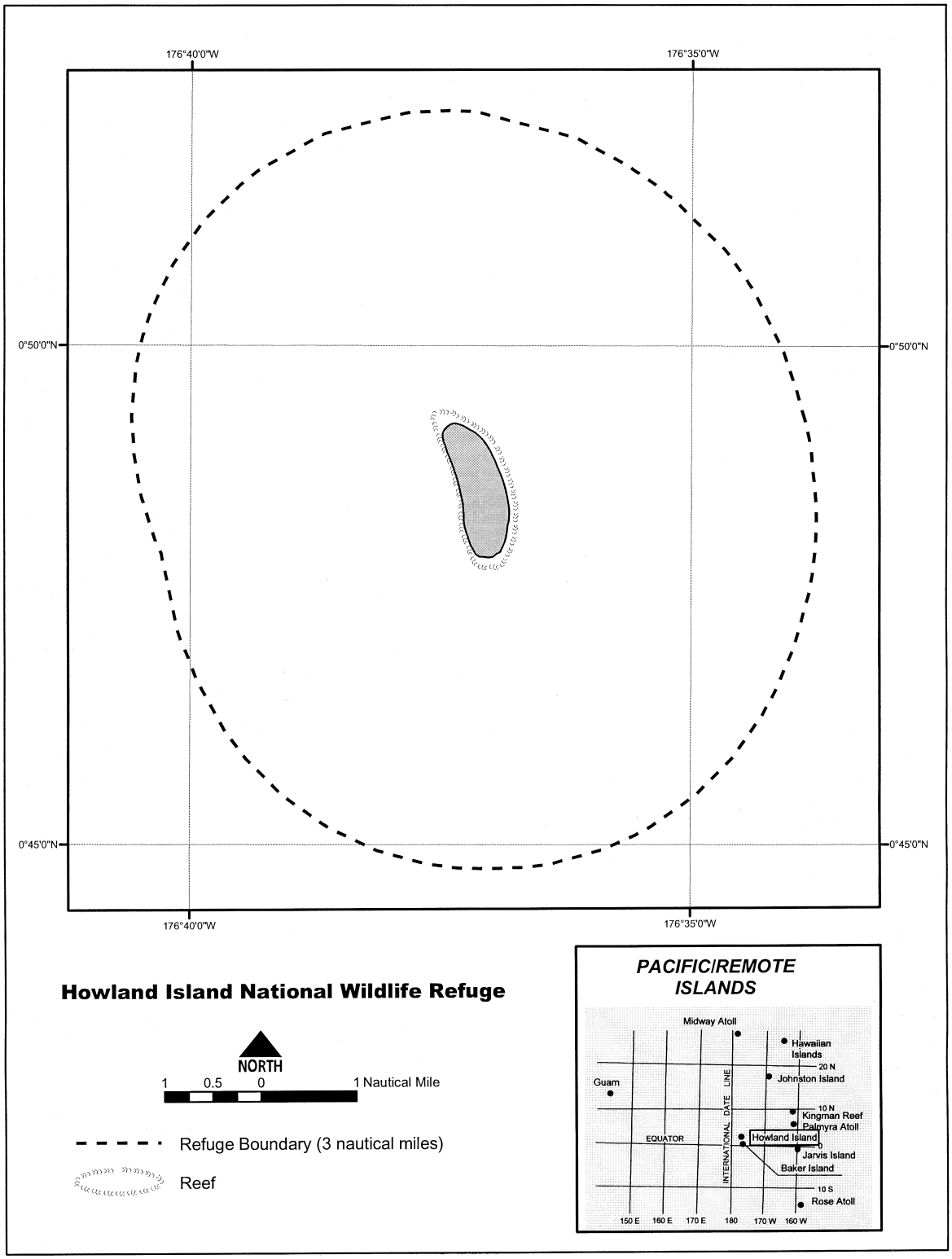
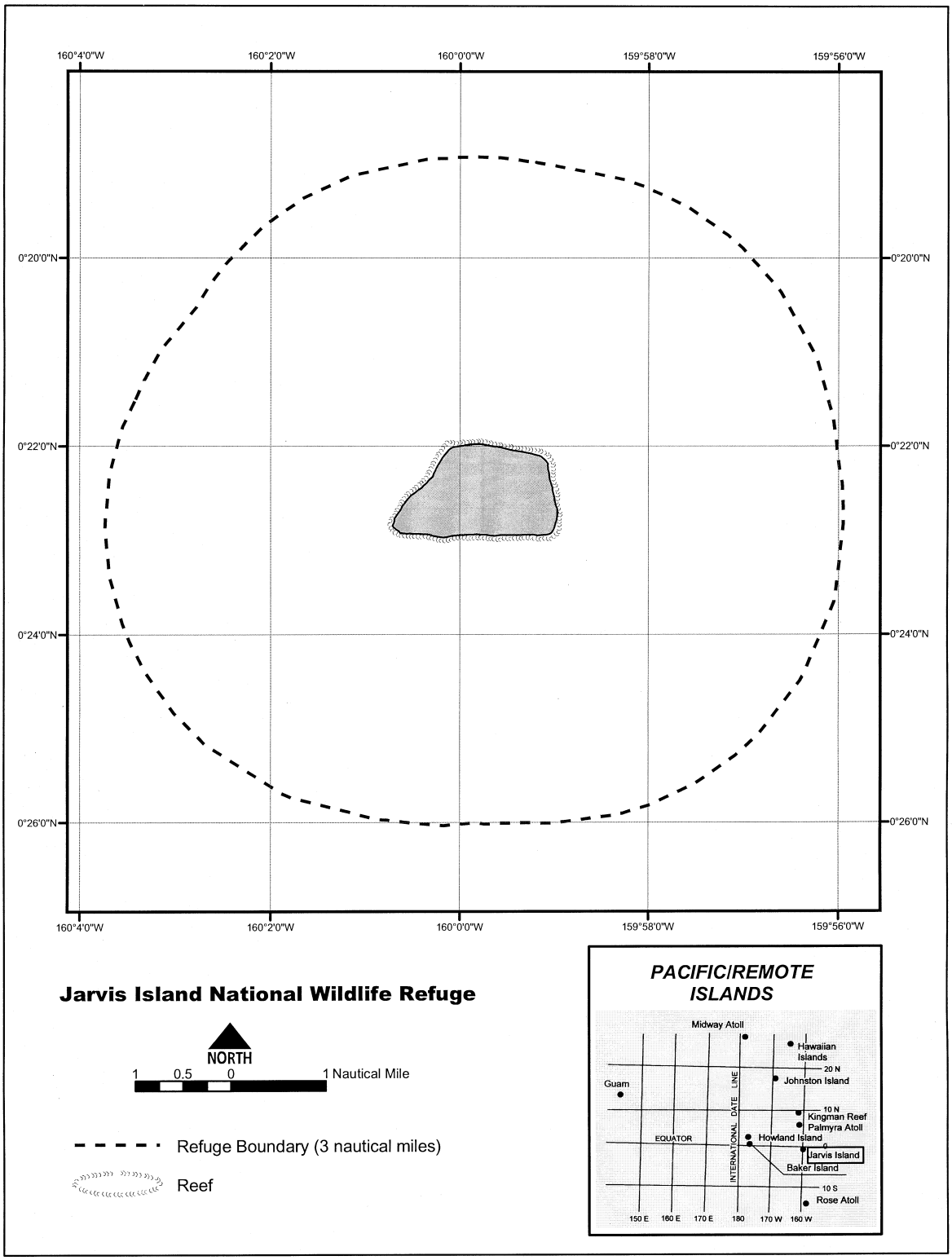
Baker Island National Wildlife Refuge
NORTH
1 0.5 0 1 Nautical Mile
Refuge Boundary (3 nautical miles)
Reef
PACIFIC/REMOTE ISLANDS
Midway Atoll
Hawaiian Islands
20 N
Johnston Island
Guam
10 N
Kingman Reef
Palmyra Atoll
EQUATOR
Howland Island
0
Jarvis Island
Baker Island
10 S
Rose Atoll
INTERNATIONAL DATE LINE
150 E
160 E
170 E
180
170 W
160 W

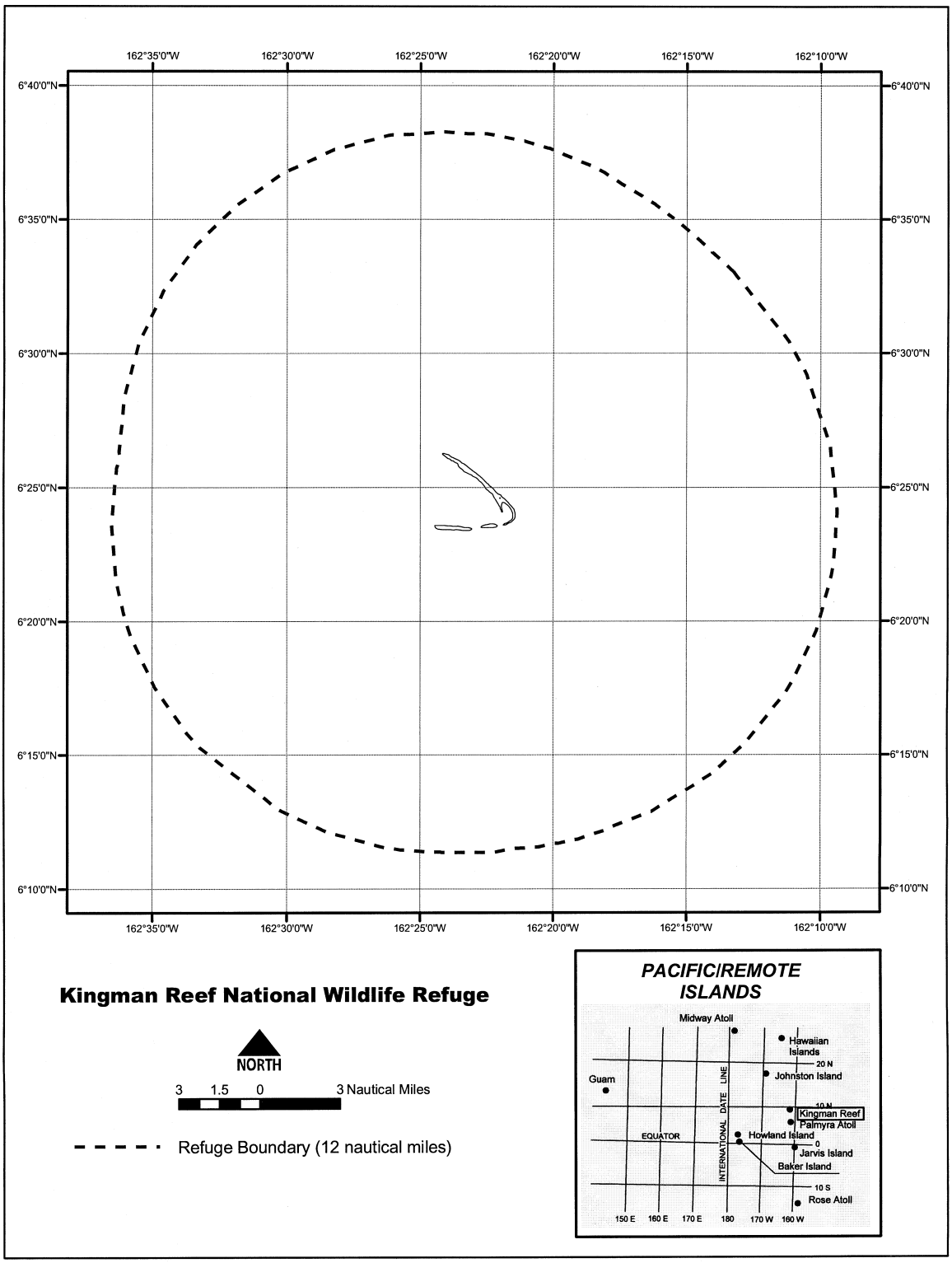
*Howland Island National Wildlife Refuge.* We prohibit collection and/or fishing for pelagic species, bottomfish species, crustaceans, and coral reef-associated species, including the collection of corals, from within the marine boundaries of this refuge unit. This refuge unit includes all of Howland Island, approximately in latitude 0°49′ north and longitude 176°43′ west from Greenwich [See map B insert], together with its territorial sea, extending outward from land to 3 nautical miles.


176°40'0"W
176°35'0"W
0°50'0"N
0°45'0"N
Howland Island National Wildlife Refuge
NORTH
1 0.5 0 1 Nautical Mile
Refuge Boundary (3 nautical miles)
Reef
PACIFIC/REMOTE ISLANDS
Midway Atoll
Hawaiian Islands
20 N
Johnston Island
Guam
10 N
Kingman Reef
Palmyra Atoll
EQUATOR
Howland Island
Jarvis Island
Baker Island
INTERNATIONAL DATE LINE
10 S
Rose Atoll
150 E
160 E
170 E
180
170 W
160 W

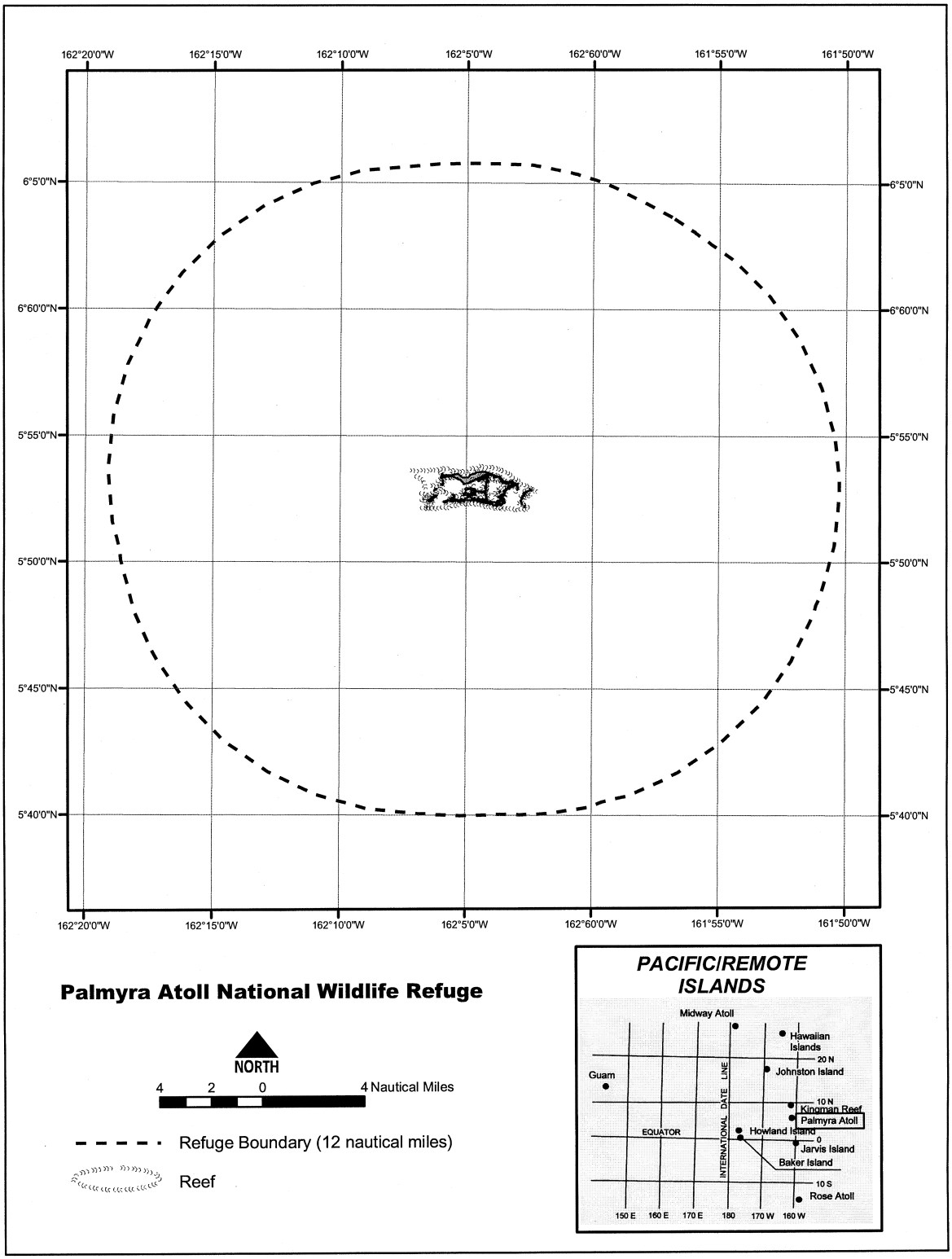
*Jarvis Island National Wildlife Refuge.* We prohibit collection and/or fishing for pelagic species, bottomfish species, crustaceans, and coral reef-associated species, including the collection of corals, from within the marine boundaries of this refuge unit. This refuge unit includes all of Jarvis Island, approximately in latitude 0°22′20″ north and longitude 160°01′ west from Greenwich [See map C insert], together with its territorial sea, extending outward from land to 3 nautical miles.


160°4'0"W
160°2'0"W
160°0'0"W
159°58'0"W
159°56'0"W
0°20'0"N
0°22'0"N
0°24'0"N
0°26'0"N
Jarvis Island National Wildlife Refuge
NORTH
1 0.5 0 1 Nautical Mile
Refuge Boundary (3 nautical miles)
Reef
PACIFIC/REMOTE ISLANDS
Midway Atoll
Hawaiian Islands
20 N
Guam
Johnston Island
INTERNATIONAL DATE LINE
10 N
Kingman Reef
Palmyra Atoll
EQUATOR
Howland Island
0
Jarvis Island
Baker Island
10 S
Rose Atoll
150 E
160 E
170 E
180
170 W
160 W

*Kingman Reef National Wildlife Refuge.* We prohibit collection and/or fishing for pelagic species, bottomfish species, crustaceans, and coral reef-associated species, including the collection of corals, from within the marine boundaries of this refuge unit. This refuge unit includes all of Kingman Reef, approximately in latitude 6°23′ north and longitude 162°25′ west from Greenwich [See map D insert], together with its territorial sea, extending outward from land to 12 nautical miles.


162°35'0"W
162°30'0"W
162°25'0"W
162°20'0"W
162°15'0"W
162°10'0"W
6°40'0"N
6°35'0"N
6°30'0"N
6°25'0"N
6°20'0"N
6°15'0"N
6°10'0"N
Kingman Reef National Wildlife Refuge
NORTH
3 1.5 0 3 Nautical Miles
Refuge Boundary (12 nautical miles)
PACIFIC/REMOTE ISLANDS
Midway Atoll
Hawaiian Islands
20 N
Guam
Johnston Island
INTERNATIONAL DATE LINE
10 N
Kingman Reef
Palmyra Atoll
EQUATOR
Howland Island
0
Jarvis Island
Baker Island
10 S
Rose Atoll
150 E
160 E
170 E
180
170 W
160 W

*Palmyra Atoll National Wildlife Refuge.* We prohibit commercial collection and/or fishing for pelagic species, bottomfish species, crustaceans, and coral reef-associated species, including the collection of corals, from within the marine boundaries of this refuge unit. This refuge unit includes all of the emergent land of Palmyra Atoll, approximately in latitude 5°53′ north and longitude 162° 05′ west from Greenwich [See map E insert], together with its territorial sea, extending outward from land to 12 nautical miles.




BILLING CODE 4310–55–C

**§§ 32.20 through 32.72 [Amended]**

6. In §§ 32.20 through 32.72 remove the entry "*A. Hunting of Migratory Game Birds.*" and add in its place "*A. Migratory Game Bird Hunting.*" each place that it appears.

7. Amend § 32.20 Alabama by:

a. Revising the listing of "Blowing Wind Cave National Wildlife Refuge" to read "Sauta Cave National Wildlife Refuge," placing it in alphabetical order, and revising paragraph B.;

b. Revising "Choctaw National Wildlife Refuge;"

c. Revising "Eufaula National Wildlife Refuge;"

d. Revising paragraphs A. and B. of "Key Cave National Wildlife Refuge;"

e. Adding "Mountain Longleaf National Wildlife Refuge;" and

f. Revising paragraphs B., C., and D. of "Wheeler National Wildlife Refuge'' to read as follows:

**§ 32.20 Alabama.**

* * * * *

**Choctaw National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting within 100 yards (90 m) of the fenced-in Work Center Area or the refuge boat ramp.
2. Access to the Middle Swamp is by boat only. We prohibit access to the refuge from private land.
3. We prohibit marking trees and use of flagging tape, reflective tacks, and other similar marking devices.
4. You may take incidental species as listed in the refuge hunt permit during any fall hunt with those weapons legal during those hunts.
5. You must possess and carry a signed refuge hunt permit when hunting.
6. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than two youth hunters.
7. We prohibit overnight mooring or storage of boats.
8. We require hunters to check all harvested game at the conclusion of each day's hunt at one of the refuge check-out stations.
9. You may only use approved nontoxic shot (*see* § 32.2(k)) #4 or smaller, .22 caliber rimfire, or legal archery equipment.
10. We allow you to use dogs during the hunt, but the dogs must be under the immediate control of the handler at all times and not allowed to roam free (*see* § 26.21(b) of this chapter). We prohibit dogs in the Middle Swamp area of the refuge.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B8 apply.
2. We require tree stand users to use a safety belt or harness.
3. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (see § 32.2(i)). Hunters must remove stands from trees after each day's hunt (see § 27.93 of this chapter).
4. During the spring muzzleloader hunt for feral hog, muzzleloaders must be .40 caliber or larger without scopes. We require hunters to wear hunter orange in accordance with State big game regulations except you must also wear hunter orange while on tree stands.
5. We prohibit participation in organized drives.
6. We prohibit mules and horses on all refuge hunts.
7. We prohibit hunting by aid or distribution of any feed, salt, or other mineral at any time.

*D. Sport Fishing.* We allow fishing in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing year-round, except in the waterfowl sanctuary, which we close from December 1 through March 1.
2. With the exception of the refuge boat ramp, we limit access from ½ hour before legal sunrise to ½ hour after legal sunset.
3. You may use a rod and reel and pole and line. We prohibit all other methods of fishing.
4. We prohibit the taking of frogs or turtles (*see* § 27.21 of this chapter).
5. We prohibit bow fishing.
6. We prohibit the use of airboats, hovercraft, and inboard waterthrust boats such as, but not limited to, personal watercraft, watercycles, and waterbikes on all waters of the refuge.
7. We allow commercial fishing with the use of nets, seines, boxes, and baskets only by Special Use Permit.
8. We prohibit mooring or storing of boats from ½ hour after legal sunset to ½ hour before legal sunrise.

**Eufaula National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning and Eurasian-collared dove, duck, and goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit when hunting.
2. We allow dove hunting on selected areas and days during the State dove season. You may only possess approved nontoxic shotshells (*see* § 32.2(k)).
3. We allow goose and duck hunting in the Kennedy and Bradley Units on selected days until 12 p.m. (noon) during State waterfowl seasons. We close all other areas within the refuge to waterfowl hunting.
4. You may only possess approved nontoxic shotshells while in the field (*see* § 32.2(k)) in quantities of 25 or less when hunting duck or goose.
5. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. Youth hunters must possess and carry verification of passing a State-approved hunter education course. One adult may supervise no more than two youth hunters.

*B. Upland Game Hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A5 apply.
2. We allow squirrel and rabbit hunting on selected areas and days during the State season.
3. We prohibit dogs (*see* § 26.21(b) of this chapter).
4. We allow only shotguns.
5. We prohibit mooring or storing of boats from 2 hours after legal sunset to ½ hour before legal sunrise.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and B5 apply.
2. We allow both archery deer and feral hog hunting during State archery and gun seasons.
3. We close the portion of the refuge between Bustahatchee and Rood Creeks to archery hunting until November 1.
4. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. We allow youth gun deer hunting (ages 10–16) within the Bradley Unit on weekends during October where youth age 16 or under must be supervised by an adult. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than one youth hunter.
5. We close the portion of the refuge around the Upland Impoundment, also designated by signs reading "Closed Seasonally November 15–February 28,'' to hunting after November 15.
6. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (*see* § 32.2(i)). Hunters must remove stands from the trees after each day's hunt (see § 27.93 of this chapter).
7. We allow access to the refuge for all hunts from 1½ hours before legal sunrise to 1½ hours after legal sunset.
8. We prohibit hunting by aid or distribution of any feed, salt, or other mineral at any time (*see* § 32.2(h)).
9. We prohibit participation in organized drives.
10. We prohibit mules and horses on all refuge hunts.

11. We require tree stand users to use a safety belt or harness.

*D. Sport Fishing.* We allow fishing in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing, including bowfishing, from legal sunrise to legal sunset only in refuge waters other than Lake Eufaula.

2. We prohibit taking frog or turtle (*see* § 27.21 of this chapter) from refuge waters not connected with Lake Eufaula.

3. We adopt reciprocal license agreements between Alabama and Georgia for fishing in Lake Eufaula. Anglers fishing in refuge impounded waters must possess and carry a license for the State in which they are fishing.

4. We prohibit use of boats with motors in all refuge impounded areas.

5. Condition B5 applies.

**Key Cave National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning and Eurasian-collared dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit when hunting.

2. We allow hunting on designated areas from 12 p.m. (noon) to legal sunset Mondays, Tuesdays, Fridays, and Saturdays.

3. Hunters must park in designated parking areas. We prohibit parking vehicles on refuge roads or in the fields (*see* § 27.31 of this chapter).

4. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than two youth hunters.

5. We allow you to use dogs during the hunt, but the dogs must be under the immediate control of the handler at all times and not allowed to roam free ( *see* § 26.21(b) of this chapter).

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A3 through A5 apply.

2. We allow hunting on designated areas from legal sunrise to legal sunset Mondays, Tuesdays, Fridays, and Saturdays, except that you may hunt opossum and raccoon after legal sunset.

* * * * *

**Mountain Longleaf National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of woodcock on designated areas of the refuge in accordance with State regulations subject to the following condition: You must possess and carry a signed hunt permit when hunting.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, groundhog, raccoon, opossum, beaver, and fox on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit when hunting.

2. We only allow hunting from legal sunrise to legal sunset.

3. We prohibit the use of dogs (*see* § 26.21(b) of this chapter) to hunt or pursue raccoon, opossum, or fox.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, bobcat, coyote, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition B1 applies.

2. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (*see* § 32.2(i)). Hunters must remove stands from trees after each day's hunt (*see* § 27.93 of this chapter).

3. We prohibit using dogs (*see* § 26.21(b) of this chapter) to hunt or pursue big game.

*D. Sport Fishing.* [Reserved]

**Sauta Cave National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following condition: Sauty Creek Wildlife Management Area regulations apply.

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**Wheeler National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit when hunting.

2. You may only possess approved nontoxic shot (*see* § 32.2(k)) #4 or smaller, .22 caliber rimfire, or legal archery equipment.

3. You must unload and case or dismantle firearms (*see* § 27.42 of this chapter) before placing them in a vehicle or boat.

4. We prohibit hunting in the Triana recreation area or within 100 yards (90 m) of any public building, public road, walking trail, or boardwalk.

5. We prohibit mules and horses on all refuge hunts.

6. We allow hunting on designated areas Monday through Saturday. We prohibit hunting on Sunday.

7. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than two youth hunters.

8. We prohibit overnight mooring or storing of boats.

9. We prohibit marking trees and the use of flagging tape, reflective tacks, and other similar marking devices.

10. We allow the use of dogs to hunt upland game, but the dogs must be under the immediate control of the handler at all times and not allowed to run free (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1, B3, B4, B6, B8, and B9 apply.

2. We prohibit participation in organized drives.

3. We allow bows with broadhead arrows and flintlocks .40 caliber or larger only.

4. We prohibit damaging trees or hunting from a tree that contains an inserted metal object (*see* § 32.2(i)). Hunters must remove stands from trees after each day's hunt (*see* § 27.93 of this chapter).

5. We require tree stand users to use a safety belt or harness.

6. We prohibit mules and horses on all refuge hunts.

7. We prohibit hunting by aid or distribution of any feed, salt, or other mineral at any time (*see* § 32.2(h)).

8. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. Youth hunters must have passed a State-approved hunter education course. One adult may supervise no more than one youth.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit bank fishing around the shoreline of the refuge headquarters.

2. We open all other refuge waters to fishing year-round unless otherwise posted.

3. We prohibit fishing in the Waterfowl Display Pool and other waters adjacent to the visitor center.

4. We prohibit airboats and hovercraft on all waters within the refuge boundaries.

5. We prohibit inboard waterthrust boats such as, but not limited to, personal watercraft, watercycles, and waterbikes on all waters of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile marker 3.

6. We prohibit overnight mooring and storing of boats.

8. Amend § 32.22 Arizona by:

a. Revising "Bill Williams River National Wildlife Refuge;''

b. Revising paragraphs A., B., and C. of "Buenos Aires National Wildlife Refuge;'' and

c. Revising paragraph A.4.iv. of "Havasu National Wildlife Refuge'' to read as follows:

**§ 32.22 Arizona.**

* * * * *

**Bill Williams River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning and white-winged dove in accordance with State regulations subject to the following conditions:

1. We only allow shotguns.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. We only allow hunting in accordance with State regulations for the listed species.

4. We only allow hunting on the refuge in those areas south of the Bill Williams Road and east of Arizona State Rt. 95 and the south half of Section 35, T 11N–R 17W as posted.

5. Only upon specific consent from an authorized refuge employee may you retrieve game from an area closed to hunting or entry.

6. We prohibit hunting within 50 yards (45 m) of any building, road, or levee.

7. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

*B. Upland Game Hunting.* We allow hunting of quail and cottontail rabbit in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A3 through A7 apply.

2. We only allow hunting of cottontail rabbit from September 1 to the close of the State quail season.

*C. Big Game Hunting.* We allow hunting of desert bighorn sheep in Arizona Wildlife Management Areas 16A and 44A in accordance with State regulations subject to the following conditions:

1. Anyone for hire assisting or guiding a hunter(s) must obtain, possess, and carry a valid Special Use Permit issued by the refuge manager.

2. Conditions A3 through A7 apply.

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We close the isolated grow-out cove near the visitor center to fishing as posted.

2. We prohibit personal watercraft (PWC as defined by State law), air boats, and hovercraft on all waters within the boundaries of the refuge.

3. We designate all waters as wakeless speed zones (as defined by State law).

4. Persons fishing from a boat or other floating object must obtain, possess, and carry a current Colorado River shared jurisdiction stamp.

**Buenos Aires National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and mourning and white-winged dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only use firearms (*see* § 27.42 of this chapter) for the taking of legal game. You may only carry and use handguns in conjunction with a designated handgun season. We prohibit weapons in the No-Hunt Zone of the refuge headquarters, on Service property in Brown Canyon, and in the Watchable Wildlife Areas located at Arivaca Cienega and Arivaca Creek.

2. We allow stands, but you must remove them at the end of the hunt (*see* § 27.93 of this chapter).

3. The No-Hunt Zones include: Clark Ranch Tract, Don Honnas Tract, all Service property in Brown Canyon, Arivaca Creek from milepost 7 to Arivaca and within ¼ mile (.4 km) of the creek bed, within ¼ mile (.4 km) of all refuge residences and structures, and within a 2-mile (3.2 km) radius of both the refuge headquarters and the 10 mile (16 km) Antelope Wildlife Drive.

*B. Upland Game Hunting.* We allow hunting of cottontail rabbit, coyote, and skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only require a refuge permit to hunt coyote during April and May. Permits are available at refuge headquarters.

2. Conditions A1 through A3 apply.

3. Hunting groups using more than four horses must possess and carry a refuge permit.

4. Each hunter using horses must provide water and feed and clear all horse manure from all campsites.

*C. Big Game Hunting.* We allow hunting of mule and white-tailed deer, javelina, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only hunt feral hog during big game seasons. Each hunter must possess and carry a valid hunting license and big game permit for the season in progress. There is no bag limit.

2. Conditions A1 through A3 and B3 apply.

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**Havasu National Wildlife Refuge**

*A. Migratory Game Bird Hunting.*

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4. * * *

iv. We limit the number of shells waterfowl hunters may possess as indicated in refuge brochures.

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9. Amend § 32.23 Arkansas by:

a. Revising "Bald Knob National Wildlife Refuge;''

b. Revising paragraphs A., B., C., D.1., and D.5., and adding paragraph D.8. of "Big Lake National Wildlife Refuge;''

c. Revising "Cache River National Wildlife Refuge;''

d. Revising "Felsenthal National Wildlife Refuge;''

e. Revising "Holla Bend National Wildlife Refuge;''

f. Revising "Overflow National Wildlife Refuge;''

g. Revising "Pond Creek National Wildlife Refuge;''

h. Revising paragraphs B., the introductory text of paragraph C., paragraphs C.1. and C.3. and paragraph D. of "Wapanocca National Wildlife Refuge;'' and

i. Revising "White River National Wildlife Refuge'' to read as follows:

**§ 32.23 Arkansas.**

* * * * *

**Bald Knob National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, snipe, woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge hunting permits. The permits are nontransferable, and anyone on refuge land in possession of

hunting equipment must sign, possess, and carry the permits at all times.

2. We allow hunting of duck, goose, and coot daily until 12 p.m. (noon) throughout the State seasons, except for season closures on the Farm Unit during Gun Deer Hunt and for the exception provided in A3.

3. We allow hunting for goose from ½ hour before sunrise until legal sunset after the closing of the duck season in January for the remainder of the State goose season(s) and Snow, Blue, and Ross' Goose Conservation Orders.

4. We allow hunting for dove, snipe, and woodcock when their seasons correspond with duck and/or goose seasons.

5. We prohibit commercial hunting/guiding.

6. You may only possess approved nontoxic shot shells while in the field (*see* § 32.2(k)) in quantities of 25 or less. The possession limit includes shells located in/on vehicles and other personal equipment.

7. We prohibit hunting closer than 100 yards (90 m) to another hunter or hunting party.

8. You must remove decoys, blinds, boats, and all other equipment (*see* § 27.93 of this chapter) daily by 2 p.m.

9. Waterfowl hunters may enter the refuge parking areas at 4:45 a.m. and access the refuge at 5 a.m.

10. Hunters may leave boats with the owner's name and address permanently displayed or valid registration on the refuge from March 1 through October 31.

11. We prohibit possession of or marking trails with materials other than biodegradable paper flagging or reflective tape/tacks.

12. We prohibit building or hunting from permanent blinds.

13. We prohibit cutting of holes or manipulation of vegetation (*i.e.*, cutting bushes, mowing, weed-eating, herbicide use, etc.) and hunting from manipulated areas (*see* § 27.51 of this chapter).

14. We allow retriever dogs.

15. You must unload firearms (*see* § 27.42(b) of this chapter) when carried in/on land vehicles or boats under power.

16. We allow waterfowl hunting from roads and levees.

17. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. For migratory bird hunting, one adult may supervise no more than two youth hunters.

18. We prohibit target practice or nonhunting discharge of firearms (*see* § 27.42 of this chapter).

19. We only allow vehicle use on established roads and trails (*see* § 27.31 of this chapter). We limit vehicle access on the Mingo Creek Unit to ATV use, only on marked ATV trails. You may use conventional vehicles on the Farm Unit from March 1 to November 14. You may only use ATVs from November 15 to February 28 for access beyond Parking Areas.

20. We prohibit entry into or hunting in waterfowl sanctuaries from November 15 through February 28.

21. You must adhere to all public use special conditions and regulations on the annual hunt brochure/permit.

22. We prohibit airboats, hovercraft, and personal watercraft (Jet Ski, *etc.*).

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, beaver, muskrat, nutria, armadillo, coyote, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following special conditions:

1. Conditions A1, A5, A11, A15, A17 (for upland game hunting, one adult may supervise no more than two youth hunters), A18, A19, A21, and A22 apply.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. We allow fall squirrel hunting in accordance with the State season on the Mingo Creek Unit and on the Farm Unit, except for season closure on the Farm Unit during the Gun Deer Hunt. We prohibit dogs, except for the period of January 15 through February 28. We do not open for the spring squirrel season.

4. We allow rabbit hunting in accordance with the State season on the Mingo Creek Unit and on the Farm Unit, except for season closure on the Farm Unit during the Gun Deer Hunt. We prohibit dogs, except for the period of January 15 through February 28.

5. We allow quail hunting in accordance with the State season except for season closure on the Farm Unit only during the Gun Deer Hunt. We allow dogs.

6. We allow hunting of raccoon and opossum with dogs beginning in November and continuing for up to a 3-week period. We list annual season dates in the refuge hunting brochure/permit. We prohibit pleasure running or training of dogs.

7. We prohibit the use of horses.

8. You may take beaver, muskrat, nutria, armadillo, feral hog, and coyote during any refuge hunt with the weapon allowed for that hunt.

9. We prohibit entry into or hunting in refuge waterfowl sanctuaries from November 15 to February 28.

10. We prohibit hunting from roads except by waterfowl hunters.

11. You may leave boats with the owner's name and address or valid registration permanently displayed on the refuge from March 1 through October 31.

12. We prohibit hunting from a vehicle.

13. We only allow rifles chambered for rimfire cartridges.

*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A5, A11, A15, A18, A19, A21, A22, and B8, B11, and B12 apply.

2. We divide the refuge into two hunting units: Farm Unit and Mingo Creek Unit.

3. The archery/crossbow hunting season for deer begins on the opening day of the State season and continues throughout the State season in the Mingo Creek Unit and Farm Unit except for the season closure on the Farm Unit during the Gun Deer Hunt. We provide annual season dates and bag limits on the hunt brochure/permit.

4. Muzzleloader hunting season for deer will begin in October and will continue for a period of up to 9 days in all hunting units with annual season dates and bag limits provided on the hunt brochure/permit.

5. The Gun Deer Hunt will begin in November and continue for a period of up to 9 days on the Farm Unit with annual season dates and bag limits provided on the hunt brochure/permit. We close the Mingo Creek Unit.

6. The fall archery/crossbow hunting season for turkey will begin on the opening day of the State season and continue throughout the State season on the Mingo Creek Unit only.

7. We prohibit spring and fall gun hunting for turkey.

8. Immediately record the zone 002 on your hunting license and later at an official check station for all deer and turkey harvested on the refuge.

9. You may only possess shotguns with rifled slugs, muzzleloaders, and legal pistols during the modern Gun Deer Hunt.

10. You may only use single-person portable deer stands.

11. We prohibit hunting from a vehicle or use of a vehicle as a deer stand.

12. You must permanently affix the owner's name and address to all deer stands on the refuge.

13. You must remove all deer stands from the Waterfowl Sanctuaries by November 14, except for stands used by Gun Deer Hunt permit holders who must remove their stands by the last day

of the gun hunt. You must remove all stands from the rest of the refuge by the last day of the archery season (*see* § 27.93 of this chapter).

14. We prohibit the use of dogs.

15. We prohibit the possession of buckshot on all refuge lands.

16. We prohibit hunting from a mowed and/or graveled road right-of-way.

17. Refuge lands are located in State flood zone B, and we will close them to all deer hunting when the White River gauge at Augusta reaches 31 feet (9.3 m), as reported by the National Weather Service in the *Arkansas Democrat Gazette,* and reopen them when the same gauge reading in this newspaper falls to or below 19 feet (5.7 m).

18. We only allow Gun Deer Hunt permit holders on the Farm Unit during the Gun Deer Hunt.

19. We close Waterfowl Sanctuaries to all entry and hunting from November 15 to February 28, except for Gun Deer Hunt permit holders, who may hunt the sanctuary when the season overlaps with these dates.

20. An adult not less than age 21 must supervise and remain within sight and normal voice contact of hunters age 15 and under. For big game hunting, one adult may only supervise one youth.

*D. Sport Fishing.* We allow fishing and frogging in accordance with State regulations subject to the following conditions:

1. Conditions A5, A19, A21, and A22 apply.

2. We close waterfowl sanctuaries to all entry and fishing/frogging from November 15 to February 28. We also close the Farm Unit to all entry and fishing during the Gun Deer Hunt.

3. You may leave boats with the owner's name and address permanently displayed or valid registration on the refuge from March 1 to October 31. We prohibit use of boats from 12 p.m. (midnight) to 5 a.m. during duck season.

4. We prohibit commercial fishing.

5. We limit nighttime use to anglers fishing/frogging with fishing and/or frogging tackle only.

6. We prohibit mooring houseboats to the refuge bank on the Red River.

**Big Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, raccoon, nutria, coyote, beaver, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge hunt permits. The permits are nontransferable and anyone on refuge land in possession of hunting equipment must sign and carry the permit at all times.

2. We prohibit firearms (*see* § 27.42 of this chapter) on the refuge, except during refuge squirrel, rabbit, and raccoon seasons. We provide annual season dates in the refuge hunting brochure/permit.

3. You may take nutria, beaver, and coyote during any refuge hunt with the firearm allowed for that hunt, subject to State seasons.

4. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. For small game hunts, one adult may supervise no more than two youth hunters.

5. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

6. You may take opossum during a raccoon hunt.

7. We prohibit dogs except for raccoon hunting. We prohibit pleasure running or training of dogs (*see* § 26.21(b) of this chapter).

8. You may only possess shotguns with approved nontoxic shot (*see* § 32.2(k)) and rifles firing .22 caliber rimfire ammunition.

9. You must unload and case firearms (*see* § 27.42(b) of this chapter) while in a vehicle, on any refuge road, parking area, or boat ramp.

10. We prohibit firearms south of Highway 18 and at the Brights Landing boat access.

11. We prohibit boats from November 1 through February 28, except on that portion of the refuge open for public fishing with electric motors and Ditch 28.

12. We prohibit hunting from mowed or gravel roads.

13. We prohibit ATVs (*see* § 27.31(f) of this chapter).

14. You must adhere to all public use special conditions and regulations on the annual hunt brochure/permit.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1, and B11 through B14 apply.

2. We allow archery/crossbow hunting for white-tailed deer. We provide annual season dates in the hunt brochure/permit.

3. Hunters may only possess long, recurve, compound, or crossbows. We prohibit possession of firearms (*see* § 27.42 of this chapter) by archery/crossbow hunters.

4. We prohibit dogs.

5. We prohibit possession of or marking trails with materials other than biodegradable paper/flagging or reflective tape/tacks.

6. Upon harvest of deer, hunters must immediately record the deer zone 030 on their license and later on official check station records.

7. Hunters must check out (check harvested deer) at the Hunter Information Station.

8. We only allow portable tree stands, and you must remove them daily (*see* § 27.93 of this chapter).

9. We prohibit driving metal or other objects into trees or hunting from trees in which objects have been driven (*see* § 32.2(i)).

10. We prohibit cutting, pruning, or trimming vegetation (*see* § 27.51 of this chapter).

11. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

12. Hunters may enter the refuge no earlier than 1 hour before legal shooting time and depart no later than 1 hour after legal shooting time.

13. An adult age 21 or older must supervise and remain within sight and normal voice contact of hunters age 15 and under. For big game hunts, one adult may supervise no more than 1 youth.

*D. Sport Fishing.* * * *

1. We prohibit the use of limb lines and jug fishing.

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5. We prohibit ATVs, airboats, personal watercraft, Jet Skis, and hovercraft (*see* § 27.31(f) of this chapter).

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8. We prohibit possessing turtles (*see* § 27.21 of this chapter).

**Cache River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, snipe, woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge hunting permits. These permits are nontransferable, and anyone on the refuge in possession of hunting equipment must sign and carry the permit at all times.

2. We allow hunting of duck, goose, and coot daily until 12 p.m. (noon) throughout the State seasons, except for refugewide season closures during Gun Deer Hunt and the exception provided in A3.

3. We allow hunting for goose from ½ hour before legal sunrise to legal sunset after the close of duck season in January for the remainder of the State goose season(s) and Snow, Blue and Ross' Goose Conservation Order.

4. We allow hunting for dove, snipe, and woodcock when their seasons correspond with duck and/or goose seasons.

5. No person, including but not limited to, a guide, guide service, outfitter, club, or other organization, will provide assistance, services, or equipment on the refuge to any other person for compensation unless such guide, guide service, outfitter, club, or organization has obtained a Special Use Permit from the refuge. For the purposes of this regulation, we will consider any fees or services rendered to a person for lodging, meals, club membership or similar services as compensation.

6. We prohibit hunting, taking, possessing, or attempting to take wildlife with a guide, guide service, outfitter, club, or organization providing assistance, service, or equipment who does not possess and carry the required refuge Special Use Permit.

7. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

8. You must remove decoys, blinds, boats, and all other equipment (*see* § 27.93 of this chapter) daily by 2 p.m.

9. Waterfowl hunters may enter the refuge parking areas at 4:45 a.m. and access the refuge at 5 a.m.

10. We prohibit boats on the refuge from 12 a.m. (midnight) to 5 a.m. during duck season.

11. We prohibit possession of or marking trails with materials other than biodegradable paper, flagging, or reflective tape/tacks.

12. We prohibit building, or hunting from, permanent blinds.

13. We prohibit cutting of holes or other manipulation of vegetation (*e.g.*, cutting bushes, mowing, weed-eating, herbicide use, and other actions) or hunting from manipulated areas (*see* § 27.51 of this chapter).

14. We allow retriever dogs.

15. You must unload firearms when carried in/on land vehicles or boats under power (*see* § 27.42(b) of this chapter).

16. We allow waterfowl hunting on flooded roads.

17. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. For migratory bird hunting, one adult may supervise no more than two youth hunters.

18. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

19. We prohibit ATVs except on established roads used by conventional vehicles on refuge lands south of Highway 38. We prohibit driving around a locked gate, barrier, or beyond a sign closing a road to vehicular traffic. We only allow vehicle use on established roads (*see* § 27.31 of this chapter).

20. We prohibit entry into or hunting in Waterfowl Sanctuaries from November 15 through February 28.

21. You must adhere to all public use special conditions and regulations on the annual hunt brochure/permit.

22. We close all other hunts during the Gun Deer Hunt. We only allow Gun Deer Hunt permit holders on the refuge during this hunt.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, beaver, muskrat, nutria, armadillo, coyote, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A5, A6, A7, A11, A15, A17 (for small game hunts, the adult may supervise no more than two youth hunters), and A18 through A21 apply.

2. Fall squirrel season corresponds with the State season on all refuge hunt units except for refugewide season closure during the Gun Deer Hunt. We prohibit dogs except during the period January 15 through February 28. We do not open for the spring squirrel season.

3. Rabbit season corresponds with the State season on all refuge hunt units except for refugewide season closure during the Gun Deer Hunt. We prohibit dogs except during the period January 15 through February 28.

4. Quail season corresponds with the State season on all refuge hunt units except for refugewide season closure during the Gun Deer Hunt. We allow dogs.

5. We allow hunting of raccoon and opossum with dogs on all refuge hunt units. We provide annual season dates in the refuge hunting brochure/permit. We prohibit pleasure running or training of dogs.

6. We allow the use of horses for raccoon and opossum hunters in refuge Hunt Unit I. We prohibit horse use in other refuge hunt units or by other refuge hunters or visitors.

7. You may take beaver, muskrat, nutria, armadillo, feral hog, and coyote during any refuge hunt with the firearm allowed for that hunt.

8. We prohibit hunting from mowed and/or graveled roads except by waterfowl hunters during flooded conditions.

9. You may leave boats with the owner's name and address or valid registration permanently displayed on the refuge from March 1 through October 31. We prohibit boats on the refuge from 12 a.m. (midnight) until 5 a.m. during the duck season.

10. We prohibit hunting from a vehicle.

11. We only allow rifles chambered for rimfire cartridges.

12. We close all other hunts during the Gun Deer Hunt. We only allow Gun Deer Hunt permit holders on the refuge during this hunt.

*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A5, A6, A11, A15, A18 through A21, B9, and B10 apply.

2. We divide the refuge into the following three hunting units: Unit I—refuge lands between Highway 79 and Interstate 40; Unit II—all refuge lands east of Highway 33 between Interstate 40 and Highway 18 at Grubbs, Arkansas; Unit III—all refuge lands west of Highway 33, from Interstate 40 to Highway 64.

3. Archery/crossbow hunting season for deer begins on the opening day of the State season and continues throughout the State season in all refuge hunting units except for refugewide season closure during the Gun Deer Hunt. We provide annual season dates and bag limits on the hunt brochure/permit.

4. Muzzleloader hunting season for deer will begin in October and will continue for a period of up to 9 days in all hunting units with annual season dates and bag limits provided on the hunt brochure/permit.

5. The Gun Deer Hunt will begin in November and continue for a period of up to 9 days in all hunting units with annual season dates and bag limits provided on the hunt brochure/permit.

6. The fall archery/crossbow hunting season for turkey will begin on the opening day of the State season and continue throughout the State season in Hunt Units I, III, and Unit II lands within the fall State archery/crossbow turkey zone except for refugewide season closure during the Gun Deer Hunt. We close Unit II lands outside the fall archery/crossbow turkey zone. We do not open for fall gun hunting for turkeys.

7. The spring gun hunt for turkey will begin on the opening day of the State season and continue throughout the State season in Hunt Units I and III. We close Unit II lands with the exception of those refuge lands included in the combined Black Swamp Wildlife Management Area/Cache River National Wildlife Refuge quota permit hunts administered by the State.

8. Immediately record the zone 095 on your hunting license and later at an official check station for all deer and turkey harvested on the refuge.

9. You may only possess shotguns with rifled slugs, muzzleloaders, and legal pistols during the modern Gun Deer Hunt on the Dixie Farm Unit Waterfowl Sanctuary, adjacent waterfowl hunt area, and the Plunkett Farm Unit Waterfowl Sanctuary.

10. We only allow portable deer stands capable of being carried by a single individual.

11. We prohibit hunting from a vehicle or use of a vehicle as a deer stand.

12. You must permanently affix the owner's name and address to all deer stands on the refuge.

13. You must remove all deer stands from the waterfowl sanctuaries by November 14 and from the rest of the refuge by the last day of archery season (*see* § 27.93 of this chapter).

14. We prohibit the use of dogs.

15. We prohibit the possession of buckshot on all refuge lands.

16. We prohibit hunting from a mowed and/or graveled road right-of-way.

17. We will close refuge lands located in State-designated Flood Prone Region B and reopen them to all deer hunting in accordance with State-established gauge readings, when the *Arkansas Democrat Gazette* posts these gauge readings.

18. We will close refuge lands located in State-designated Flood Prone Region C to all deer hunting when the Cache River gauge at Patterson reaches 10 feet (3 m), as reported by the National Weather Service in the *Arkansas Democrat Gazette*, and reopen them when the same gauge reading in this newspaper falls to or below 8.5 feet (2.6 m).

19. We will close refuge lands located in Flood Prone Region D to all deer hunting when the White River gauge at Clarendon reaches 28 feet (8.4 m), as reported by the National Weather Service in the *Arkansas Democrat Gazette*, and reopen them when the same gauge reading in this newspaper falls to or below 27 feet (8.1 m).

20. We close all other hunts during the Gun Deer Hunt. We only allow Gun Deer Hunt permit holders on the refuge during this hunt.

21. An adult not less than age 21 must supervise and remain within sight and normal voice contact of hunters age 15 and under. For big game hunting, one adult may only supervise one youth.

*D. Sport Fishing.* We allow fishing and frogging in accordance with State regulations subject to the following conditions:

1. We close waterfowl sanctuaries to all entrance and fishing/frogging from November 15 to February 28. We prohibit refugewide entry and fishing during the Gun Deer Hunt.

2. Conditions A19, A21, B9, and B10 apply.

3. We require a Special Use Permit for all commercial fishing activities on the refuge.

4. We prohibit hovercraft, personal watercraft (Jet Skis, etc.), and airboats.

**Felsenthal National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of duck, goose, and coot during the State duck season except during scheduled quota refuge Gun Deer Hunts. We allow hunting of woodcock during the State season. Dates for quota deer hunts are typically in November, and we publish them annually in the refuge hunt brochure.

2. Hunting of duck, goose, and coot ends at 12 p.m. (noon) each day.

3. We only allow portable blinds. You must remove all duck hunting equipment (portable blinds, boats, guns, and decoys) (*see* § 27.93 of this chapter) from the hunt area by 1:30 p.m. each day.

4. You may only possess approved nontoxic shells (see § 32.2(k)) in quantities of 25 or less each day during waterfowl season; hunters may not discharge more than 25 shells per day.

5. We close areas of the refuge posted with "Area Closed" signs and identify them on the refuge hunt brochure map as a Waterfowl Sanctuary and closed to all public entry and public use during waterfowl hunting season. Exception: we open the Waterfowl Sanctuary to all authorized activities during the September teal season.

6. No person will utilize the services of a guide, guide service, outfitter, club, organization, or other person who provides equipment, services, or assistance on Refuge System lands for compensation unless the guide, guide services, outfitter, club, organization, or person has obtained a Special Use Permit from the refuge. It is the responsibility of the hunter to verify that the guide has the required Special Use Permit; failure to comply with this provision subjects each hunter in the party to a fine if convicted of this violation.

7. You must possess and carry a refuge hunt brochure permit. These hunt brochure permits are available in unlimited qualitites at the refuge office, brochure dispensers at multiple locations throughout the refuge, and at area businesses.

8. We prohibit possession and/or use of herbicides.

9. We prohibit marking trails with tape, ribbon, paint, or any other substance other than biodegradable materials.

10. We prohibit possession or use of alcoholic beverages while hunting. We prohibit consumption of alcohol in parking lots, on roadways, and in plain view in campgrounds (*see* § 32.2(j)).

11. All persons born after 1968 must posses a valid hunter education card in order to hunt.

12. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

13. We only allow ATVs for wildlife-dependent activities such as hunting and fishing. We restrict ATVs to designated times and designated trails (*see* § 27.31 of this chapter) marked with signs and paint. We identify these trails and the dates they are open for use in the refuge hunt brochure. You may use horses on roads and ATV trails (when open to motor vehicle use) as a mode of transportation on the refuge for wildlife-dependent activities.

14. We prohibit hunting within 150 feet (45 m) of roads and trails (*see* § 27.31 of this chapter) open to motor vehicle use (including ATV trails).

15. We prohibit target practice with any weapon or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

16. We only allow camping at designated primitive campground sites identified in the refuge hunt brochure, and we restrict camping to individuals involved in wildlife-dependent refuge activities. Campers may stay no more than 14 days during any 30 consecutive-day period in any campground and must occupy camps daily. We prohibit all disturbances, including use of generators, after 10 p.m. You must unload all weapons (*see* § 26.42(b) of this chapter) within 100 yards (90 m) of a campground.

17. You may take beaver, nutria, feral hog, and coyote during any daytime refuge hunt with weapons and ammunition allowed for that hunt. There is no bag limit. You may not transport live hogs.

18. We prohibit blocking of gates and roadways (*see* § 27.31(h) of this chapter).

19. We allow the use of retriever dogs.

20. We require you to unload and case any firearms (*see* § 27.42(b) of this chapter) transported in any land vehicle, boat under power, or on horses. We define "loaded'' as any shells in the gun or cap on a muzzleloader.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, nutria, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4 through A18 and A20 apply.

2. We allow hunting on the refuge during State seasons for this zone through January 31. We list specific hunting season dates annually in the refuge hunt brochure. We close hunting during refuge quota deer hunts. We annually publish dates for these quota deer hunts in the refuge hunt brochure.

3. We do not open for spring squirrel hunting season and summer/early fall raccoon hunting season on the refuge.

4. We prohibit possession of lead ammunition except that you may use rimfire rifle lead ammunition no larger than .22 caliber for upland game hunting. We prohibit possession of shot larger than that legal for waterfowl hunting.

5. You may use dogs for squirrel and rabbit hunting from December 1 through January 31. You may also use dogs for quail hunting and for raccoon/opossum hunting during open season on the refuge for these species. At other times, you must keep dogs and other pets on a leash or confine them (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A6, A8 through A11, and A13 through A18 and A20 apply.

2. We allow archery deer hunting on the refuge from the opening of the State season for this deer management zone through January 31.

3. You must possess and carry a refuge hunt brochure permit to archery deer hunt, and multiple copies of these brochures are available at the refuge office, in brochure dispensers located at entrances throughout the refuge, and at many area businesses.

4. We close archery deer hunting during the quota deer hunts.

5. The refuge will conduct only one 2-day quota permit for the muzzleloader deer hunt (typically in October) and only two 2-day quota permits for the Gun Deer Hunts (typically in November).

6. We restrict hunt participants for quota hunts to those drawn for a quota permit. The permits are nontransferable. Hunt dates and application procedures will be available at the refuge office in July.

7. The quota muzzleloader and Gun Deer Hunt bag limit is one deer, either sex, on each hunt.

8. You must check all harvested deer during quota hunts at refuge deer check stations on the same day of the kill. We identify the check station locations in the refuge hunt brochure. Carcasses of deer taken must remain intact (except you may field dress) until checked.

9. You may only use portable deer stands. You may erect stands 2 days before each hunt, but you must remove them within 2 days after each hunt (*see* § 27.93 of this chapter).

10. We prohibit horses and mules during refuge quota deer hunts.

11. We open spring archery turkey hunting during the State spring turkey season for this zone. We do not open for fall archery turkey season.

12. We close spring archery turkey hunting during scheduled turkey quota gun hunts.

13. The refuge will conduct one 2-day, youth-only (age 15 and under at the beginning of the spring turkey season) quota spring turkey hunt and two 3-day quota spring turkey hunts (typically in April). Specific hunt dates and application procedures will be available at the refuge office in January. We restrict hunt participants to those selected for a quota permit, except that one nonhunting adult age 21 or older must accompany the youth hunter during the youth hunt.

14. An adult age 21 or older must accompany and be within sight or normal voice contact of hunters age 15 and under. One adult may supervise no more than one youth hunter.

*D. Sport Fishing.* We allow fishing, frogging, and the taking of crawfish for personal use on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A6, A8, A9, A13, A16, and A18 apply.

2. We prohibit fishing in the waterfowl sanctuary area during the waterfowl hunting season, with the exception of the main channel of the Ouachita River and the borrow pits along Highway 82. We post the Waterfowl Sanctuary area with "Area Closed'' signs and identify those areas in refuge hunt brochures.

3. You must reset trotlines when receding water levels expose them.

4. We prohibit consumption of alcoholic beverages in parking lots, on roadways, and in plain view in campgrounds (*see* § 32.2(j)).

**Holla Bend National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, beaver, armadillo, coyote, and bobcat on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge hunting permits. The permits are nontransferable, and anyone on refuge land in possession of hunting equipment must sign, possess, and carry the permits at all times.

2. You may only take all upland game mentioned above during the refuge archery season.

3. We allow gun hunting of raccoon and opossum with dogs every Thursday, Friday, and Saturday until legal sunrise during the month of February. We prohibit pleasure running or training of dogs (*see* § 26.21(b) of this chapter).

4. You must unload and case firearms (*see* § 27.42(b) of this chapter) when traveling in vehicles on refuge roads.

5. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42(a) of this chapter).

6. We prohibit possession or use of alcoholic beverages (*see* § 32.2(j)).

7. We only allow ATVs for disabled hunters with a refuge ATV permit.

8. We prohibit the use of horses.

9. We prohibit hunting from a vehicle.

10. We only allow vehicle use on established roads and trails (*see* § 27.31 of this chapter).

*C. Big Game Hunting.* We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 and B4 through B11 apply.

2. Archery/crossbow season for deer and turkey begins October 1 and continues through November 30.

3. Spring archery/crossbow season for turkey has the same dates as the State season.

4. The firearms spring youth hunt for turkey is the same as the State. We restrict hunting to youths under age 16. One adult age 18 or older must accompany one youth hunter. We must receive applications for hunts by the last day of February.

5. We only allow portable deer stands. You may erect stands 2 days before the start of the season and must remove the stands from the refuge within 2 days after the season ends (*see* § 27.93 of this chapter).

6. You must permanently affix the owner's name and address to all deer stands on the refuge.

7. We prohibit the use of dogs.

8. We prohibit marking trees or trails with plastic or paint.

9. We prohibit hunting from paved, graveled, and mowed roads and mowed trails (*see* § 27.31 of this chapter).

10. We prohibit hunting with the aid of bait, salt, or ingestible attractant (*see* § 32.2(h)).

11. We prohibit all forms of organized drives.

12. You must check all game at the refuge check station.

*D. Sport Fishing.* We allow sport fishing in accordance with State regulations subject to the following conditions:

1. Conditions B6, B7, B8, B10, and B11 apply.

2. Waters of the refuge are only open for fishing March 1 through October 31 during daylight hours.

3. We do not require a permit to fish but do require an entrance pass to the refuge.

4. We limit free-floating fishing devices, trotlines, and tree limb devices to 20 per person. Each device must have the angler's name and address.

5. You must reset trotlines and limb lines when receding water levels expose them.

6. We prohibit leaving trotlines and other self-fishing devices overnight or unattended.

7. We only allow bow fishing during daylight hours during August.

8. We prohibit commercial fishing.

9. We prohibit possessing turtles (*see* § 27.21 of this chapter).

10. We prohibit hovercraft, personal watercraft (Jet Skis, etc.), and airboats.

**Overflow National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of duck, goose, and coot during the State duck season. We do not open during the September teal season. We allow hunting of woodcock during the State season.

2. Hunting of duck, goose, and coot ends at 12 p.m. (noon) each day.

3. We only allow portable blinds. You must remove portable blinds, boats, and decoys from the hunt area each day (*see* § 27.93 of this chapter).

4. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less per day during waterfowl hunting season; hunters may not discharge more than 25 shells per day.

5. We close areas of the refuge by posting "Area Closed'' signs and/or marking with purple paint and identifing on the refuge hunt brochure map as Sanctuary to all public entry and public use. Exception: we open the area identified as North Sanctuary on refuge hunt brochure map to all authorized public use activities from 2 days prior to opening of deer archery season through October 31.

6. No person will utilize the services of a guide, guide service, outfitter, club, organization, or other person who provides equipment, services, or assistance on Refuge System lands for compensation unless the guide, guide services, outfitter, club, organization, or person has obtained a Special Use Permit for commercial activities from the refuge. It is the responsibility of the hunter to verify that the guide has the required Special Use Permit; failure to comply with this provision subjects each hunter in the party to a fine if convicted of this violation.

7. We require a refuge hunt brochure permit that is available in unlimited quantities at the refuge office, brochure dispensers at multiple locations throughout the refuge, and at area businesses. You must possess and carry a signed permit when hunting on the refuge.

8. We prohibit possession and/or use of herbicides (*see* § 27.51 of this chapter).

9. We prohibit marking of trails with tape, ribbon, paint, or any other substance other than biodegradable materials.

10. We prohibit possession or use of alcoholic beverages while hunting. We prohibit consumption of alcoholic beverages in parking areas and on roadways. (*see* § 32.2(j).)

11. All persons born after 1968 must possess and carry a valid hunter education card in order to hunt.

12. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

13. We only allow ATVs for wildlife-dependent activities such as hunting, and we restrict them to designated times and designated trails marked with signs and paint. We identify these trails and the dates they are open for use in the refuge hunt brochure. You may use horses on roads and designated ATV trails (when open to motor vehicle use) (*see* § 27.31 of this chapter) as a mode of transportation on the refuge and for wildlife-dependent activities. You may use ATVs on unmarked roads and levees in the North Sanctuary beginning 2 days prior to the opening of deer archery season through October 31.

14. We prohibit hunting within 150 feet (45 m) of roads and trails (*see* § 27.31 of this chapter) open to motor vehicle use (including ATV trails).

15. We prohibit target practice with any weapon or any nonhunting discharge of weapons (*see* § 27.42 of this chapter).

16. We prohibit blocking of gates and roadways (*see* § 27.31(h) of this chapter).

17. You may take beaver, nutria, feral hog, and coyote during any daytime refuge hunt with weapons and ammunition legal for that hunt. There is no bag limit. We prohibit transportation of live hogs.

18. We allow retriever dogs.

19. We require you to unload and case firearms (*see* § 27.42(b) of this chapter) transported in any land vehicle, boat under power, or on horses. We define "loaded'' as shells in the gun or cap on a muzzleloader.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, nutria, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4 through A17 and A19 apply.

2. We allow hunting during State seasons (*see* State regulations for the appropriate zone) for the species listed above through January 31. We list specific hunting season dates annually in the refuge hunt brochure.

3. We do not open for the spring squirrel season and summer/fall racoon hunting season.

4. We prohibit possession of lead ammunition except that you may use rimfire rifle lead ammunition no larger than .22 caliber for upland game hunting. We prohibit possession of shot larger than that legal for waterfowl hunting.

5. You may use dogs for squirrel and rabbit hunting January 1 through 31. You may also use dogs for quail hunting and for raccoon/opossum hunting during open season. At other times, you must keep dogs and other pets on a leash or confined (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery deer hunting on the refuge during the State season (*see* State regulations for appropriate zone) through January 31.

2. Conditions A5 through A11, A13 through A17, and A19 apply.

3. We allow muzzleloader deer hunting during the October State

muzzleloader season for this zone (*see* State regulations for appropriate zone).

4. Bag limit for the October muzzleloader deer hunt is one buck and one doe.

5. We only allow portable deer stands. You may erect stands 2 days before each hunt, but you must remove them within 2 days after each hunt (*see* § 27.93 of this chapter).

6. We prohibit horses and mules during the muzzleloader deer hunt.

7. We allow spring archery turkey hunting during the State spring turkey season. *see* State regulations for appropriate zones.

8. We do not open for the fall turkey archery season and spring turkey gun season.

9. We do not open for the gun deer season and December muzzleloader deer season.

10. An adult age 21 or older must accompany and be within sight and normal voice contact of hunters age 15 and under. One adult may supervise no more than one youth hunter.

*D. Sport Fishing.* [Reserved]

**Pond Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, coot, and goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of migratory game birds during the State duck seasons, except we close during scheduled quota refuge Gun Deer Hunts. Dates for quota deer hunts are typically in November, and we publish them annually in the refuge hunt brochure. We do not open for the September teal season.

2. Hunting ends at 12 p.m. (noon) each day.

3. We only allow portable blinds. You must remove portable blinds, boats, and decoys from the hunt area each day (*see* § 27.93 of this chapter).

4. No person will utilize the services of a guide, guide service, outfitter, club, organization, or other person who provides equipment, services, or assistance on Refuge System lands for compensation unless the guide, guide services, outfitter, club, organization, or person has obtained a Special Use Permit for commercial activities from the refuge. It is the responsibility of the hunter to verify that the guide has the required Special Use Permit; failure to comply with this provision subjects each hunter in the party to a fine if convicted of this violation.

5. We require a refuge hunt brochure permit; multiple copies of this permit are available at the refuge office, brochure dispensers at multiple locations throughout the refuge, and at area businesses. You must possess and carry a signed permit when hunting on the refuge.

6. We prohibit possession and/or use of herbicides (*see* § 27.51 of this chapter).

7. We prohibit marking trails with tape, ribbon, paint, or any other substance other than biodegradable materials.

8. We prohibit possession or use of alcoholic beverages while hunting (See § 32.2(j)). We prohibit consumption of alcoholic beverages in parking lots, on roadways, and in plain view in campgrounds.

9. All persons born after 1968 must possess a valid hunter education card in order to hunt.

10. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult may supervise no more than two youth hunters.

11. We only allow ATVs for wildlife-dependent activities such as hunting and fishing and restrict them to designated times and designated trails marked with signs and paint (*see* § 27.31 of this chapter). We identify these trails and the dates they are open for use in the refuge hunt brochure. You may use horses on roads and designated ATV trails (when open to motor vehicle use) (*see* § 27.31 of this chapter) as a mode of transportation on the refuge for wildlife-dependent activities.

12. We prohibit hunting within 150 feet (45 m) of roads and trails (*see* § 27.31 of this chapter) open to motor vehicle use (including ATV trails).

13. We prohibit target practice with any weapon or any nonhunting discharge of firearms (see § 27.42 of this chapter).

14. We only allow camping at designated primitive campground sites identified in the refuge hunt brochure. We restrict camping to the individuals involved in refuge wildlife-dependent activities. Campers may stay no more than 14 days during any consecutive 30-day period in a campground and must occupy the camps daily. We prohibit all disturbances, including use of generators, after 10 p.m. You must unload all weapons (*see* § 27.42(b) of this chapter) within 100 yards (90 m) of a campground.

15. You may take beaver, nutria, feral hog, and coyote during any daytime refuge hunt with weapons and ammunition allowed for that hunt. We prohibit the use of dogs. There is no bag limit. You may not transport live hogs.

16. We prohibit blocking of gates and roadways (*see* § 27.31(h) of this chapter).

17. We allow the use of retriever dogs.

18. You must unload and case firearms (*see* § 27.42(b) of this chapter) transported in any land vehicle, boat under power, or on horses. We define "loaded'' as shells in the gun or cap on a muzzleloader.

B. *Upland Game Hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, and beaver on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting during State seasons (*see* State regulations for appropriate zone) for the species listed above through January 31. We annually list specific hunting season dates and quota Gun Deer Hunt dates in the refuge hunt brochure. We close upland game hunting during refuge quota Gun Deer Hunts.

2. We do not open to spring squirrel season and summer/early fall racoon season.

3. Conditions A4 through A16 and A18 apply.

4. We prohibit possession of lead ammunition, except that you may use rimfire rifle lead ammunition no larger than .22 caliber for upland game hunting. We prohibit possession of shot larger than that legal for waterfowl hunting.

5. You may use dogs for squirrel and rabbit hunting December 1 through January 31. You may also use dogs for raccoon/opossum hunting during open season on the refuge for these species. At other times you must keep dogs and other pets on a leash or confined (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow archery deer hunting on the refuge from the opening of the State season through January 31 (see State regulations for appropriate zone).

2. Conditions A4, A5 (for archery deer and muzzle-loader deer hunts and spring archery turkey hunts), A6 through A9, A11 through A16, and A18 apply.

3. We close archery deer hunting during the quota Gun Deer Hunts.

4. We allow muzzleloader deer hunting during the October State muzzleloader season for this deer management zone. The bag limit for the October refuge muzzleloader hunt is one buck and one doe.

5. The refuge will conduct one 2-day quota Gun Deer Hunt (typically in November).

6. We restrict hunt participants for this quota Gun Deer Hunt to those drawn for a quota permit. Hunt dates and application procedures will be available at the refuge office in July. The permits are nontransferable.

7. The quota Gun Deer Hunt bag limit is one buck and one doe.

8. You must check all deer taken during the quota hunt at the refuge deer check station on the same day of kill. You must keep carcasses of deer taken intact (you may remove entrails) until checked.

9. We prohibit horses and mules during refuge muzzleloader and quota deer hunts.

10. We open spring archery turkey hunting during the State spring turkey season for this zone. The State bag limit for this turkey hunt applies. We do not open for fall archery turkey season.

11. We close spring archery turkey hunting during scheduled turkey quota permit gun hunts.

12. The refuge will conduct one 2-day, youth-only (age 15 and younger at the beginning of the spring turkey season) quota spring turkey hunt and one 3-day spring quota turkey hunt (typically in April). Specific hunt dates and application procedures will be available in January. We restrict hunt participants on these hunts to those drawn for a quota permit, except that during the youth hunt, a nonhunting adult age 21 or older must accompany the youth hunter.

13. We prohibit the use of buckshot for gun deer hunting.

14. You may only use portable deer stands erected 2 days before each hunt, but you must remove them within 2 days after each hunt (*see* § 27.93 of this chapter).

15. An adult age 21 or older must accompany and be within sight and normal voice contact of hunters age 15 and under. One adult may supervise no more than one youth hunter during big game hunts.

*D. Sport Fishing*. We allow fishing, frogging, and the taking of crawfish for personal use on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must reset trotlines when exposed by receding water levels.

2. Conditions A4, A6, A7, A11, A14, and A16 apply.

3. We prohibit consumption of alcoholic beverages in parking lots, on roadways, and in plain view in campgrounds (see § 32.2(j)).

**Wapanocca National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting*. We allow hunting of squirrel, rabbit, raccoon, nutria, beaver, coyote, feral hog, and opossum in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3, and A4 apply.

2. We allow shotguns using approved nontoxic shot (*see* § 32.2(k)) and .22 long-rifle caliber rifles. We prohibit possession of lead shot and .22 magnum caliber rifles.

3. We provide annual season dates for squirrel, rabbit, raccoon, and opossum hunting on the hunt brochure/permit.

4. You may take nutria, beaver, feral hog, and coyote during any refuge hunt with the firearm allowed for that hunt, subject to State seasons on these species.

5. We prohibit dogs except for raccoon hunting where we require them. We prohibit pleasure running or training of dogs.

6. We allow raccoon hunters to use horses/mules but prohibit their use by other refuge hunters and visitors.

7. We prohibit hunting from or within 50 yards (45 m) of graveled roads and within 150 yards (135 m) of refuge buildings.

*C. Big Game Hunting*. We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A4 and B4 apply.

* * * * *

3. We specify annual season dates, bag limits, and hunting methods on the annual hunting brochure/permit.

* * * * *

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing from March 15 through October 31 from ½ hour before legal sunrise to ½ hour after legal sunset.

2. We prohibit fishing in Big Creek and other ditches that flow through the refuge.

3. We prohibit the possession or use of live carp, shad, buffalo, or goldfish for bait.

4. We prohibit the possession or use of yo-yos, jugs, or other floating containers, drops or limb lines, trotlines, or commercial fishing tackle.

5. We prohibit fishing within 100 yards (90 m) of any refuge building.

6. We allow bank fishing but you must park vehicles in designated parking areas.

7. We prohibit the taking of frogs, mollusks, and turtles (*see* § 27.21 of this chapter).

8. You must use the public boat ramp off Highway 77 to launch boats into Wapanocca Lake.

9. You must remove all boats daily from the refuge (*see* § 27.93 of this chapter). We prohibit airboats, personal watercraft, and hovercraft.

**White River National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must sign, possess, and carry a refuge permit.

2. We allow duck hunting from legal sunrise until 12 p.m. (noon).

3. We allow retriever dogs.

4. You must remove blinds, blind material, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. each day.

5. North Unit waterfowl season and youth waterfowl hunts are concurrent with State season dates.

6. You may take coot, goose, and woodcock during the State season.

7. We restrict the South Unit waterfowl season to the Jack's Bay hunt area as indicated in the general user permit. It is open every Tuesday, Thursday, Saturday, and Sunday of the concurrent State season dates.

8. Waterfowl hunters may access the refuge no earlier than 4:30 a.m.

9. The following refuge users (age 16 or older) must sign and possess and carry a refuge general user permit and a refuge fee permit ($12.00): hunters, anglers, campers, and ATV users.

10. We prohibit boating December 1 through January 31 in the South Unit Waterfowl Hunt Area, except during designated waterfowl hunt days between 5 a.m. and 1 p.m.

11. We prohibit marking trails with materials other than biodegradable paper flagging or reflective tape/tacks.

12. We prohibit use and/or possession of alcoholic beverages while hunting (*see* § 32.2(j)).

13. We prohibit cutting of holes in or other manipulation of vegetation or hunting in such areas (*see* § 27.51 of this chapter).

14. We prohibit waterfowl hunting on Kansas Lake Area.

15. We prohibit loaded weapons in a vehicle or boat while under power (*see* § 27.42(b) of this chapter). We define "loaded'' as a muzzleloader containing a cap or any type of ignition device, cartridges, or shells in a magazine, or cartridges or shells in a chamber of a weapon.

16. We allow duck hunting on specific scattered tracts of land, in accordance with the North Unit regulations. Consult the refuge office for further information.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, beaver, coyote, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A10, A11, A12, and A14 apply.

2. You may hunt rabbit and squirrel on the North Unit during the concurrent State season dates until January 31.

3. We allow dogs for hunting of rabbit and squirrel December 1 through January 31 on the North Unit.

4. You may hunt rabbit and squirrel on the South Unit from the beginning of the concurrent State season through November 30.

5. We prohibit dogs on the South Unit for the purpose of squirrel or rabbit hunting.

6. You may only possess approved nontoxic shot when hunting upland game, except turkey (*see* § 32.2(k)). We allow the possession of lead shot for hunting turkey.

7. We close all upland game hunts during quota modern gun and quota muzzleloader deer hunts.

8. We allow spring squirrel hunting with the concurrent State spring season dates.

*C. Big Game Hunting.* We allow the hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A10, A11, A12, and A14 apply.

2. Archery deer and turkey seasons on the North Unit will begin with the concurrent State archery season and end January 31.

3. Archery deer and turkey seasons on the South Unit will begin with the concurrent State archery season and end November 30.

4. Modern gun quota deer season is the first 3 days of the State season for the North and South Units. We require a quota permit. You may take one deer of either sex.

5. The muzzleloader quota deer season is the first 3 days of the State season for the North and South units. We require a quota permit. You may take one deer of either sex.

6. We allow modern guns on the North Unit as per dates indicated in the general user brochure. We only allow take of one legal buck.

7. You may only hunt the North and South Unit by muzzleloader with a quota hunt permit. You may only take one deer of either sex. We list the season in the refuge hunt brochure/permit.

8. We allow muzzleloader guns on the North Unit for 6 consecutive days following the 3-day muzzleloader quota hunt.

9. State deer limits apply to archery hunting season except during the refuge muzzleloader and modern gun season.

10. We close all nonquota hunting during the quota deer hunts.

11. We do not open to the bear season on all refuge-owned lands, including those lands in Trusten Holder Wildlife Management Area.

12. If you harvest deer and turkey on the refuge, you must immediately record the zone 660 on your hunting license and later at an official check station.

13. We prohibit muzzleloader and modern gun deer hunting in the Kansas Lake Area after October 30 of each year.

14. We close refuge lands on the North Unit to all deer hunting and fall turkey hunting when the White River gauge reading at St. Charles reaches 23 feet (8.4 m), as reported by the National Weather Service in the *Arkansas Democrat Gazette,* and will reopen these lands when the same gauge reading in this newspaper falls to or below 21 feet (6.3 m).

15. We close refuge lands on the South Unit to all deer hunting and fall turkey hunting when the White River gauge reading at St. Charles reaches 23 feet (8.4 m) and the gauge at Lock and Dam #1 reaches 145 feet (43.5 m) simultaneously as reported by news release and will reopen these lands when the same gauge reading reaches 21 feet (6.3 m) and 143 feet (42.9 m), respectively, as reported by news release.

16. We restrict access and refuge use during quota hunts to quota permit holders. We require a quota permit for all use during quota deer hunts.

17. We prohibit hunting with the aid of bait, salt, or ingestible attractant (*see* § 32.2(h)).

18. We prohibit the use of dogs and/or horses other than specified in the general user permit.

19. We prohibit all forms of organized drives.

20. We prohibit firearm hunting from or across roadways, levees, and maintained utility rights-of-way for deer only.

21. We prohibit hunting from a tree in which a metal object has been driven to support a hunter.

22. We prohibit leaving a hunt stand after a hunt season.

23. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

24. We prohibit modern gun and muzzleloader deer hunting on Kansas Lake Area after October 30.

25. You may take beaver, nutria, and feral hog incidental to any daytime refuge hunt with weapons allowed for that hunt.

*D. Sport Fishing.* We allow fishing and frogging on desigated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A8 and A10 apply.

2. We allow fishing year-round in LaGrue, Essex, Prairie, Scrubgrass and Brooks Bayous, Big Island Chute, Moon and Belknap Lakes next to Arkansas Highway 1, Indian Bay, the Arkansas Post Canal and adjacent drainage ditches; those borrow ditches located adjacent to the west bank of that portion of the White River Levee north of the Arkansas Power and Light Company powerline right-of-way; and all refuge-owned waters located north of Arkansas Highway 1. We open all other refuge waters to sport fishing from March 1 through November 30 unless posted otherwise.

3. We require a refuge Special Use Permit to fish with any type tackle other than hook and line.

4. We allow frogging on all refuge-owned waters open for sport fishing as follows: we allow frogging on the South Unit from the beginning of the State season through November 30; we allow frogging on the North Unit for the entire State season.

5. We allow the use of bow and arrow for taking bullfrogs or fish by a refuge Special Use Permit.

6. We allow crawfishing.

7. We require a Special Use Permit for all commercial fishing and commercial turtling activities on the refuge in addition to compliance with State regulations governing commercial fishing and commercial turtling.

8. We allow commercial fishing and commercial turtling on the North Unit year-round.

9. We allow commercial fishing on the South Unit October 1 through November 30 and annually when the White River exceeds 23.5 feet (7 m) at the St. Charles, Arkansas gauge.

10. We prohibit take or possession of any freshwater mussels, and we do not open to mussel shelling.

11. You must reset trotlines when receding water levels expose them, and you cannot leave them unattended. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

10. Amend § 32.24 California, by:

a. Revising paragraphs A. and B. of "Colusa National Wildlife Refuge;''

b. Revising the introductory text of paragraph A., adding paragraphs A.10. and A.11., revising the introductory text of paragraph B., and adding paragraph B.8. of "Delevan National Wildlife Refuge;"

c. Revising "San Francisco Bay National Wildlife Refuge" to read "Don Edwards San Francisco Bay National Wildlife Refuge" and placing it in alphabetical order, and revising "Don Edwards San Francisco Bay National Wildlife Refuge;"

d. Revising paragraphs A.and D. of "Humboldt Bay National Wildlife Refuge;"

e. Revising paragraph A. of "Merced National Wildlife Refuge;"

f. Revising paragraphs A., B., and D. of "Modoc National Wildlife Refuge;"

g. Revising the introductory text of paragraph A., adding paragraphs A.10. and A.11., revising the introductory text of paragraph B., and adding paragraph B.8. of "Sacramento National Wildlife Refuge;"

h. Revising the introductory text of paragraph A., revising paragraph A.1., and adding paragraphs A.4. and A.5. of "Salinas River National Wildlife Refuge;"

i. Revising the introductory text of paragraphs A., revising paragraphs A.1., A.3., A.4., A.5., A.6., adding paragraph A.12, revising the introductory text of paragraph B., paragraphs B.1. and B.2., revising the introductory text of paragraph D., and revising paragraphs D.1. and D.2. of "San Luis National Wildlife Refuge;"

j. Revising paragraphs A. and B. of "San Pablo Bay National Wildlife Refuge;" and

k. Revising the introductory text of paragraph A., adding paragraphs A.7. and A.8., revising the introductory text of paragraph B., and adding paragraph B.7. of "Sutter National Wildlife Refuge."

**§ 32.24 California.**

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**Colusa National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

2. Each hunter may not possess more than 25 shells while in the field.

3. Access to the hunt area is by foot traffic only. We prohibit bicycles and other conveyances.

4. We prohibit building or maintaining fires (*see* § 27.95 of this chapter), except in portable gas stoves.

5. You may only enter or exit at designated locations (*see* § 27.31 of this chapter).

6. Vehicles may only stop at designated parking areas (*see* § 27.31 of this chapter). We prohibit the dropping of passengers or equipment or stopping between designated parking areas.

7. We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking area.

8. You must restrain dogs on a leash within all designated parking areas (*see* § 26.21(b) of this chapter).

*B. Upland Game Hunting.* We allow hunting of pheasant only in the free-roam areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A8 apply.

2. Mobility-impaired hunters should consult with the refuge manager for allowed conveyances.

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**Delevan National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

10. We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking area.

11. You must restrain dogs on a leash within all designated parking areas (*see* § 26.21(b) of this chapter).

*B. Upland Game Hunting.* We allow hunting of pheasant only in the free-roam areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

8. Conditions A10 and A11 apply.

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**Don Edwards San Francisco Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting in tidal areas, including salt marshes, sloughs, mudflats, and open waters of the San Francisco Bay. Unless posted in the field and/or noted below, we allow hunting by boat in all refuge tidal areas up to the mean high-water line. We close the following tidal areas to hunting and/or shooting:

i. Newark Slough to hunting and shooting from its source to Hetch-Hetchy Aqueduct, a distance of 3½ miles (5.6 km);

ii. Dumbarton Point Marsh to the Hetch-Hetchy Aqueduct (west side of Newark Slough); and

iii. The headwaters of Mallard Slough (Artesian Slough) in the vicinity of the Environmental Education Center to hunting, as designated by posted signs.

2. We allow hunting in the nine salt evaporation ponds listed below. These ponds are surrounded by levees and were formerly part of the San Francisco Bay. We have not opened any other ponds. You may access the salt ponds by pulling your boat across the levee from the Bay.

i. Ponds R–1 and R–2 in the Ravenswood Unit. These ponds are located on the west side of the Dumbarton Bridge between Ravenswood Slough and Highway 84. You may access these ponds by foot or bicycle from either of the two trailheads off Highway 84. We prohibit hunting within 300 feet (90 m) of Highway 84.

ii. Ponds M–1, M–2, M–3, M–4, M–5, M–6, and A–19 in the Mowry Slough Unit. These ponds are located on the east side of the Bay between Mowry Slough and Coyote Creek. You may only access the ponds by boat. You may land your boat at specific points on the Bay side of the levee as designated by refuge signs. We prohibit hunting within 300 feet (90 m) of the Union Pacific Railroad track.

3. We only allow walk-in hunting at the Ravenswood Unit northwest of the Dumbarton Bridge. You must only access all other areas by boat.

4. At the Ravenswood Unit only, we only allow portable blinds or construction of temporary blinds of natural materials that readily decompose. We prohibit collection of these natural materials from the refuge. You must remove portable blinds (*see* § 27.93 of this chapter) at the end of each day's hunt. Temporary blinds become available for general use on a first-come, first-served basis on subsequent days. We prohibit permanent blinds, pit blinds, or digging into the levees. We prohibit entry into closed areas of the refuge prior to hunting season in order to scout for hunting sites or to build blinds.

5. You must remove all decoys, boats, and other personal property from the refuge at the end of each day's hunt. You must remove all trash, including shotshell hulls, when leaving hunting areas (*see* §§ 27.93 and 27.94 of this chapter).

6. Hunters may enter closed areas of the refuge to retrieve downed birds, provided they leave all weapons in a legal hunting area. We encourage the

use of retriever dogs. You must keep your dog(s) under the immediate control of the handler at all times (*see* § 26.21(b) of this chapter).

7. We prohibit target practice on the refuge or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

8. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

9. You must keep firearms unloaded (*see* § 27.42(b) of this chapter) until you are within the designated hunt area.

*B. Upland Game Hunting*. [Reserved]

*C. Big Game Hunting*. [Reserved]

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing from land at the Coyote Creek Lagoon in Fremont, the Faber-Laumeister Unit in East Palo Alto, the Dumbarton Fishing Pier, and along the San Francisco Bay shoreline within ½ mile (0.8 km) of the Dumbarton Fishing Pier. We also allow fishing from boats in the Bay and major slough channels. We close Mallard Slough to boats from March 1 through August 31, and we close Mowry Slough from March 15 to June 15. We prohibit fishing in salt evaporation ponds or marshes.

2. We open fishing areas daily (except we close the Dumbarton Fishing Pier and adjacent shoreline on Thanksgiving, Christmas, and New Year's Day). We open the Dumbarton Fishing Pier from 7 a.m. to 6 p.m. November 1 through March 31 and 7 a.m. to 8 p.m. April 1 through October 31. We open Coyote Creek Lagoon and Faber-Laumeister Unit from legal sunrise to legal sunset.

3. We prohibit the collection of bait of any type from the refuge except from the Dumbarton Fishing Pier, where it is legal to collect bait for noncommercial purposes.

4. We prohibit the use of balloons to float hooks and bait farther than hand casting.

5. We prohibit personal watercraft (*e.g.*, Jet Skis, waterbikes) on the refuge.

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**Humboldt Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, common moorhen, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require adults age 18 or older to accompany youth hunters age 16 and under. No more than three youth hunters may accompany one adult hunter.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. We prohibit public access into or through closed areas and designate closed areas as nonretrieval zones.

4. You may only use portable blinds in the free-roam hunting areas (*i.e.*, all hunt areas except Salmon Creek Unit).

5. You must remove all blinds, decoys, shell casings, and other personal equipment and refuse from the refuge at the end of each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

6. We require hunters to restrain dogs inside vehicles except when using them for authorized hunting purposes (*see* § 26.21(b) of this chapter).

7. On the Salmon Creek Unit, we allow hunting on Tuesdays and Saturdays (except Federal holidays), and hunters must possess and carry a valid daily refuge permit. We issue refuge permits prior to each hunt by random drawing conducted at the check station 1½ hours before legal shooting time.

8. On the Salmon Creek Unit, you may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less per day.

9. On the Salmon Creek Unit, we restrict hunters to within 100 feet (30 meters) of the assigned hunt site except for placing and retrieving decoys, retrieving downed birds, or traveling to and from the parking area. You must unload firearms (*see* § 27.42(b) of this chapter) while transporting them between the parking lot and designated blind sites.

10. We open the waters of Hookton Slough (including Teal Island) and White Slough (including Egret Island) to hunting on Saturdays, Sundays, Wednesdays, Federal holidays, and the opening and closing day of the State waterfowl hunting season. We have not opened the portion of the Hookton Slough unit between the dike and Hookton Road to hunting and firearms. We have not opened the boat dock on the Hookton Slough Unit to hunting and firearms and restrict use to nonmotorized boats only.

11. We open the Table Bluff Unit (southwest corner of South Bay) to hunting.

12. We open portions of the Eureka Slough and Jacoby Creek Units to hunting. We designate the Eureka Slough and Jacoby Creek Units as boat access only. On the Eureka Slough and Jacoby Creek Units, we prohibit hunting within 100 yards (90 meters) of Highway 101.

* * * * *

*D. Sport Fishing*. We allow fishing on the refuge in accordance with State regulations subject to the following condition: We allow fishing from the designated shoreline trail and dock (for nonmotorized boats only) at the Hookton Slough Unit from legal sunrise to legal sunset, only using pole and line or rod and reel.

* * * * *

**Merced National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, and moorhen on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must unload firearms (*see* § 27.42(b) of this chapter) before transporting them between parking areas and blind sites. Unloaded means that no ammunition is in the chamber or magazine of the firearm.

2. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less per day after leaving the parking lot.

3. Each hunter must remain inside his or her assigned blind, except for placing decoys, retrieving downed birds, and traveling to and from the parking area. We prohibit shooting from outside the blind.

4. Dogs must remain under the immediate control of their owners at all times (*see* § 26.21(b) of this chapter).

* * * * *

**Modoc National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On the opening weekend of the hunting season, hunters must possess and carry a refuge permit issued through random drawing to hunters with advance reservations only.

2. After the opening weekend of the hunting season, we only allow hunting on Tuesdays, Thursdays, and Saturdays. Hunters must check-in and out of the refuge by using self-service permits. Hunters must completely fill out the "Refuge Hunt Permit'' portion of the permit and deposit it in the drop box prior to hunting. The hunter must possess and carry the "Record of Kill'' portion of the permit while on the refuge and turned in prior to exiting the hunting area.

3. In the designated spaced blind area, you must remain within 50 feet (15 m) of the established blind stake for the blind assigned to you.

4. We require adults age 18 or older to accompany youth hunters age 15 and under.

5. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in

quantities of 25 or less after leaving the parking area.

6. In the free-roam hunting areas, you may only use portable blinds or blinds constructed of vegetation.

7. You must remove all blinds, decoys, shell casings, other personal equipment, and refuse from the refuge at the end of each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

8. Hunters must enter and exit the hunting area from the two designated hunt parking lots, which we open 1½ hours before legal sunrise and close 1 hour after legal sunset each hunt day.

9. We only allow access to the hunt area by foot, bicycle, and nonmotorized cart. We prohibit bicycles in the hunt area during the opening weekend of the hunting season.

*B. Upland Game Hunting*. We allow hunting of pheasant on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We limit hunting to junior hunters only, age 15 or under, possessing a valid State Junior Hunting License and refuge Junior Pheasant Hunt Permit.

2. We require adults age 18 or older to accompany junior hunters.

3. You may only possess approved nontoxic shot while in the field (see § 32.2(k)).

4. Hunters must enter and exit the hunting area from the two designated hunt parking lots.

* * * * *

*D. Sport Fishing*. We allow fishing only on Dorris Reservoir in accordance with State regulations subject to the following conditions:

1. We prohibit fishing from October 1 through January 31.

2. We only allow fishing from legal sunrise to legal sunset.

3. We only allow walk-in access to Dorris Reservoir from February 1 through March 31.

4. We only allow use of boats on Dorris Reservoir from April 1 through September 30.

**Sacramento National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

10. We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking area.

11. You must restrain dogs on a leash within all designated parking areas (see § 26.21(b) of this chapter).

*B. Upland Game Hunting*. We allow hunting of pheasant only in the free-roam areas on the refuge in accordance with State regulations subject to the following conditions:

* * * * *

8. Conditions A10 and A11 apply.

* * * * *

**Salinas River National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, and moorhen on a hunt area along the Salinas River on the southeast portion of the refuge, as designated by posted signs, in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shotshells while on the refuge (*see* § 32.2(k)) in quantities of 25 or less.

* * * * *

4. We only allow dogs engaged in hunting activities on the refuge during the waterfowl season. Hunters must keep their dog(s) under their immediate control at all times (*see* § 26.21(b) of this chapter). We prohibit training of dogs on the refuge. We prohibit other domesticated animals or pets.

5. We prohibit target practice on the refuge or any nonhunting discharge of weapons (see § 27.42 of this chapter).

* * * * *

**San Luis National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only use portable blinds, temporary blinds constructed of natural materials, or existing concrete blinds. We prohibit cutting or breaking woody vegetation (*see* § 27.51 of this chapter).

* * * * *

3. You must dismantle any temporary blinds constructed of natural materials at the end of each day's hunt.

4. You may only hunt snipe within the free-roaming portion of the San Luis Unit waterfowl hunting area.

5. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less after leaving your assigned parking lot or boat launch.

6. We prohibit dropping of passengers or equipment or stopping between designated parking areas. You must return your permits to the check stations immediately upon completion of your hunt and prior to using any tour routes or leaving the refuge vicinity.

* * * * *

12. Dogs must remain under the immediate control of their owners at all times (see § 26.21(b) of this chapter).

*B. Upland Game Hunting*. We allow hunting of pheasants on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less while in the field.

2. Dogs must remain under the immediate control of their owners at all times (see § 26.21(b) of this chapter).

* * * * *

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset, except on that portion of the San Joaquin River's south (left descending) bank within the West Bear Creek Unit designated as open for fishing 24 hours per day.

2. We only allow the use of pole and line or rod and reel to take gamefish, and anglers must attend their equipment at all times.

* * * * *

**San Pablo Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Unless posted in the field and/or noted below, we only allow hunting in the open waters of San Pablo Bay and its navigable sloughs. We have not opened the following areas to hunting:

i. Lower Tubbs Island;

ii. Lower Tubbs Setback;

iii. Cullinan Ranch Unit; and

iii. Within 300 feet (90 m) of Highway 37.

2. You may only hunt from a boat or a floating blind. We prohibit walk-in hunting on the refuge.

3. You may only possess approved nontoxic shotshells (see § 32.2(k)) in quantities of 25 or less while in the field.

4. You must remove all decoys, boats, and other personal property from the refuge at the end of each day's hunt (*see* § 27.93 of this chapter). Hunters must remove all trash, including shotshell hulls, when leaving hunting areas (*see* § 27.94 of this chapter).

5. We allow temporary floating blinds on the refuge subject to refuge manager approval. We allow blind installation beginning on October 1, but hunters must remove blinds (*see* § 27.93 of this chapter) by February 1. Temporary floating blinds become available for general use on a first-come, first-served basis on subsequent days. We prohibit

entry to closed areas of the refuge prior to the hunting season in order to scout for hunting sites.

6. We only allow dogs engaged in hunting activities on the refuge during waterfowl season. We prohibit other domesticated animals or pets. Hunters must keep their dog(s) under their immediate control at all times (*see* § 26.21(b) of this chapter). We prohibit training of dogs on the refuge.

7. We prohibit digging into levees or slough channels.

8. We prohibit target practice on the refuge or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

9. We allow foot access through the refuge to the State's Tolay Creek Unit for waterfowl hunting. You must unload and either break down or case all shotguns (*see* § 27.42(b) of this chapter) while in transit through the refuge.

*B. Upland Game Hunting*. We allow hunting of pheasant only in areas of the Tolay Creek Unit designated by posted signs in accordance with State regulations subject to the following conditions:

1. You may only hunt on Wednesdays, Saturdays, and Sundays.

2. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less while in the field.

3. You may only access the Tolay Creek Unit by foot or bicycle.

4. We only allow dogs engaged in hunting activities on the refuge during pheasant season. We prohibit other domesticated animals or pets.

* * * * *

**Sutter National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, moorhen, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

7. We only allow overnight stays in vehicles, motor homes, and trailers at the check station parking area.

8. You must restrain dogs on a leash within all designated parking areas (*see* § 26.21(b) of this chapter).

*B. Upland Game Hunting*. We only allow hunting of pheasant in the free-roam areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

7. Conditions A7 and A8 apply.

* * * * *

11. Amend § 32.28 Florida by:

a. Revising "Arthur R. Marshall Loxahatchee National Wildlife Refuge;''

b. Revising "Cedar Keys National Wildlife Refuge;''

c. Revising "Hobe Sound National Wildlife Refuge;''

d. Revising paragraphs B., C., and D. of "Lower Suwannee National Wildlife Refuge;''

e. Revising paragraphs A. and D. of "Merritt Island National Wildlife Refuge;''

f. Revising "St. Marks National Wildlife Refuge;''

g. Revising paragraphs C. and D. of "St. Vincent National Wildlife Refuge;'' and

h. Revising "Ten Thousand Islands National Wildlife Refuge'' to read as follows:

**§ 32.28 Florida.**

* * * * *

**Arthur R. Marshall Loxahatchee National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge waterfowl hunt permit while hunting.

2. We allow hunting in the interior of the refuge south of latitude line 26.27.130. We have not opened to hunting from the perimeter canal or levee and those areas posted as closed.

3. The refuge open waterfowl season is concurrent with the State season. The refuge does not participate in any early experimental seasons. Hunters may only take duck and coot.

4. We do not open to hunting on Mondays, Tuesdays, and Christmas Day.

5. Refuge hunting hours are from ½ hour before legal sunset to 1 p.m. Hunters may enter the refuge no earlier than 5 a.m. and must be off the refuge by 3 p.m.

6. Hunters must only enter and leave the refuge at the Headquarters Area (Boynton Beach) and the Hillsboro Area (Boca Raton) (*see* § 27.31 of this chapter).

7. Hunters must unload and case or dismantle firearms (*see* § 27.42(b) of this chapter) when outside of hunting area and when en route to or from the hunting area. Hunters may only use no greater than .10 gauge shotguns. We prohibit all other firearms or weapons (*see* §§ 27.42 and 27.43 of this chapter).

8. We only allow temporary blinds of native vegetation. We prohibit the taking, removing, or destroying of refuge vegetation (*see* § 27.51 of this chapter).

9. Hunters must remove decoys and other personal property (*see* § 27.93 of this chapter) from the hunting area following each day's hunt.

10. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain under the immediate control of the owner at all times (*see* § 26.21(b) of this chapter). We prohibit pets at all other times.

11. A hunter must complete a daily bag report card and place it in an entrance fee canister after each day's hunt.

12. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. Youth hunters must have completed a hunter education course.

13. We only allow boats equipped with outboards or electric motors and nonmotorized boats. We prohibit airboats, Hovercraft, and personal watercraft (Go Devils, Jet Skis, jet boats, and Wave Runners). We recommend all boats operating within the hunt area fly a 12 inch by 12 inch (30 cm × 30 cm) orange flag, 10 feet (3 m) above the vessel's waterline.

14. We prohibit motorized vehicles of any type on the levees and undesignated routes (*see* § 27.31 of this chapter).

15. For emergencies or to report violations, contact law enforcement personnel at 561–936–4100.

*B. Upland Game Hunting*. [Reserved]

*C. Big Game Hunting*. [Reserved]

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset.

2. Special black bass regulations are in effect within the boundaries of the refuge. The daily creel limit is five black bass per person, per day, where only one bass may be over 14 inches (35 cm) in length.

3. We allow fishing south of a line of latitude of 26.27.130 and in the rim canal in the rest of the refuge. We prohibit fishing in Management Compartments A, B, and C, and those areas posted as closed to fishing or the public.

4. We only allow the use of rods and reels and poles and lines, and anglers must attend them at all times.

5. We prohibit commercial fishing and the taking of frogs, turtles, and other wildlife (*see* § 27.21 of this chapter).

6. We prohibit the possession or use of cast nets, seines, trot lines, jugs, gigs, and other fishing devices.

7. Anglers may only launch boats at the Headquarters Area (Boynton Beach), the Hillsboro Area (Boca Raton), and 20 Mile Bend (West Palm Beach).

8. We only allow boats equipped with outboards or electric motors and nonmotorized boats. We prohibit airboats, Hovercraft, personal watercraft (Go Devils, Jet Skis, jet boats, and Wave

Runners). We recommend that all boats operating within the hunt area fly a 12 inch by 12 inch (30 cm × 30 cm) orange flag, 10 feet (3 m) above the vessel's waterline.

9. We prohibit motorized vehicles of any type on the levees and undesignated routes (*see* § 27.31 of this chapter).

10. For emergencies or to report violations, contact law enforcement personnel at 561–936–4100. Law enforcement officers monitor VHF Channel 16.

**Cedar Keys National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. [Reserved]

*B. Upland Game Hunting*. [Reserved]

*C. Big Game Hunting*. [Reserved]

*D. Sport Fishing*. You may fish in salt water year-round in accordance with State regulations subject to the following condition: We will close a 300 foot (90 m) buffer zone beginning at mean high tide line and extending into the waters around Seahorse Key to all public entry from March 1 through June 30.

* * * * *

**Hobe Sound National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. [Reserved]

*B. Upland Game Hunting*. [Reserved]

*C. Big Game Hunting*. [Reserved]

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset.

2. We allow salt water fishing along the Atlantic Ocean and Indian River Lagoon year-round in accordance with State regulations.

3. We prohibit commercial fishing and the taking of frogs, turtles, and other wildlife (*see* § 27.21 of this chapter).

4. We prohibit motorized vehicles of any type on the fire roads, undesignated routes, and areas posted as closed (*see* § 27.31 of this chapter).

5. For emergencies or to report violations, contact law enforcement personnel at 561–936–4100.

Law enforcement officers monitor VHF Channel 16.

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**Lower Suwannee National Wildlife Refuge**

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*B. Upland Game Hunting*. We allow hunting of gray squirrel, armadillo, opossum, rabbit, raccoon, coyote, and beaver on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to possess and carry signed refuge hunt permits for all hunts.

2. We designate open and closed refuge hunting areas on the map in the refuge hunt permit that the hunter must possess and carry.

3. You must park vehicles in a manner that does not block roads or gates (*see* § 27.31(h) of this chapter).

4. We prohibit the use of ATVs (*see* § 27.31(f) of this chapter).

5. We prohibit horses.

6. We prohibit possession of a loaded firearm or bow and arrow (*see* § 27.42(b) of this chapter) while on a refuge road right-of-way designated for motorized vehicle travel or in any vehicle or boat. We define "loaded'' as shells in the chamber or magazine or percussion cap on a muzzleloader, or arrow notched in a bow.

7. We prohibit hunting from refuge roads open to public vehicle travel.

8. We prohibit construction of permanent blinds or stands.

9. In addition to State hunter education requirements, an adult (parent or guardian) age 21 or older must supervise and must remain within sight of and in normal voice contact of the youth hunter age 15 and under. Parents or adult guardians are responsible for ensuring that youth hunters do not engage in conduct that would constitute a violation of the refuge regulations. An adult can supervise no more than two youth hunters.

10. We prohibit all commercial activities, including guiding or participating in a guided hunt.

11. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

12. We prohibit marking any tree or other refuge feature with flagging, litter, paint, or blaze.

13. We allow marking trails with reflective markers, but you must remove the markers (*see* §§ 27.93 and 27.94 of this chapter) at the end of the refuge deer-hunting season.

14. Hunters utilizing the refuge are subject to inspection of licenses, permits, hunting equipment, bag limits, vehicles, and their contents, during compliance checks by refuge or State law enforcement officers.

15. Hunters must be at their vehicles by 1 hour after legal shooting time.

16. The refuge upland game hunting season opens on the Monday after the Florida State Central Management Zone general gun (antlered deer and wild hog) season closes, and it ends on February 28.

17. You may only possess .22 caliber rimfire (but not .22 magnum caliber) firearms (*see* § 27.42 of this chapter) or shotguns with shot no larger than #4 common.

18. We allow night hunting in accordance with State regulations for raccoon and opossum on Friday and Saturday nights from legal sunset until legal sunrise during the month of February.

*C. Big Game Hunting*. We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following conditions.

1. Conditions B1 through B15 apply.

2. We prohibit use of hunting and tracking dogs.

3. We require quota hunt permits (issued through a random draw) for the limited deer gun hunt and limited youth Gun Deer Hunt. They cost the participants selected $12.50.

4. Quota hunt permits are nontransferable.

5. Hunters may only use archery equipment, in accordance with State archery regulations, during the refuge archery season.

6. Hunters may only use muzzleloading firearms (*see* § 27.42 of this chapter), in accordance with State muzzleloader regulations, during the refuge muzzleloader season.

7. We prohibit hunting from a tree in which a metal object has been driven.

8. You may leave temporary tree stands on the refuge starting on the last weekend of August, but you must remove them by the last day of the general gun-hunting season (*see* § 27.93 of this chapter).

9. All hunters (including all persons accompanying hunters) must wear a minimum of 500 square inches (3,250 $cm^2$) of fluorescent orange visible above the waistline while hunting during all refuge deer gun hunts.

10. We prohibit the use of organized drives for taking or attempting to take game.

11. The refuge general gun season begins on the opening Saturday of the Florida State Central Management Zone General Gun season and ends on the following Friday. It reopens on the Monday after the refuge limited deer season and ends on the following Sunday. The refuge general gun season lasts 14 days.

12. The refuge limited either-sex deer hunt is on the second Saturday and Sunday of the State Central Management Zone General Gun season. This coincides with the opening of the State's either-sex hunt, deer-hunting season.

13. The youth limited Gun Deer Hunt is the Saturday and Sunday following

the close of the refuge general gun season.

14. During the limited youth hunt, an adult age 21 or older must accompany the youth hunter but only the youth hunter may hunt and handle the firearm.

15. We confine the limited youth hunt to the Levy County portion of the refuge, and hunters must access the refuge from Levy County Road 347.

16. We allow hunting of deer (except spotted fawns), feral hog (no size or bag limit), gray squirrel, rabbit, armadillo, opossum, raccoon, beaver, and coyote during the archery season.

17. Hunters may take deer with one or more antlers at least 5 inches (12.5 cm) in length visible above the hairline and feral hog (no bag or size limit) during the muzzleloader and general-gun season.

18. Hunters may take one legal deer of either sex and hog (no size or bag limit) during the limited deer gun hunt and limited youth Gun Deer Hunt.

19. We prohibit all other public entry or use of the hunting area during the limited gun and youth deer hunts. During the limited gun hunt, the Dixie Mainline road will remain open to all public vehicles, but we prohibit firearms except for permit holders.

20. Hunters must check all game harvested during the limited deer gun hunt and limited youth Gun Deer Hunt at a refuge check station.

21. You may only take turkey during the State spring turkey hunting season.

22. You may only take bearded turkeys during the spring turkey hunt.

23. Shooting hours for spring turkey begin ½ hour before legal sunrise and end at 1 p.m.

24. We only allow shotguns with shot no larger than size 2 common shot or bows for spring turkey hunting.

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. Anglers may only take game and nongame fish with pole and line or rod and reel.

2. We prohibit take of frogs and turtles (*see* § 27.21 of this chapter).

3. We prohibit leaving boats on the refuge overnight (*see* § 27.93 of this chapter).

4. We prohibit consumption of alcoholic beverages or possession of open alcohol containers in the public use areas of Shired Island boat launch/fishing and parking lot area and the Shell Mound fishing/recreational area (*see* § 32.2(j)).

**Merritt Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot in accordance with State regulations subject to the following conditions:

1. You must possess and carry a current signed refuge permit at all times while hunting on the refuge.

2. You must purchase and possess and carry a quota permit if you are hunting in areas 1 or 4 from the beginning of the regular season through December 31.

3. You may hunt Wednesdays, Saturdays, Sundays and the following holidays: Thanksgiving, Christmas, and New Year's Day within the State waterfowl season.

4. You may hunt in four designated areas of the refuge as delineated in the refuge hunting regulations map. Hunters may not enter the restricted areas of the Kennedy Space Center.

5. You may hunt from ½ hour before legal sunrise until 1 p.m.

6. You may enter no earlier than 4 a.m. for the purpose of hunting.

7. We require all hunters to successfully complete a State-approved hunter education course.

8. We require an adult, age 18 or older, to supervise hunters under the age 18.

9. We prohibit accessing a hunt area from Black Point Wildlife Drive, Playalinda Beach Road, or Scrub Ridge Trail (*see* § 27.31 of this chapter).

10. We prohibit construction of permanent blinds (*see* § 27.92 of this chapter) or digging into dikes.

11. We prohibit hunting or shooting from any portion of a dike, road, or railroad grade.

12. We prohibit hunting within 150 yards (135 m) of SR 402 or SR 406.

* * * * *

*D. Sport Fishing.* We allow you to fish, crab, clam, oyster, or shrimp in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a current, signed refuge permit at all times while on the refuge.

2. We allow fishing at night in the waters of Mosquito Lagoon, Indian River Lagoon, Banana River, and Haulover Canal.

3. We allow launching boats at night from the following refuge boat ramps: Bairs Cove, Beacon 42, and Bio Lab.

4. We prohibit crabbing or fishing from Black Point Wildlife Drive or any side road connected to Black Point Wildlife Drive except L Pond Road.

5. We prohibit launching boats, canoes, or kayaks from Black Point Wildlife Drive or any side road connected to Black Point Wildlife Drive except L Pond Road.

6. Anglers and crabbers must attend their lines.

7. We prohibit harvesting or possession of horseshoe crabs.

8. We prohibit use of personal watercraft, air thrust boats, and hovercraft.

9. Vessels must not exceed idle speed in Bairs Cove and KARS Marina or slow speed/minimum wake in Haulover Canal.

10. We prohibit motorized vessels in the Banana River within the posted "No-Motor Zone,'' including any vessel having an attached motor or a nonattached motor capable of use (including electric trolling motor).

11. We prohibit anglers entering the restricted areas of the Kennedy Space Center.

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**St. Marks National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits for hunting the Piney Island unit. Permits are available at no cost from the refuge office. Each hunter must possess and carry a signed hunt permit when using the hunt area.

2. You must remove blinds daily (*see* § 27.93 of this chapter).

3. Hunters may access the hunt area by boat.

4. We allow retriever dogs to recover game.

*B. Upland Game Hunting.* We allow hunting of grey squirrel, rabbit, raccoon, and feral hog in accordance with State regulations subject to the following conditions:

1. We require refuge permits for hunting upland game. Permits are available at no cost from the refuge office. Each hunter must possess and carry a signed permit while participating in a hunt.

2. Hunters must wear 500 square inches (3,250 $cm^2$) of fluorescent orange above the waistline.

3. You may use .22 caliber rim-fired rifles, shotguns with nontoxic shot (*see* § 32.2(k)), or muzzleloaders. You may use shotgun slugs, buckshot, or archery equipment to take feral hogs. We prohibit the use or possession of other weapons. You must unload all firearms for transport in vehicles (uncap muzzleloaders) (*see* § 27.42 of this chapter).

4. We prohibit dogs in the hunt area.

5. There is no limit on the size or number of feral hogs that hunters may take.

6. We allow hunting on designated areas of the refuge. Contact the refuge office for specific dates.

7. We prohibit hunting from any named or numbered road.

8. We prohibit cleaning of game within 1,000 feet (300 m) of any developed public recreation area, game check station, or gate.

9. The refuge is only open to daylight use.

10. You must check out all game taken at a game check station.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, feral hog, and bearded turkey in accordance with State regulations subject to the following conditions:

1. We require refuge permits, issued by lottery. Lottery applications are available at the refuge office each year beginning in July. There is a fee for permits. Permits are nontransferable. There is an additional fee for duplicate permits. Each hunter must possess and carry a signed permit when participating in a hunt.

2. Conditions B4, B5, B8, and B10 apply.

3. We prohibit hunting from any named or numbered road (with the exception of persons hunting in the mobility impaired hunt).

4. You may access the refuge hunt areas by vehicle for prehunt scouting 2 days prior to the hunt for which you are drawn. We prohibit weapons in the hunt area during the prehunt scouting (*see* § 27.42 of this chapter).

5. There is a two-deer limit per hunter as specified in C8 and C9 below. The limit for bearded turkey is one per day and two per hunt. There is no limit on feral hogs.

6. We prohibit the use of deer decoys.

7. We prohibit the use of flagging, paint, or blazes.

8. There are two fall archery hunts: hunters may harvest either sex deer, bearded turkey, or feral hogs during the fall archery hunts. There will be a fall archery hunt on the Panacea and Wakulla Units. We prohibit other weapons in the hunt area (*see* § 27.43 of this chapter). Contact the refuge office for specific dates.

9. There is a winter archery/muzzleloader hunt. Hunters may harvest doe deer, antlerless deer, bearded turkey, or feral hogs. We define "antlerless deer'' as deer with antlers less than 1 inch above the hairline. We will give each hunter that harvests a doe deer a permit to harvest an antlered deer. Archery equipment and muzzleloaders must meet the requirements set by the State. We prohibit other weapons in the hunt area (*see* § 27.43 of this chapter). Contact the refuge office for specific dates.

10. There are two modern gun hunts. Modern guns must meet State requirements. We will hold one hunt on the Panacea Unit and one on the Wakulla Unit. Hunters may harvest doe deer or antlerless deer. See definition for "antlerless deer'' in C9 above. We will give each hunter that harvests a doe deer a permit to harvest an antlered deer. You may also harvest one bearded turkey or feral hogs (no limit). Contact the refuge office for specific dates.

11. There is one mobility-impaired hunt on the Panacea Unit in the area west of Country Road 372. Hunters may harvest doe deer, antlerless deer, bearded turkey, or feral hogs. See definition for "antlerless deer'' in C9 above. We will issue permits to those hunters that harvest a doe deer to harvest an antlered deer. Hunters may have an able-bodied hunter accompany them. You can transfer permits issued to able-bodied assistants. We limit those hunt teams to two deer per hunt. Contact the refuge office for specific dates.

12. There is one spring gobbler hunt. You may harvest one bearded turkey per day (with a limit of two turkey per hunt). You may only use shotguns to harvest turkey. Contact the refuge office for specific dates. You must unload and dismantle or case weapons (*see* § 27.42 of this chapter) after 1 p.m.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit taking blue crabs from impoundments or canals on the St. Marks Unit.

2. We only allow fishing in refuge lakes, ponds, and impoundments from legal sunrise to legal sunset.

3. We allow fishing in tidal and coastal waters 24 hours per day year-round.

4. We prohibit use of boats with motors over 10 hp on any refuge lake, pond, or impoundment.

5. We allow use of boats on impoundments on the St. Marks Unit from March 15 through October 15 each year.

6. We prohibit taking of frogs or turtles (*see* § 27.21 of this chapter).

7. We prohibit use of cast nets, traps, or dip nets to take fish from any lake, pond, or impoundment on the refuge.

8. You must attend all fishing equipment.

9. We prohibit bow fishing on refuge lakes, ponds, and impoundments.

10. The interior ponds and lakes on the Panacea Unit are open year-round for bank fishing. We open vehicle access to these areas from March 15 through May 15 each year. Ponds and lakes that you can access from County Road 372 are open year-round for fishing and boating.

11. We prohibit commercial boats, air-thrust boats, and personal watercraft to launch at the saltwater boat ramp on the St. Marks Unit.

12. We prohibit air-thrust boats or personal watercraft to launch from Wakulla Beach.

13. All fish must remain in a whole condition when being transported from the refuge.

**St. Vincent National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer, sambar deer, raccoon, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits. The permits are nontransferable and must be possessed and carried while hunting. Only signed permits are valid. We only allow people with a signed refuge hunt permit on the island during the hunt periods.

2. We restrict hunting to three hunt periods: Sambar deer, raccoons, and feral hog—November 13–15; and white-tailed deer, raccoon, and feral hog—December 18–20 and January 8–10. Hunters may check-in and set up camp sites and stands on November 12, December 17, and January 7. Hunters must leave the island and remove all equipment by 11 a.m. on November 16, December 21, and January 11 (*see* § 27.93 of this chapter).

3. Hunters must check-in at the check stations on the island. We restrict entry onto St. Vincent Island to the Indian Pass and West Pass campsites. We restrict entry during the sambar deer hunt to the West Pass Campsite. All access to hunt areas will be on foot or by bicycle from these areas.

4. We close to public entry all areas marked with eagle nesting area, shorebird closed area, or area closed signs.

5. Hunt hours are ½ hour before legal sunrise until 3 p.m. for the sambar deer hunt. All other hunt times will be in accordance with Florida Wildlife Commission regulations.

6. We restrict camping and fires (*see* § 27.95 of this chapter) to the two designated camping areas. We may restrict or ban fires during dry periods.

7. Hunters may set up camp after receiving their hunting permit. We allow camping beginning on the first day of the hunt period, and campers must remove all personal equipment (*see* § 27.93 of this chapter) from St. Vincent Island by 11 a.m. on Sunday of the hunt period.

8. You may only set up tree stands after you check-in, and you must remove them from the island at the end of the hunt (*see* § 27.93 of this chapter).

9. You may only retrieve game from the closed areas if accompanied by a refuge officer.

10. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. Each adult may only supervise one youth hunter.

11. We will issue permits for the white-tailed deer December and January hunts beginning at legal sunrise on the first day of the hunt period. You must obtain permits at the check station prior to accessing the hunt area.

12. We issue permits for the sambar deer hunt by computer drawing. You may obtain applications after May 15 from the refuge office (P.O. Box 447, Apalachicola, FL 32329).

13. Primitive weapons hunters (sambar deer and January white-tailed deer hunt), when outside the campsite area, must wear a minimum of 500 square inches (3,250 $cm^2$) of a solid, unbroken pattern of fluorescent orange-colored material visible above the waistline.

14. We limit weapons to muzzleloaders or bow and arrow on the sambar deer hunt and the January white-tailed deer hunt. We limit the December hunt to bow and arrow. Weapons must meet all State regulations.

15. We allow only stand, still, and stalk hunting. We prohibit man drives.

16. We prohibit the use of flagging material and/or bright eyes. We prohibit defacing of plants or trees (*see* § 27.51 of this chapter).

17. We prohibit target practice on the refuge (*see* § 27.42 of this chapter). You may discharge muzzleloaders at the designated discharge area between 5 a.m. and 9 p.m.

18. Nonmovement stand hours for all hunts will be from legal morning shooting time until 9 a.m.

19. We prohibit discharging of weapons (including cap firing) in campgrounds (*see* § 27.42 of this chapter).

20. Weapons must have the caps removed from muzzleloaders and arrows quivered before and after legal shooting hours.

21. Hunters must check out at the check station prior to leaving the refuge at the end of their hunt. A refuge staff member or volunteer must check the campsites before the hunters leave the refuge.

22. We prohibit motorized equipment, generators, or land vehicles (except bicycles).

23. Refuge personnel must check and tag game harvested before the hunter leaves the island.

24. We prohibit littering (see § 27.94 of this chapter) and cutting of live trees (*see* § 27.51 of this chapter). Only dead and downed wood may be cut.

25. Bag limits:

i. Sambar deer hunt—two sambar deer, no limit on feral hog or raccoon.

ii. Archery hunt—one white-tailed deer of either sex (no spotted fawns or spike bucks), no limits on feral hogs or raccoons.

iii. Primitive weapons hunt—one white-tailed deer buck having one or more forked antlers at least 5 inches (12.5 cm) in length visible above the hairline with points greater than 1 inch (12.5 cm) in length; we issue a limited number of either-sex permits. If you have an either-sex permit, the bag limit is one deer that may be antlerless or a buck legal antler configuration. There is no limit on feral hog or raccoon.

26. We prohibit bringing live game into the check station.

27. Hunters must observe quiet time in the campground between 9 p.m. and 5 a.m. We prohibit loud or boisterous behavior or activity.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may fish from legal sunrise to legal sunset.

2. We allow boats with electric motors. You must remove all other motors from the boats and secure them to a designated motor rack with a lock and chain.

3. We prohibit the use of live minnow as bait.

4. We allow fishing on Lakes 1 and 2 and Oyster Pond from April 1 through September 30.

5. We allow fishing in Lakes 3, 4, and 5 from May 15 through September 30.

6. We prohibit leaving boats and fishing gear on the refuge overnight (*see* § 27.93 of this chapter).

7. We prohibit commercial fishing or the taking of frog or turtle (*see* § 27.21 of this chapter).

8. We only allow the use of rods and reels or poles and lines. You must attend your fishing equipment at all times.

9. You may only take fish species and fish limits authorized by State regulations.

**Ten Thousand Islands National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot in accordance with State regulations subject to the following conditions:

1. We allow hunting daily during the early wood duck/teal season.

2. We allow only hunting on Wednesdays, Saturdays, Sundays, Thanksgiving, Christmas, and New Year's Day within the regular State season.

3. You must possess and carry a valid, signed refuge hunt permit (free) at all times while hunting on the refuge.

4. We allow only hunting in the areas posted and shown on the refuge hunt brochure.

5. We post entry points with signs numbered 1, 2, and 3 along the south side of U.S. 41. Hunters may enter the refuge at 4 a.m. and shooting hours start ½ hour before legal sunrise. You must remove all decoys, guns, blinds, and other related equipment (*see* § 27.93 of this chapter) by 1 p.m. daily.

6. We prohibit hunting within 100 yards (90 m) of the south edge of U.S. 41 and the area signed around the small access road extending south from U.S. 41.

7. We prohibit pit blinds and permanent blinds (*see* § 27.92 of this chapter).

8. We allow and recommend prehunt scouting from legal sunrise to legal sunset.

9. You may only take duck and coot with a shotgun (no larger than a 10 gauge). We prohibit possession of handguns and long guns. We prohibit target practice on the refuge (*see* § 27.42 of this chapter).

10. We prohibit air-thrust boats, hovercraft, personal watercraft, and off-road vehicles at all times. We limit vessels to a maximum of a 25 hp outboard motor. We allow go-devil type motors.

11. We require all guides to purchase, possess, and carry a refuge Special Use Permit.

12. We allow and recommend use of dogs for waterfowl retrieval. Dogs must remain under the immediate control of their handlers at all times (*see* § 26.21(b) of this chapter). We allow dogs during prehunt scouting.

13. We allow youth hunt days in accordance with State regulations. Hunters under age 16 may hunt only with a nonhunting adult age 18 or older. Youth hunters must remain within sight and sound of the nonhunting adult.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing and crabbing on the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit air-thrust boats, hovercraft, personal watercraft, and off-

road vehicles in the freshwater and brackish marsh area south of U.S. 41. We limit vessels to a maximum of a 25 hp outboard motor. We allow go-devil-type motors.

2. We allow fishing in the freshwater and brackish marsh area of the refuge year-round from legal sunrise to legal sunset. You may fish the tidal and barrier island area of the refuge year-round 24 hours a day.

3. We only allow crabbing and crab pots for recreational use in the freshwater and brackish marsh area of the refuge. You may only use crab pots in accordance with State regulations. Abandoned or unchecked crab pots after 72 hours are subject to impoundment.

4. We prohibit commercial fishing and the taking of snake and frog in the freshwater and brackish marsh area of the refuge.

5. We prohibit the use of trotlines, gigs, spears, bush hooks, snatch hooks, crossbows, or bows and arrows of any type in the freshwater and brackish marsh area of the refuge.

12. Amend § 32.29 Georgia, by:

a. Revising "Banks Lake National Wildlife Refuge;"

b. Revising paragraph C. of "Blackbeard Island National Wildlife Refuge;"

c. Revising "Bond Swamp National Wildlife Refuge;"

d. Revising paragraph C. of "Harris Neck National Wildlife Refuge;"

e. Revising "Okefenokee National Wildlife Refuge;"

f. Revising "Piedmont National Wildlife Refuge;"

g. Revising paragraphs A., B., and C. of "Savannah National Wildlife Refuge;" and

h. Revising paragraph C. of "Wassaw National Wildlife Refuge" to read as follows:

**§ 32.29 Georgia.**

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**Banks Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following condition: We only allow the use of pole and line or rod and reel. For more information, contact the Okefenokee National Wildlife Refuge at 912–496–7836.

**Blackbeard Island National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry signed refuge permits on their persons at all times. You may obtain information on permits and the hunt at the refuge headquarters in Savannah, Georgia.

2. Hunters must check-in no more than 1 day in advance of the opening day of each hunt. We prohibit check-in after legal sunset of the second hunt day.

3. Each hunter may place one stand on the refuge no earlier than 1 month prior to the opening day of each hunt but must remove the stand (*see* § 27.93 of this chapter) by the end of each hunt.

4. Hunters must check-in at the refuge dock prior to setting up camp. We require personal identification at check-in.

5. We confine hunters to the camping area until 12 p.m. (noon) of the first day of check-in; we will allow scouting from 12 p.m. (noon) until 5 p.m.

6. Within the refuge, you may only travel by foot or bicycle, except in the wilderness area where we allow only foot travel. We limit entry and exit points to the designated check stations or other specified areas. We prohibit hunters to leave by boat to reach other parts of the island.

7. You may only camp at the designated camping area.

8. You must confine fires (*see* § 27.95 of this chapter) to the camping area.

9. We prohibit flagging, blazing, or trail-marking devices to locate stands or for any other purpose.

10. We only allow bows. We prohibit crossbows or firearms (*see* §§ 27.42 and 27.43 of this chapter).

11. We prohibit the use of organized drives for taking or attempting to take deer.

12. You may take five deer of either sex and State bonus tags will be issued for two of these. There is no bag limit on feral hog.

13. Refuge personnel must check deer harvested during the scheduled hunt before hunters may remove them from the refuge.

14. Hunters must be on their stands from ½ hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until legal sunset.

15. We prohibit target practice except in designated areas (*see* § 27.42 of this chapter).

16. Hunters must be off the island by 12 p.m. (noon) on Sunday.

17. We close the refuge to the nonhunting public 1 day prior to and 1 day after the hunt period, as well as on hunt days.

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**Bond Swamp National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting for white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We coordinate hunting seasons and limits with the State and annually list them in the refuge hunting brochure.

2. We require you to possess and carry a signed refuge hunt permit while archery hunting. You may obtain this permit from the refuge office.

3. We require a refuge hunt permit and payment of a fee for the quota firearms hunts. You may obtain applications and information about the hunt drawing from the refuge office.

4. We require you to sign in once prior to each hunt at the refuge check station.

5. We allow access to the hunt area from 1 hour before legal sunrise to 1 hour after legal sunset. We prohibit overnight camping and/or parking.

6. We prohibit buckshot.

7. We prohibit flagging, blazing, painting, or any other trail-marking devices.

8. We prohibit hunting within 50 yards (45 m) of a road open to vehicle travel or within 200 yards (180 m) of a building.

9. We prohibit entry into the designated hunt area by nonhunters during the hunts.

10. We prohibit hunting or possession of weapons in public use or other areas posted "No Hunting Zone" or "Area Closed" or designated as no hunting areas on the hunt brochure map (*see* §§ 27.42 and 27.43 of this chapter).

11. We require you to bring any deer or hog you harvest to the refuge check station the day you kill it and before you leave the refuge.

12. We prohibit possession of field-dressed deer or hogs unless you have checked them at the refuge check station.

13. We prohibit possession of alcoholic beverages while on the refuge (*see* § 32.2(j)).

14. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

15. We require each firearms hunter to wear at least 500 square inches (3,250 $cm^2$) of hunter orange as an outer garment above the waist.

16. We prohibit walking or trespassing on the railroad tracks to access the refuge.

17. We prohibit removal of live hog from the refuge.

18. We prohibit the use of dogs.

19. We allow the use of ATVs on refuge roads to retrieve game (*see* § 27.31 of this chapter), but you must obtain permission from refuge staff before using the ATV.

20. We allow limited nonmotorized portable boat access at the Stone Creek parking area.

21. We prohibit the use of organized drives for taking or attempting to take game.

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing from March 15 to October 15, except on the Ocmulgee River, which is open to fishing year-round.

2. We only allow access to the refuge and fishing from legal sunrise to legal sunset.

3. We only allow fishing with pole and line or rod and reel.

4. We prohibit boats on all refuge waters, except the Ocmulgee River, where we allow boats.

5. We prohibit leaving boats or other personal equipment on the refuge overnight (*see* § 27.93 of this chapter).

6. The minimum size limit for largemouth bass is 14 inches (490 cm).

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**Harris Neck National Wildlife Refuge**

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*C. Big Game Hunting*. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit on their person at all times. We require payment of a fee for the quota gun hunt only. You may obtain information on permits, quota hunt applications, and quota hunt drawings at the refuge headquarters in Savannah, Georgia.

2. Each hunter may place one stand on the refuge during the week (Monday through Friday only) preceding each hunt, but you must remove stands by the end of each hunt (*see* § 27.93 of this chapter).

3. Hunters must be on their stands from ½ hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until legal sunset.

4. We prohibit use of flagging, blazing, or trail-marking devices to locate stands or for any other purpose.

5. We prohibit hunting closer than 100 yards (90 m) to State Highway 131, the refuge entrance drive, refuge headquarters, Barbour River Landing, Barbour River Road, or Gould's Cemetery.

6. We require personal identification at check-in.

7. To hunt during the morning stand hours, bow hunters must enter the refuge through the refuge entrance gate only, between 5 a.m. and 6 a.m. We will allow hunters to exit and re-enter through the entrance gate only, from 9 a.m. until 4 p.m. After 4 p.m. we prohibit entry to the refuge.

8. During the archery hunt, we will restrict vehicles to the auto tour route (*see* § 27.31 of this chapter) and allow two-way traffic.

9. During the archery hunt, we only allow bows.

10. We require gun hunters to check-in at the refuge headquarters between 4 a.m. and 5 a.m. and park in designated areas prior to hunting. We prohibit entry by boat.

11. You may take three deer of either sex (State bonus deer tags will be issued for two of these). There is no bag limit on feral hog.

12. During the gun hunt, you must only use shotguns with slugs 20 gauge or larger.

13. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

14. Gun hunters must wear an outer garment with a minimum of 500 square inches (3,250 $cm^2$) of hunter-orange material above the waistline.

15. Refuge personnel must check deer harvested during refuge hunts before leaving the refuge.

16. We prohibit the use of organized drives for taking or attempting to take game.

17. We will close the refuge to the nonhunting public on all hunt days.

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**Okefenokee National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. [Reserved]

*B. Upland Game Hunting*. We allow the hunting of rabbit, squirrel, bobwhite quail, and turkey on the Cowhouse Unit of the refuge. The season will be consistent with the adjacent Dixon Memorial Wildlife Management Area and in accordance with State hunting regulations subject to the following conditions:

1. We only allow foot and bicycle traffic on the refuge portion of Cowhouse Island.

2. We only allow dogs to locate, point, and retrieve during quail hunts.

3. For more information, contact the refuge at 912–496–7836.

*C. Big Game Hunting*. We allow hunting of turkey only on the Cowhouse Island Unit of the refuge. We allow hunting of white-tailed deer and feral hog at the Suwannee Canal Recreation Area, the Pocket Unit, and Cowhouse Island Unit in accordance with State regulations subject to the following conditions:

1. In the Pocket Unit:

i. We only allow archery hunting and foot traffic.

ii. You must sign in and out.

iii. You must remove tree stands daily (*see* § 27.93 of this chapter).

iv. We prohibit dogs.

2. In the Suwannee Canal Unit:

i. We only allow two ½-day hunts (dates will be announced) and shotguns with slugs or muzzleloaders.

ii. We require a refuge permit through refuge lottery, which interested parties should enter before August 31 (fee will be announced).

iii. Hunters must remain on stands from 30 minutes before legal sunrise until 9 a.m.

iv. You must sign in and sign out.

v. You must tag your deer with special refuge tags. There is a limit of two deer of either sex.

vi. We only zone Chesser Island Hunt area to accommodate wheelchair hunters.

vii. Conditions B3, C1iii, and C1iv apply.

viii. We prohibit dogs.

3. In the Cowhouse Island Unit:

i. Dixon Memorial Wildlife Management Area rules, regulations, dates, and times apply.

ii. Conditions B1, B3, C1iii, and C1iv apply.

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow motorized boats with motors 10 hp or less.

2. We prohibit possession of live bait fish.

3. We only allow the use of pole and line or rod and reel.

4. In the Suwannee Canal unit:

i. We prohibit fishing in the boat basin.

ii. We prohibit fishing in ponds and canals along the Swamp Island Drive.

iii. We reserve the porch and canal area behind the visitor center for youth age 15 and under and physically disabled.

5. Condition B3 applies.

**Piedmont National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. [Reserved]

*B. Upland Game Hunting*. We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit upland game hunting during refuge deer or turkey hunts.

2. We coordinate hunting seasons for raccoon and opossum with the State and annually list them in the refuge hunt brochure.

3. You must possess and carry a signed refuge hunt permit while hunting. You may obtain the permit from the refuge office.

4. We require a refuge hunt permit to hunt on the Hitchiti Experimental Forest in accordance with refuge hunting seasons and regulations.

5. We prohibit hunting or possessing weapons in areas posted "No Hunting Zone'' or "Area Closed'' or designated as no hunting areas on the hunt brochure map (*see* §§ 27.42 and 27.43 of this chapter).

6. The refuge is a day-use-only area, with the exception of legal hunting activities.

7. We allow access to the hunt area for quail, squirrel, and rabbit hunting from 1 hour before legal sunrise to 1 hour after legal sunset. We prohibit overnight camping and/or parking.

8. We allow hunting for raccoon and opossum from 6 p.m. to 6 a.m. on the days listed as open in the refuge hunt brochure.

9. We only allow .22 caliber rimfire firearms for raccoon and opossum.

10. You may use dogs on designated areas of the refuge in accordance with State regulations.

11. You must keep your dogs confined or on a leash except when hunting, and you must remove your dogs upon your departure from the refuge (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting for white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B4, B5, and B6 apply.

2. We coordinate hunting seasons and limits with the State and annually list them in the refuge hunting brochure.

3. We require you to possess and carry a signed refuge permit while archery hunting. You may obtain this permit from the refuge office.

4. We require a refuge hunt permit and payment of a fee for the quota firearms hunts. You may obtain applications and information about the hunt drawing from the refuge office.

5. We have a special deer hunt for disabled hunters confined to wheelchairs. You may obtain information about this hunt from the refuge office.

6. We prohibit entry into designated hunt area by nonhunters during the hunts.

7. We allow access to the hunting area from 1 hour before legal sunrise to 1 hour after legal sunset. We prohibit overnight camping and/or parking except in the designated campground at Pippins Lake. You must have a refuge hunting permit to enter and use the campground.

8. We prohibit buckshot.

9. We only allow alcoholic beverages in the designated campground (*see* § 32.2(j)).

10. We prohibit flagging, blazing, painting, or any other trail-marking devices.

11. We prohibit hunting within 50 yards (45 m) of a road open to vehicle travel or within 200 yards (180 m) of a building.

12. You must bring any deer, turkey, or hog you harvest to the refuge check station intact, except entrails, the day you kill them and before you leave the refuge. We prohibit possession of dressed deer, turkey, or hog unless you have checked them at the refuge check station.

13. We prohibit ATVs on the refuge except by disabled hunters with a refuge Special Use Permit.

14. We prohibit target practice on the refuge, including the shooting of firearms or bows in the designated campground, or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

15. We prohibit audio equipment such as radios or other noise-making devices such as generators after 10 p.m. or before 6 a.m. in the campground (*see* § 27.72 of this chapter).

16. We prohibit dogs for hunting big game.

17. We prohibit the use of organized drives for taking or attempting to take game.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing from May 1 to September 30.

2. We only allow access to the refuge and fishing from legal sunrise to legal sunset.

3. You may keep the following numbers of fish each day: bass—5; channel catfish—5; sunfish or bream—15; all other species—State limit.

4. We only allow nonmotorized boats and boats with electric motors in Pond 2A and Allison Lake.

5. We limit fishing in Pond 21A to youths age 15 and under.

6. We only allow fishing with pole and line or rod and reel.

7. We prohibit leaving boats or other personal equipment on the refuge overnight (see § 27.93 of this chapter).

8. We prohibit the use of fish for bait.

9. We prohibit placing or throwing in the water feeds, grains, or other materials to chum or attract fish.

10. You must immediately release any grass carp you catch. We are using these fish to help combat an exotic weed invasion in some ponds.

**Savannah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot on designated areas north of Georgia Highway 25 of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge permit at all times while hunting on the refuge. We only require a fee for the quota youth waterfowl hunt on the Solomon Tract. Permits and quota hunt drawing information are available at the refuge headquarters in Savannah, Georgia.

2. We only allow temporary blinds. You must remove decoys and other personal property from the refuge daily (*see* § 27.93 of this chapter).

3. We prohibit hunting within 100 yards (90 m) of Georgia Highway 25; or in or on Middle and Steamboat Rivers and Houstown Cut, or closer than 50 yards (45 m) of the shoreline of these waterways.

*B. Upland Game Hunting.* We allow hunting of squirrel November 1 through November 30 on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge permit at all times while hunting on the refuge. Permits and hunt information are available at the refuge headquarters in Savannah, Georgia.

2. We only allow .22 caliber rimfire rifles or shotguns with #2 shot or smaller for squirrel hunting.

3. We prohibit handguns.

4. We prohibit the use of dogs.

5. You may take feral hog with weapons legal for this hunt (no bag limit).

6. We require a refuge big game license.

7. We require hunters to wear an outer garment that contains a minimum of 500 square inches (3,250 $cm^2$) of hunter-orange material above the waistline (except during the archery-only deer hunt, the turkey hunt, and the waterfowl hunt).

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge permit at all times while

hunting on the refuge. We require a fee for the wheelchair-dependent hunters' quota gun hunt for deer. Permits, quota hunt applications, and information about the quota hunt drawing are available at the refuge headquarters in Savannah, Georgia.

2. We allow archery hunting for deer and hog from October 1 through 31 on designated areas (consult the refuge brochure for the areas).

3. We only allow bows for deer and hog hunting during the archery hunt.

4. We allow gun hunting for deer and hog from November 1 through 30 on designated areas of the refuge. We also allow hog (only) hunting during a special 9-day hunt in March.

5. We only allow shotguns with slugs, muzzleloaders, and bows for deer and hog hunting throughout the designated hunt area. However, we only allow centerfire rifles of .22 caliber or larger north of Interstate Highway 95. We prohibit handguns.

6. You may take five deer, no more than three antlerless and two antlered. There is no bag limit on feral hog.

7. Doe days for refuge lands in Georgia will only coincide with doe days set by the Georgia Department of Natural Resources for Effingham County.

8. Condition B7 applies.

9. We allow turkey hunting during a special 16-day turkey hunt in April. Turkey hunters may only harvest three gobblers.

10. We only allow shotguns with #2 shot or smaller and bows for turkey hunting in accordance with State regulations. We prohibit possession of slugs or buckshot during turkey hunts.

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**Wassaw National Wildlife Refuge**

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*C. Big Game Hunting*. We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must carry a signed refuge permit on their person at all times. We only require payment of a fee for the quota gun hunt for deer. You may obtain information on permits, quota hunt applications, and quota hunt drawings at the refuge headquarters in Savannah, Georgia.

2. We prohibit flagging, blazing, or trail-marking devices to locate stands or for any other purpose.

3. We prohibit the use of organized drives for taking or attempting to take game.

4. Refuge personnel must check deer harvested during scheduled hunts before hunters leave the refuge.

5. You may take five deer of either sex (State bonus tags issued for two of these). There is no bag limit on feral hog.

6. Hunters must be on their stands from ½ hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until legal sunset.

7. We prohibit target practice or any nonhunting discharge of firearms (*see* § 27.42 of this chapter).

8. We allow bows and muzzleloading rifles during the primitive weapons hunt.

9. We allow shotguns, 20 gauge or larger (slugs only), centerfire rifles of .22 caliber or larger, bows, and primitive weapons during the gun hunt.

10. We prohibit mooring boats to the government dock except for loading or unloading purposes.

11. Hunters must check-in at the refuge dock prior to setting up camp. We require personal identification at check-in.

12. We only allow camping at the designated camping area. You must confine fires (*see* § 27.95 of this chapter) to the camping area.

13. Each hunter may place one stand on the refuge no earlier than 1 month prior to the opening day of each hunt, but you must remove all stands by the end of each hunt (*see* § 27.93 of this chapter).

14. We require hunters to wear an outer garment that contains a minimum of 500 square inches (3,250 $cm^2$) of hunter-orange material above the waistline.

15. Hunters may check-in at the refuge dock no more than 1 day in advance of the opening day of the hunt. We will confine hunters to the camping area until 12 p.m. (noon) of the first day of check-in; we will allow scouting from 12 p.m. (noon) until 5 p.m.

16. Hunters must be off the island the day following the last day of the hunt.

17. Within the refuge, you may only walk or use a bicycle. We prohibit hunters to leave by boat to reach other parts of the island.

18. We will close the refuge to the nonhunting public 1 day prior to, and 1 day after, the hunt period as well as on the hunt days.

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13. Amend § 32.31 Idaho by:

a. Revising paragraphs A., B., and D. of "Bear Lake National Wildlife Refuge";

b. Revising paragraphs A. and B. of "Camas National Wildlife Refuge";

c. Revising paragraph A. of "Grays Lake National Wildlife Refuge"; and

d. Revising paragraphs A., B., and D. of "Minidoka National Wildlife Refuge" to read as follows:

**§ 32.31 Idaho.**

* * * * *

**Bear Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit air-thrust boats.

2. We allow nonmotorized and motorized boats after September 20 within the designated hunting area. We prohibit air-thrust boats.

3. You may only use portable blinds or construct temporary blinds of natural vegetation. Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds from the refuge at the end of each day's hunt (*see* § 27.93 of this chapter).

4. You must remove all personal property, including decoys and boats, (*see* § 27.93 of this chapter) from the refuge at the end of each day's hunt.

*B. Upland Game Hunting*. We allow hunting of pheasant, grouse, partridge, and cottontail rabbit on designated areas of the refuge in accordance with State regulations subject to the following condition: You may only possess approved nontoxic shotshells while in the field (*see* § 32.2(k)).

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*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit boats in the fishing area.

2. We prohibit use and possession of lead weights or sinkers.

**Camas National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit public entry onto the refuge prior to 1 hour before legal hunting hours.

2. You may only use portable blinds or construct temporary blinds of natural vegetation. Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds (*see* § 27.93 of this chapter) at the end of each day's hunt.

3. You may only transport firearms (*see* § 27.42 of this chapter) on the hunter access roads.

4. You must remove all personal property (*see* § 27.93 of this chapter), including decoys, from the refuge at the end of each day's hunt.

*B. Upland Game Hunting*. We allow hunting of pheasant, grouse, and partridge on designated areas of the

refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shotshells while in the field (*see* § 32.2(k)).

2. You may only transport firearms (*see* § 27.42 of this chapter) on the hunter access roads.

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**Grays Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow nonmotorized boats.

2. You may only use portable blinds or construct temporary blinds of natural vegetation. Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds (*see* § 27.93 of this chapter) at the end of each day's hunt.

3. We only allow hunters and dogs to retrieve game in designated hunting areas.

4. You must remove all personal property, including decoys and boats, (*see* § 27.93 of this chapter) from the refuge at the end of each day's hunt.

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**Minidoka National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunters and dogs to retrieve game in designated hunting areas.

2. You may only use portable blinds or construct temporary blinds of dead natural vegetation. Blinds will be available for general use on a first-come, first-served basis. You must remove portable blinds (*see* § 27.93 of this chapter) at the end of each day's hunt. We prohibit use of rock piles above the high-water mark for blind construction. We prohibit pit blinds (*see* § 27.92 of this chapter).

3. We only allow vehicle parking in designated parking lots.

4. On West Hunting Area (Lake Walcott), we allow hunting on the uplands and over water within 100 yards (90 m) of the shoreline. We only allow use of boats for retrieval of game.

5. On East Hunting Area (Tule Island), we allow boats during the waterfowl hunting season.

*B. Upland Game Hunting*. We allow hunting of pheasant, grouse, partridge, and cottontail rabbit on designated areas of the refuge in accordance with State regulations subject to the following condition: You may only possess approved nontoxic shotshells while in the field (*see* § 32.2(k)).

* * * * *

*D. Sport Fishing*. We allow fishing on the refuge in accordance with State regulations and subject to the following conditions:

1. We allow bank fishing year-round. We only allow vehicle access (*see* § 27.31 of this chapter) to shoreline fishing areas on designated routes.

2. We allow ice fishing in accordance with State regulations. We prohibit motor vehicles (*see* § 27.31 of this chapter) on the ice.

3. We restrict boat fishing to designated areas as specified below:

i. On Lake Walcott, we allow boats from April 1 through September 30 within the area marked by buoys and posted signs.

ii. On Gifford Springs, we allow boats within the area marked by posted signs during the open sport fishing season.

iii. On Smith Springs, we allow boats within the area marked by posted signs during the open sport fishing season.

4. We allow use of float tubes at all times and locations except south of the southern buoy line on Lake Walcott.

14. Amend § 32.32 Illinois by:

a. Adding paragraph A.4. of "Chautauqua National Wildlife Refuge;''

b. Revising "Cypress Creek National Wildlife Refuge;''

c. Revising "Great River National Wildlife Refuge;''

d. Revising "Middle Mississippi River National Wildlife Refuge;''

e. Revising "Port Louisa National Wildlife Refuge;''

f. Revising "Two Rivers National Wildlife Refuge;'' and

g. Revising paragraph A.1., adding paragraphs A.6., A.7., revising paragraphs B.1., adding paragraph B.6., revising paragraph C.1., and adding paragraph D.3. of "Upper Mississippi River National Wildlife and Fish Refuge'' to read as follows:

**§ 32.32 Illinois.**

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**Chautauqua National Wildlife Refuge**

*A. Migratory Game Bird Hunting*.

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4. Hunters must remove boats, decoys, and portable blinds (*see* § 27.93 of this chapter) at the end of each day's hunt.

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**Cypress Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, goose, coot, woodcock, dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to possess and carry a free refuge hunting permit while hunting on the refuge.

2. We prohibit leaving boats on the refuge overnight (*see* § 27.93 of this chapter).

3. We prohibit outboard motors larger than 10 hp.

3. We prohibit the use of paint, flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations.

4. Dove hunting:

i. We allow dove hunting beginning on September 1 and continuing on the following Mondays, Wednesdays, and Saturdays throughout the State season.

ii. We only allow all dove hunting from field borders.

iii. We prohibit dove hunting within 100 yards (90 m) of roadways.

iv. We prohibit hunters from possessing guns while retrieving downed doves from field interiors.

5. We only allow the use of portable or temporary blinds. Hunters must remove all blinds and decoys (*see* § 27.93 of this chapter) from the refuge at the end of each day's hunt.

6. On the Bellrose Waterfowl Reserve:

i. We prohibit duck hunting.

ii. You may only hunt goose following the closure of the State duck hunting season.

iii. We only allow goose hunting on Tuesdays, Thursdays, Saturdays, and Sundays.

iv. We allow hunting from ½ hour before legal sunrise until 1 p.m.

v. Hunters must exit the Reserve by 2 p.m.

vi. We prohibit entry to the Reserve prior to 4:30 a.m.

vii. We prohibit hunting during the special snow goose seasons after closure of the regular goose seasons.

viii. We prohibit construction or use of pit blinds (*see* § 27.92 of this chapter).

ix. We prohibit hunting within 100 yards (90 m) of any private property boundary.

x. All hunting parties must be at least 200 yards (180 m) apart.

xi. All hunters must sign in and out and report daily harvest at the hunter registration station.

*B. Upland Game Hunting*. We allow hunting of squirrel, rabbit, bobwhite quail, raccoon, opossum, red fox, grey fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, and A3 apply.

2. We prohibit hunting after legal sunset, except we only allow raccoon

and opossum hunting after legal sunset on refuge lands north of Perks Road.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, and A5 apply.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A2 applies.

2. We prohibit the use of trotlines, jogs, yo-yos, nets, or any commercial fishing equipment except in areas where State regulation authorizes commercial tackle.

3. We prohibit the use of more than two poles per angler and more than two hooks or lures per pole.

4. We prohibit possession of bass less than 15 inches (37.5 cm) in length from refuge ponds.

5. We prohibit possession of more than six channel catfish from refuge ponds.

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**Great River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl and coot on the Long Island Division of the refuge in accordance with State regulations subject to the following condition: We only allow hunting from blinds constructed on sites posted by the Illinois Department of Natural Resources.

*B. Upland Game Hunting.* We allow hunting of small game, furbearers, turkey, and game birds on Long Island Division and Fox Island of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while hunting for upland game except turkey (*see* § 32.2(k)). We allow possession of lead shot for hunting turkey.

2. We only open Long Island Division and Fox Island Division for upland game hunting from ½ hour before legal sunrise until ½ hour after legal sunset.

3. We only allow turkey hunting on the Fox Island Division during the State spring seasons, including youth season. We do not open to fall turkey hunting.

4. We close Fox Island Division to all hunting and nonhunting entry from October 16 through December 31, except the Division is open to deer hunting as described below in C2.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow the use of portable stands, and hunters must remove them from the refuge at the end of each day's hunt (*see* § 27.93 of this chapter).

2. On the Fox Island Division, we only allow hunting during the "Antlerless-Only'' portion of the State firearms deer season.

3. On the Delair Division, we only allow muzzleloader hunting subject to the following conditions:

i. You must possess and carry a refuge permit.

ii. We require hunters to check-in and out of the refuge each day.

iii. We require hunters to record all harvested deer with refuge staff before removing them from the refuge.

iv. Shooting hours end at 3 p.m. each day.

v. Hunters must park all vehicles only in designated parking areas.

*D. Sport Fishing.* We allow fishing on the Long Island and Fox Island Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of turtle and frog (*see* § 27.21 of this chapter).

2. On the Fox Island Division, we only allow bank fishing along any portion of the Fox River from January 1 through October 15.

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**Middle Mississippi River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on the Meissner and Wilkinson Island Division in accordance with State regulations subject to the following conditions:

1. We only allow portable blinds.

2. Hunters must remove blinds, decoys, and other equipment (*see* § 27.93 of this chapter) from the refuge at the conclusion of each day's hunt.

*B. Upland Game Hunting.* We allow hunting of small game, furbearers, turkey, and nonmigratory game birds on the Meissner, Harlow, and Wilkinson Island Divisions in accordance with State regulations subject to the following conditions:

1. We only allow hunting of furbearers from legal sunrise to legal sunset.

2. You may only possess approved nontoxic shot while hunting upland game, except turkey (*see* § 32.2(k)).

*C. Big Game Hunting.* We allow hunting of white-tailed deer on the Harlow, Meissner, and Wilkinson Island Divisions in accordance with State regulations subject to the following conditions:

1. We only allow archery hunting on the Harlow and Meissner Divisions.

2. We only allow the use of portable stands, and hunters must remove them from the refuge at the end of each day's hunt (*see* § 27.93 of this chapter).

*D. Sport Fishing.* We allow fishing on the Harlow and Wilkinson Island Divisions in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of turtle and frog (*see* § 27.21 of this chapter).

2. We only allow fishing from legal sunrise to legal sunset.

3. Anglers must remove all fishing devices (*see* § 27.93 of this chapter) at the end of each day's fishing.

**Port Louisa National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on the Big Timber Division in accordance with State regulations subject to the following conditions:

1. Hunters must remove boats, decoys, and portable blinds (*see* § 27.93 of this chapter) at the end of each day's hunt.

2. We allow portable blinds on a daily basis at any location on first-come, first-served basis.

3. We prohibit hunting on the Louisa, Horseshoe Bend, and Keithsburg Divisions.

*B. Upland Game Hunting.* We allow hunting of upland game only on Big Timber, Keithsburg, and Horseshoe Bend Divisions in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting upland game. You may use lead shot to hunt turkey. We allow shotgun slug or muzzleloading rifle for hunting coyotes.

2. We only allow squirrel hunting on the Keithsburg Division from the beginning of the State season to September 15.

3. We allow hunting on the Horseshoe Bend Division from September 1 until September 14 and from December 1 until February 28. We allow spring turkey hunting.

4. We allow hunting on the Big Timber Division from September 1 until February 28. We allow spring turkey hunting.

*C. Big Game Hunting.* We allow hunting of white-tailed deer only on Big Timber and Horseshoe Bend Divisions in accordance with State regulations subject to the following conditions:

1. We only allow the use of portable stands, and hunters must remove them at the end of each day's hunt (*see* § 27.93 of this chapter).

2. We close Horseshoe Bend Division to all public access from September 15 until December 1.

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of turtle or frog (*see* § 27.21 of this chapter).

2. We only allow fishing from legal sunrise to legal sunset.

3. We close the following Divisions to all public access: Louisa Division — September 14 until February 1; Horseshoe Bend Division — September 14 until December 1; Keithsburg Division — September 15 until January 1.

4. Anglers must remove boats and all other fishing devices (*see* § 27.93 of this chapter) at the end of each day's fishing.

5. We only allow motor boats on Horseshoe Bend Division for fishing during the periods when flood water enables access from the river over the levee.

**Two Rivers National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds only on the Apple Creek Division in accordance with State regulations subject to the following conditions:

1. We only allow portable blinds.

2. Hunters must remove boats, decoys, and portable blinds (*see* § 27.93 of this chapter) at the end of each day.

*B. Upland Game Hunting.* We allow upland game hunting only on the Apple Creek Division and the portion of the Calhoun Division east of the Illinois River Road in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while hunting, except turkey (*see* § 32.2(k)). We allow possession of lead shot for turkey hunting.

2. We allow hunting from legal sunrise to legal sunset.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on the Apple Creek Division and the portion of the Calhoun Division east of the Illinois River Road in accordance with State regulations subject to the following condition: We only allow the use of portable stands, and hunters must remove them at the end of each day's hunt (*see* § 27.93 of this chapter).

*D. Sport Fishing.* We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of turtle or frog (*see* § 27.21 of this chapter).

2. We only allow fishing from legal sunrise to legal sunset.

3. From October 15 through December 31, we close the Batchtown, Calhoun, Gilbert Lake, and Portage Island Divisions, and the portion of the Calhoun Division north and west of the Illinois River Road to all public access.

4. Anglers must remove boats and all other fishing devices (*see* § 27.93 of this chapter) at the end of each day.

5. We only allow boats on the Gilbert Lake Division for fishing during those periods when flood water enables access from the river over the levee.

**Upper Mississippi River National Wildlife and Fish Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. In areas posted "Area Closed" or "No Hunting Zone," we prohibit hunting of migratory game birds at all times. In addition to areas posted "No Hunting Zone," we prohibit hunting within 50 yards (45 m) of the Great River Trail at Thomson Prairie, within 150 yards (135 m) of the Great River Trail at Mesquaki Lake, and within 400 yards (360 m) of the Potter's Marsh area in Pool 13.

* * * * *

6. For Pools 12, 13, and 14, we allow the following: hunting from boat blinds or scull boats; construction of permanent blinds from dimensional lumber (however, we prohibit use of nonbiodegradable materials such as metal, plastic, or fiberglass); and use of willow, cattail, bulrush, lotus, arrowhead vegetation, and dead wood on the ground for blind building and camouflage. We prohibit cutting or removing any other trees or vegetation (*see* § 27.51 of this chapter). Hunters must place an identification card with name, address, and telephone number inside the permanent blind. Blinds not occupied by ½ hour before legal sunrise are available on a first-come, first-served basis.

i. *Iowa:* Hunters may hunt from the shoreline or wade. You may build permanent blinds anytime during the year anywhere within the pools on the Iowa side.

ii. *Illinois* (excluding Potter's Marsh Management Zone): Hunters may select permanent blind sites with a blind site marker beginning at 8 a.m. on the first Saturday in August. We prohibit occupying, improving, building a blind, or placing building materials on the site or in the adjacent area prior to this time. The blind site marker must include the name, address, date, time and telephone number of person(s) selecting the site. Hunters must completely build and camouflage the blind by September 1 or must remove the site selection marker (*see* § 27.93 of this chapter). All blinds must be a minimum of 4 by 8 feet (120 by 240 cm) in size and at least 200 yards (180 m) from each other. Scull boat and boat blinds must be at least 200 yards (180 m) from permanent blinds. Only during the early teal or goose season do we allow hunters to hunt by standing or wading in the water.

7. We allow the use of hunting dogs, provided the dogs remain under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

*B. Upland Game Hunting.* * * *

1. In areas posted "No Hunting Zone," we prohibit possession of firearms at all times (*see* § 27.42 of this chapter). In addition to areas posted "No Hunting Zone," we prohibit hunting within 50 yards (45 m) of the Great River Trail at Thomson Prairie, within 150 yards (135 m) of the Great River Trail at Mesquaki Lake, and within 400 yards (360 m) of the Potter's Marsh area in Pool 13.

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6. We allow the use of hunting dogs provided the dogs remain under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* * * *

1. Condition B1 applies.

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*D. Sport Fishing.* * * *

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3. For the purpose of determining length limits, slot limits, and daily creel limits, the impounded areas of Spring Lake, Duckfoot Marsh, and Pleasant Creek in Pool 13 are part of the Mississippi River site-specific State regulations.

15. Amend § 32.33 Indiana by:

a. Revising paragraphs B., the introductory text of paragraph C., paragraph C.1., C.2., and C.5., adding paragraphs C.6., C.7., and C.8., and revising paragraph D. of "Muscatatuck National Wildlife Refuge;" and

b. Revising "Patoka River National Wildlife Refuge and Management Area" to read as follows:

**§ 32.33 Indiana.**

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**Muscatatuck National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of quail, rabbit and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit discharge of firearms (*see* § 27.42 of this chapter) within 100 yards (90 m) of an occupied dwelling.

2. We only allow hunting from legal sunrise to legal sunset.

3. We prohibit hunting from the beginning of the second State muzzleloader deer season through the end of the year.

4. You must possess and carry a refuge permit for turkey hunting.

5. We only allow turkey hunting on weekdays from ½ hour before legal sunrise until 12 p.m. (noon).

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit during the second State muzzleloader season. We allow archery hunting following the second muzzleloader season.

2. We only allow bow and arrow and muzzleloaders, except that hunters with a State handicapped hunting license may use crossbows.

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5. Refuge hours are 6 a.m. to 6 p.m. during the deer hunts.

6. Hunters may only take one deer per day from the refuge.

7. Refuge personnel must check deer harvested during scheduled hunts before hunters leave the refuge.

8. We prohibit entry into the designated hunt area by nonhunters during the second State muzzleloader season.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow bank fishing by wading in the water and from nonmotorized boats on Stanfield Lake from May 15 through October 15. We prohibit the use of boats at other times and in other refuge waters.

2. We only allow fishing with rod and reel or pole and line.

3. We allow fishing on Richart Lake during periods as posted in the spring and fall.

4. The minimum size limit for large-mouth black bass taken from refuge waters is 14 inches (35 cm).

5. We allow ice fishing on Stanfield Lake and other fishing areas designated by signs and when ice conditions permit.

6. We allow fishing from legal sunrise to legal sunset.

7. You may take frog and turtle by hook and line from legal sunrise to legal sunset.

8. We allow "Belly boat''-type inflatables as long as the occupant's feet remain in contact with the bottom.

**Patoka River National Wildlife Refuge and Management Area**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge and the White River Wildlife Management Areas in accordance with State regulations subject to the following conditions:

1. We only allow the use of portable blinds or temporary blinds constructed of native vegetation. Hunters must remove all portable blinds and dismantle temporary blinds (*see* § 27.93 of this chapter) at the end of each day.

2. We only allow motorboats on Snakey Point Marsh east of the South Fork River and the Patoka River. You must operate motorboats at no-wake speed. We open other waters to hand-powered or battery-driven motors. We prohibit airboats.

3. You must remove boats and decoys (*see* § 27.93 of this chapter) at the end of each day's hunt.

4. We do not open Cane Ridge Wildlife Management Area to all hunting.

*B. Upland Game Hunting.* We allow hunting of bobwhite quail, cottontail rabbit, squirrel (grey and fox), pheasant, turkey (spring only), red and grey fox, coyote, opossum, and raccoon in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while hunting, except while hunting for turkey (*see* § 32.2(k)).

2. You must possess and carry a refuge permit for furbearer hunting.

3. We allow dogs for hunting provided the dog is under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following conditions:

1. We prohibit construction or use permanent tree stands or blinds (*see* § 27.92 of this chapter). We only allow portable stands.

2. Condition A4 applies.

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We allow fishing from legal sunrise to legal sunset, except on the Patoka River.

2. We only allow fishing with rod and reel or pole and line.

3. The minimum size limit for large-mouth bass on Snakey Point Marsh is 14 inches (35 cm).

4. You must possess and carry a refuge permit to take bait fish, crayfish, snapping turtle, and bull frog.

5. Condition A2 applies.

6. Anglers must remove boats (*see* § 27.93 of this chapter) at the end of each day.

16. Amend § 32.34 Iowa by:

a. Revising paragraph A., the introductory text of paragraph C., paragraph C.1., and adding paragraph D.8. of "Desoto National Wildlife Refuge;''

b. Revising paragraphs B. and C. of "Neal Smith National Wildlife Refuge;'' and

c. Revising "Union Slough National Wildlife Refuge'' to read as follows:

**§ 32.34 Iowa.**

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**DeSoto National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

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*C. Big Game Hunting.* We allow archery and muzzleloader hunting of white-tailed deer on designated areas of the refuge in accordance with State of Iowa and Nebraska regulations subject to the following conditions:

1. You must possess and carry refuge permits for archery hunting at all times while hunting.

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*D. Sport Fishing.* * * *

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8. We prohibit taking or possession of turtle or frog at any time (*see* § 27.21 of this chapter).

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**Neal Smith National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, bobwhite quail, cottontail rabbit, and squirrel on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting for any permitted bird or other small game.

3. We allow hunting of upland game from 8 a.m. to 4:30 p.m. during the dates posted at the refuge.

4. All hunters must cover their head and chest with one or more of the following articles of visible, external, solid-blaze-orange clothing: a hat, vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. We only allow portable stands, and hunters must remove them at the end of each day's hunt (*see* § 27.93 of this chapter).

3. We only allow hunter access from ½ hour before legal sunrise until ½ hour after legal sunset.

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**Union Slough National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, rail (Virginia and sora only), woodcock, and snipe on the Buffalo Creek Bottoms and Schwob Marsh units of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters on the refuge from 1 hour before legal sunrise until ½ hour after legal sunset.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. We allow boats or other floating devices. We allow gasoline and electric motors. We prohibit the use of air-thrust boats. You may not leave boats unattended.

4. You may construct blinds using manmade materials or natural vegetation found on the refuge. We prohibit bringing plants or their parts onto the refuge (*see* § 26.52 of this chapter).

5. You must remove boats, decoys, and blinds (*see* § 27.93 of this chapter) from the refuge at the end of each day.

6. We allow the use of hunting dogs provided that the dogs remain under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

7. We prohibit entry into any closed area to retrieve downed game, unless the hunter has received written permission from the refuge manager.

8. We prohibit hunting on road rights-of-way on any portion of the refuge not open to hunting. The road right-of-way extends to the center of the road.

B. *Upland Game Hunting.* We allow hunting of pheasant, gray partridge, rabbit (cottontail and jack), squirrel (fox and gray), groundhog, raccoon, opossum, fox, coyote, and crow on Buffalo Creek Bottoms, Schwob Marsh, and the Core Area in accordance with State regulations subject to the following conditions:

1. We only allow hunting in the Core Area during the dates posted at the Refuge Headquarters.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)). We prohibit possession of shotgun slugs.

3. Hunters may only enter the refuge from 8 a.m. until 4:30 p.m.

4. Conditions A6, A7, and A8 apply.

*C. Big Game Hunting.* We allow hunting of deer and turkey on Buffalo Creek Bottoms, Schwob Marsh, and the Core Area in accordance with State regulations subject to the following conditions:

1. Condition B1 and A8 apply.

2. Deer hunters in the Core Area must possess a valid State deer hunting license and an unfilled deer transportation tag.

3. We only allow deer hunters to enter the refuge from ½ hour before legal sunrise until ½ hour after legal sunset.

4. Deer hunters may only possess shot shells that shoot a single projectile (*i.e.*, slugs).

5. We prohibit turkey hunting in the Core Area at all times.

6. We only allow turkey hunters to enter the refuge from ½ hour before legal sunrise until ½ hour after legal sunset.

7. Turkey hunters may only possess approved nontoxic shot while in the field.

8. We allow the use of temporary stands, blinds, platforms, or ladders. You may construct blinds using manmade materials or natural vegetation found on the refuge. We prohibit bringing plants or their parts onto the refuge (*see* § 27.52 of this chapter).

9. You must remove decoys, stands, blinds, platforms, and ladders from the refuge at the end of each day (*see* § 27.93 of this chapter).

10. We prohibit entry into any closed area to retrieve downed game, unless the hunter has received written permission from the refuge manager.

*D. Sport Fishing.* We allow sport fishing from the County Road A–40 right-of-way and in Buffalo Creek south of County Road 320th Street in accordance with State regulations subject to the following conditions:

1. We allow fishing from April 15 through September 30.

2. We allow fishing from legal sunrise to legal sunset.

3. We prohibit the use of boats, canoes, or other floating devices.

4. We prohibit the use or possession of lead terminal tackle.

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17. Amend § 32.35 Kansas by:

a. Revising "Flint Hills National Wildlife Refuge;''

b. Revising "Kirwin National Wildlife Refuge;''

c. Revising "Marais des Cygnes National Wildlife Refuge;'' and

d. Revising "Quivira National Wildlife Refuge'' to read as follows:

**§ 32.35 Kansas.**

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**Flint Hills National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, mourning dove, rail, woodcock, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow waterfowl hunting on portions of the refuge on the south side of the Neosho River.

2. We prohibit hunting or possession of weapons on the Neosho River.

3. We prohibit shooting from or over roads and parking areas.

4. We only allow portable blinds and blinds made from natural vegetation. We prohibit the construction or use of permanent blinds and/or pits (*see* § 27.92 of this chapter).

5. We prohibit leaving decoys unattended at any time.

6. Dogs must be under the owner's immediate control at all times (*see* § 26.21(b) of this chapter).

7. We prohibit hunters or dogs retrieving game in areas closed to hunting.

8. We allow crow hunting on designated areas of the refuge subject to the following conditions:

i. We prohibit the use of centerfire rifles and pistols on the refuge;

ii. We close hunting areas on the north side of the Neosho River to all hunting from November 1 through March 1; and

iii. Conditions A2, A3, and A7 apply.

*B. Upland Game Hunting.* We allow hunting of pheasant, quail, prairie chicken, rabbit, and squirrel on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2, A3, A6, A7, A8i, and A8ii apply.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotguns, muzzleloading firearms (*see* § 27.42 of this chapter), and archery equipment for deer hunting.

2. We prohibit the use of deer game tags on the refuge.

3. We do not open for deer hunting during the extended white-tailed deer antlerless season in January.

4. We require the use of approved nontoxic shot for turkey hunting (*see* § 32.2(k)).

5. Dogs used during the fall turkey season must be under the owner's immediate control at all times (*see* § 26.21(b) of this chapter).

6. Conditions A2, A3, A7, and A8ii apply.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We do no open areas on the north side of the Neosho River to all fishing from November 1 through March 1, except for the Dove Roost pond and the Upper Burgess marsh.

2. We only allow fish bait collecting for personal use. We prohibit digging or habitat disturbance (*see* § 27.51 of this chapter).

**Kirwin National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, merganser, coot, mourning dove, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess six shells per day in the area from the Quillback Cove parking lot to the No Hunting Zone boundary east of Dogtown.
2. You may use natural vegetation to construct a temporary blind.
3. You may use portable hunting blinds.
4. We prohibit construction or use of any permanent blind.
5. We prohibit digging or using holes or pits for blinds.
6. We prohibit retrieval of waterfowl from an area closed to waterfowl hunting.
7. We only allow waterfowl hunting by boat in Bow Creek. You may not create a wake while in Bow Creek.
8. We only allow motorized vehicles on designated roads, parking lots, campgrounds, and boat ramps (*see* § 27.31 of this chapter).
9. We prohibit the use of ATVs or snowmobiles on the refuge (*see* § 27.31(f) of this chapter).
10. We prohibit commercial guiding on the refuge.

*B. Upland Game Hunting*. We allow hunting of pheasant, quail, prairie chicken, squirrel, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess bow and arrow or shotguns no larger than 10 gauge on the refuge.
2. We only allow hunting of rabbit and squirrel during that portion of the State small game season that occurs during the State upland game season.
3. You may only possess six shells per day in the area from the Quillback Cove parking lot to the "Closed to Hunting'' boundary east of Dogtown.
4. We prohibit retrieval of upland game from an area closed to upland game hunting.
5. Conditions A8, A9, and A10 apply.

*C. Big Game Hunting*. We allow hunting of deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow archery hunting of deer.
2. Deer hunters must obtain a free refuge permit and possess and carry a signed permit in the field while hunting.
3. You may use portable tree stands and hunting blinds provided that you install them no more than 7 days prior to the season and remove them no later than 2 days after the season (*see* § 27.93 of this chapter).
4. We prohibit construction or use of any permanent stand or blind (*see* § 27.92 of this chapter).
5. We prohibit digging or using holes or pits for blinds.
6. You may use natural vegetation to construct a temporary blind.
7. Archery hunters with a valid refuge permit may retrieve deer from an area closed to deer hunting. You must receive consent from a refuge employee prior to entering the closed area.
8. We prohibit retrieving turkey from an area closed to turkey hunting.
9. Conditions A8, A9, and A10 apply.

*D. Sport Fishing*. We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We allow access to Kirwin Reservoir by foot to bank or ice fish.
2. We only allow motorized vehicles on designated roads, parking lots, campgrounds, and boat ramps (*see* § 27.31 of this chapter). We prohibit motorized vehicles on the ice.
3. We allow motorized boating in the main body of Kirwin Reservoir and in Bow Creek. You must not create a wake in Bow Creek or within 100 yards (90 m) of any shoreline or island in the main body of Kirwin Reservoir. We prohibit motorized boats in the Solomon Arm of Kirwin Reservoir.
4. We allow motorless boats in the Solomon Arm of Kirwin Reservoir from August 1 through October 31.
5. We prohibit access within 100 yards (90 m) of a nesting endangered or threatened species.
6. We allow noncommercial collection of bait fish in accordance with State regulations.
7. You must obtain a free Special Use Permit prior to conducting a fishing tournament on the refuge.
8. We prohibit disposal of fish cleanings on the refuge (*see* § 27.94 of this chapter).
9. Conditions A9 and A10 apply.

**Marais des Cygnes National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, rail, snipe, woodcock, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must remove decoys (*see* § 27.93 of this chapter) daily.
2. We restrict outboard motor use to the westernmost 5½ miles (8.8 km) of the Marais des Cygnes River. You may only use nonmotorized boats and electric trolling motors on remaining waters in designated areas of the refuge.
3. We prohibit discharge of firearms (*see* § 27.42 of this chapter) within 150 yards (135 m) of any residence or other occupied building.

*B. Upland Game Hunting*. We allow hunting of cottontail rabbit, squirrel, and bobwhite quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A3 applies.
2. We prohibit rimfire rifles and pistols.

*C. Big Game Hunting*. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Deer and spring turkey hunters must possess and carry a refuge permit.
2. We prohibit centerfire rifles and pistols.
3. Condition A3 applies.

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A2 applies.

**Quivira National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, Virginia and Sora rail, mourning dove, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open refuge hunting areas September 1 through February 28.
2. We may close refuge hunting areas to hunting without notice when whooping crane are present or emergencies arise.
3. We post refuge hunting areas as "Public Hunting Areas'' and delineate them on the refuge hunting brochure map.
4. We allow hunters to enter the refuge 1 hour before legal shooting hours, and they must exit the refuge up to 1 hour past legal shooting hours.
5. We prohibit hunting from or across any road, trail, or parking area.
6. Hunters must park in designated parking areas.
7. We only allow portable devices or temporary blinds of natural vegetation. We prohibit construction of permanent blinds or pits (*see* § 27.92 of this chapter).
8. We prohibit the retrieval of game from areas closed to hunting.
9. We prohibit the use of boats, canoes, or other watercraft.

*B. Upland Game Hunting.* We allow hunting of pheasant, quail, squirrel, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A6, and A8 apply.

2. We only allow shotguns for hunting on the refuge.

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing on all waters on the refuge in accordance with State regulations subject to the following conditions:

1. You may take fish species listed in the State fishing regulations. We prohibit taking of frog, snake, or any other wildlife (*see* § 27.21 of this chapter).

2. We prohibit the use of trotlines and setlines.

3. We prohibit the use of seines for taking bait.

4. We prohibit fishing from water control structures and bridges.

5. We restrict fishing in the designated "Kid's Pond,'' approximately ¼ mile (.4 km) WSW of headquarters, to youth age 14 and under, and to a parent and/or guardian age 18 or older accompanying a youth.

6. The bag limit for the Kid's Pond is one fish per day.

7. We prohibit the use of boats, canoes, or other watercraft.

18. Amend § 32.36 Kentucky by:

a. Revising "Clarks River National Wildlife Refuge''; and

b. Revising "Reelfoot National Wildlife Refuge'' to read as follows:

**§ 32.36 Kentucky.**

* * * * *

**Clarks River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning dove, woodcock, common snipe, Canada and snow goose, coot, and waterfowl listed in 50 CFR 10.13 under DUCKS on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We prohibit the use of motorized off-road vehicles (*e.g.,* ATVs) on the refuge (*see* § 27.31(f) of this chapter).

3. We prohibit target practice on refuge property (*see* § 27.42 of this chapter).

4. We prohibit the use of mules and horses on all refuge hunts.

5. You must possess and carry a valid refuge permit while hunting on the refuge.

6. To retrieve or track game from a posted closed area of the refuge, the hunter must first request permission from the refuge manager at 270–527–5770 or refuge officer at 1–888–261–2000.

7. We prohibit the use of flagging tape, reflective tacks, or other devices used to identify paths to and mark tree stands, blinds, or other areas.

8. We close those portions of abandoned railroad tracks within the refuge boundary to vehicle access (*see* § 27.31 of this chapter).

9. No person will discharge a firearm within 100 feet (90 m) of any public roadways running through or adjoining refuge property.

10. Waterfowl hunters must pick up decoys and equipment, unload firearms (*see* § 27.42(b) of this chapter), and be out of the field by 2 p.m. daily during the State waterfowl season.

11. You may only use portable or temporary blinds that must be removed (*see* § 27.93 of this chapter) from the refuge each day.

12. We close, as posted, the Sharpe-Elva Water Management Unit from November 1 through March 15 to all entry with the exception of drawn permit holders and their guests.

13. We only allow waterfowl hunting on the Sharpe-Elva Water Management Unit on Saturdays and Sundays during the State waterfowl season. We only allow hunting by individuals in possession of a refuge draw permit and their guests. State regulations and the following conditions apply:

i. Application procedures and eligibility requirements are available from the refuge office.

ii. We allow permit holders and up to three guests to hunt their assigned provided blind on the designated date. We prohibit guests in the blind without the attendance of the permit holder.

iii. We prohibit selling, trading, or bartering of permits. The permit is nontransferable.

iv. You may place decoys out Saturday morning at the beginning of the hunt, and you must remove them by Sunday at the close of the hunt (*see* § 27.93 of this chapter).

v. We prohibit watercraft in Sharpe-Elva Water Management Unit.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, opossum, crow, red and gray fox, bobcat, and coyote on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A12 apply.

2. You may not kill or cripple a game animal without making a reasonable effort to retrieve the animal and include it in your daily bag limit.

3. You may only use rimfire rifles, shotguns, and legal archery equipment for taking upland game.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A9, A12, and B2 apply.

2. We only allow the use of portable and climbing stands. You may place stands in the field (not attached to trees—*see* § 32.2(i)) no earlier than 2 weeks prior to the opening of deer season, and you must remove them from the field within 1 week after the season closes (*see* § 27.93 of this chapter). The hunter's name and address must appear on all stands left in the field.

3. You must remove stands from the tree when not in use, or they will be subject to confiscation (*see* § 27.93 of this chapter). We prohibit the use of any tree stand left attached and unattended.

4. You must use safety belts at all times when occupying the tree stands.

5. We prohibit organized deer drives of two or more hunters. We define "drive'' as: the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make animals more susceptible to harvest.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to State regulations subject to the following conditions:

1. Conditions A1 through A9 and A12 apply.

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**Reelfoot National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrel and raccoon on the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge (*see* § 27.31(f) of this chapter).

3. We set season dates and bag limits annually and publish them in the refuge public use regulations available at the refuge office.

4. You must possess and carry a valid refuge permit and report game taken as specified within the permit.

5. We allow hunters to access the refuge no more than 2 hours before legal sunrise and no more than 2 hours after legal sunset with the exception of raccoon hunters, who we will allow access from 7 p.m. to 12 a.m. (midnight).

8. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult hunter may supervise no more than two youth hunters.

*C. Big Game Hunting.* We allow hunting for white-tailed deer and turkey on the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B5, and B7 apply.

2. You may only participate in the refuge firearms deer and turkey hunts with a special quota permit issued through random drawing. You may obtain information on permit applications at the refuge headquarters.

3. You may only possess approved nontoxic shot while turkey hunting on the refuge (see § 32.2(k)).

4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment from the refuge at the end of each day (*see* § 27.93 of this chapter).

5. All youth hunters age 15 and younger must remain within sight and normal voice contact of an adult age 21 or older, possessing a license. One adult hunter may supervise no more than one youth hunter.

*D. Sport Fishing.* We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We allow access to the Long Point Unit (north of Upper Blue Basin) for fishing from March 16 through November 14, and the Grassy Island Unit (south of Upper Blue Basin) for fishing from February 1 through November 14.

2. We allow fishing on the refuge from legal sunrise to legal sunset.

3. We prohibit taking of frog or turtle on the refuge (see § 27.21 of this chapter).

4. We prohibit airboats, hovercraft, or personal watercraft (Jet Skis) on any waters within the refuge boundary.

19. Amend § 32.37 Louisiana by:

a. Revising "Atchafalaya National Wildlife Refuge";

b. Revising "Bayou Cocodrie National Wildlife Refuge";

c. Revising paragraphs D.1., D.3., D.6., and adding paragraphs D.7. and D.8. of "Bayou Sauvage National Wildlife Refuge";

d. Revising "Bayou Teche National Wildlife Refuge";

e. Revising "Big Branch Marsh National Wildlife Refuge";

f. Revising "Black Bayou Lake National Wildlife Refuge";

g. Revising "Boque Chitto National Wildlife Refuge";

h. Revising "Cameron Prairie National Wildlife Refuge";

i. Revising "Cat Island National Wildlife Refuge";

j. Revising "Catahoula National Wildlife Refuge";

k. Revising "D'Arbonne National Wildlife Refuge";

l. Revising "Delta National Wildlife Refuge";

m. Revising "Grand Cote National Wildlife Refuge";

n. Revising "Lacassine National Wildlife Refuge";

o. Revising "Lake Ophelia National Wildlife Refuge";

p. Revising "Mandalay National Wildlife Refuge";

q. Adding "Red River National Wildlife Refuge";

r. Revising "Sabine National Wildlife Refuge";

s. Revising "Tensas River National Wildlife Refuge"; and

t. Revising "Upper Ouachita National Wildlife Refuge" to read as follows:

**§ 32.37 Louisiana.**

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**Atchafalaya National Wildlife Refuge**

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, snipe, and woodcock on designated areas of the refuge subject to the following condition: Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, nutria, muskrat, mink, fox, bobcat, beaver, and otter on designated areas of the refuge subject to the following condition: Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: Hunting must be in accordance with Sherburne Wildlife Management Area regulations.

*D. Sport Fishing.* We allow finfishing and shellfishing year-round in accordance with Sherburne Wildlife Management Area regulations subject to the following condition: We require refuge Special Use Permits for all commercial shellfishing.

**Bayou Cocodrie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We allow migratory game bird hunting on Tuesdays, Thursdays, Saturdays, and Sundays until 12 p.m. (noon) during the State season. We do not open for the special teal season and State youth waterfowl hunt.

3. We prohibit hunting within 150 feet (45 m) of the maintained rights-of-way of roads, refuge road or designated trail, building, residence, or designated public facility.

4. You must remove temporary blinds (*see* § 27.93 of this chapter) used for duck hunting by 12 p.m. (noon) on the last day of the State waterfowl season. You must clearly mark any stand or blind left on the refuge with the name and address of the person using the stand or blind. You must remove decoys daily.

5. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

6. Youth hunters under age 16 must have completed a hunter education course and possess and carry evidence of completion. An adult age 21 or older must closely supervise youth hunters (within sight and normal voice contact). One adult may supervise no more than two youth hunters while hunting migratory game birds.

7. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

8. We prohibit use or possession of any type of trail-marking material.

9. Coyote, beaver, feral hog, and raccoon are incidental take species and, as such, you may take them during any open hunting season only with the weapon allowed for that season, if you are a hunter having the required licenses and permits. There is no bag limit on coyote and beaver. The feral hog bag limit is 10 per year, and the raccoon bag limit is 1 per day.

10. We prohibit entering the refuge from private property and/or hunt leases; you may use only designated entry sites.

11. You must check all game taken on the refuge before leaving the refuge at one of the self-clearing check stations indicated on the map in the refuge Hunting and Fishing Regulations Brochure.

12. You must use boats to access the refuge from Bayou Cocodrie or Cross Bayou. We prohibit entering the refuge from U.S. Highway 84. You must dock all boats used to access the refuge on the banks of the refuge. Boats used to cross

"low water crossings'' at Cross Bayou may be left for a maximum of 3 days, and you must clearly mark them with the name and address of the person responsible for the boat while it is on the refuge. We only allow outboard motors in Cocodrie Bayou and tributaries accessible therefrom.

13. We only allow ATVs on designated trails (see § 27.31 of this chapter) from September 1 through the hunting season. An all-terrain vehicle (ATV) is an off-road vehicle with factory specifications not to exceed the following: weight 750 pounds (337.5 kg), length 85 inches (2l2.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 x 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

14. We require all refuge users to sign in at a designated check station upon entering the refuge and sign out upon their departure.

15. Hunters with mobility impairments must possess and carry a valid special access permit from the refuge to use special access ATV trails (*see* § 27.31 of this chapter). State requirements for "Mobility-Impaired'' classification apply. Mobility-impaired hunters must present their State "Disabled Hunter'' card at the refuge headquarters to apply for the refuge special access permit.

16. You may only possess approved nontoxic shot while hunting on the refuge (see § 32.2(k)). This requirement only applies to the use of shotgun ammunition.

B. *Upland Game Hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow squirrel and rabbit hunting during the State season except during the open youth hunt for deer, the youth lottery hunt, the muzzleloader hunt, and the lottery deer hunt.

2. Conditions A1, A3, and A7 through A16 apply.

3. We allow the use of dogs to hunt squirrel and rabbit during that portion of the season designated as "With/Without Dogs.'' We list specific season dates in the refuge brochure.

4. While engaged in upland game hunting, we prohibit possession of firearms (see § 27.42 of this chapter) larger than .22 caliber rimfire, shotgun slugs, or buckshot.

5. Hunters must enter the refuge no earlier than 2 hours before legal sunrise and must exit the refuge within 2 hours after legal sunset.

6. Youth hunters under age 16 must have completed a hunter education course and possess and carry evidence of completion. An adult age 21 or older must closely supervise youth hunters (within sight and normal voice contact). One adult may supervise no more than one youth hunter while hunting upland game.

C. *Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3, A7 through A16, and B5 apply.

2. The bag limit is one deer (of either sex) per day. The State season limit applies.

3. You must check all deer on the same day taken during lottery deer hunts at a staffed refuge check station.

4. Archery hunters must possess and carry proof of completion of the International Bowhunters Education Program.

5. We require a minimum of 400 square inches (2,600 cm2) of unbroken hunter orange on the outermost layer of clothing on the chest and back, and in addition, we require a hat or cap of unbroken hunter orange. You must wear the solid hunter-orange items while in the field.

6. You may place temporary stands no more than 2 days prior to the opening of the respective season, and you must remove them by the last day of archery season (see § 27.93 of this chapter). You must clearly mark any stand left on the refuge with the name and address of the person using the stand.

7. We only allow deer hunting with modern firearms during the lottery deer hunt. We require special limited permits for the lottery deer hunt. We only allow hunters with a valid lottery deer hunt permit (must possess and carry the permit) to use the refuge during the lottery deer hunt.

8. We open archery season on the Saturday closest to October 31, and keep it open until the end of the State season, except we close the refuge to archery hunting during the refuge youth hunt, youth lottery hunt, and lottery deer hunt.

9. We allow deer hunting with muzzleloaders subject to State regulations. Specific open dates will appear in the annual Refuge Hunting and Fishing Regulations Brochure.

10. We prohibit possession or use of buckshot.

11. We prohibit possession or use of climbing spikes.

12. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or any nonnaturally occurring attractant on the refuge (see § 32.2(h)).

13. Youth hunters under age 16 must have completed a hunter education course and possess and carry evidence of completion. An adult age 21 or older must closely supervise youth hunters (within sight and normal voice contact). One adult may supervise no more than one youth hunter while hunting big game.

*D. Sport Fishing.* We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A11 through A15 apply.

2. You must tend trotlines daily. You must attach ends of trotlines by a length of cotton line that extends into the water.

3. We prohibit commercial fishing except by Special Use Permit. Recreational fishing using commercial gear (slat traps, *etc.*) requires a special refuge permit (that you must possess and carry) available at the refuge office.

4. We prohibit the taking of alligator snapping turtle (*see* § 27.21 of this chapter).

5. We only allow fishing during daylight hours.

**Bayou Sauvage National Wildlife Refuge**

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*D. Sport Fishing.* We allow finfishing and shellfishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is daylight use only.

* * * * *

3. We only allow sport fishing with hand-held rod and reel or hand-held rod and line. You may take bait shrimp with cast nets 8 feet (2.4 m) in diameter or less. You may take crawfish (up to 100 pounds (45 kg) per person) with wire nets up to 20 inches (50 cm) in diameter. We allow recreational crabbing with a limit of 12 dozen per person. You must attend all fishing, crabbing, and crawfishing equipment at all times.

* * * * *

6. We prohibit air-thrust boats, motorized pirogues, mud boats, and air-cooled propulsion engines on the refuge.

7. We prohibit feeding of any wildlife within the refuge.

8. We prohibit all commercial activity unless authorized by a Special Use Permit obtained from Southeast Louisiana Refuges Headquarters.

**Bayou Teche National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed Public Use Permit while on the refuge. This permit is free and available on the front cover of the refuge's brochure.

2. We prohibit hunting in and/or shooting into or across any open field, roadway, or canal.

3. Youth hunters under age 16 must have completed a hunter education course and possess and carry evidence of completion. An adult age 21 or older must closely supervise youth hunters (within sight and normal voice contact). One adult can supervise no more than two youth hunters while hunting migratory game birds. All hunters and adult supervisors must possess and carry proof of completion of a State Hunter Education Course.

4. All hunters must have a refuge lottery hunting permit prior to hunting. You will find applications for refuge permits (that you must possess and carry) inside the refuge hunting, fishing, and public use brochures.

5. All hunters must check-in prior to hunting and check out after hunting at a refuge self-clearing check station. You must report all game taken on the refuge when checking out by using the check card.

6. We prohibit airboats and marsh buggies (tracked vehicles) on the refuge. We restrict motorized boat use to existing canals, ditches, trenasses, ponds, and from areas marked as nonmotorized areas only.

7. We prohibit parking, walking, or hunting within 150 feet (45 m) of any active oil well site, production facility, or equipment. We also prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail, building, residence, or designated public facility.

8. We prohibit feeding of any wildlife within the refuge.

9. We allow hunting until 12 p.m. (noon). We allow hunters to enter the refuge up to 2 hours before legal sunrise.

10. We open the refuge to hunting of migratory game bird on Wednesdays, Thursdays, Saturdays, and Sundays of the State waterfowl season.

11. We allow hunting in the Centerville, Garden City, Bayou Sale, North Bend-East, and North Bend-West Units through November 30. After November 30, we allow hunting in the Centerville, Garden City, and Bayou Sale Units only. We open no other units to hunting of migratory game birds.

12. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

13. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)). This requirement only applies to the use of shotgun ammunition.

*B. Upland Game Hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting from the start of the State squirrel and rabbit seasons until the last day of State waterfowl season in the West Zone.

2. We prohibit upland game hunting on days corresponding with refuge deer gun hunts.

3. We allow hunters to enter the refuge up to 2 hours before legal sunrise, but they must leave the refuge 1 hour after legal sunset.

4. We allow hunting 7 days a week beginning with the opening of State seasons in the Centerville, Garden City, Bayou Sale, North Bend-East, and North Bend-West Units through November 30. After November 30, we only allow hunting on Wednesdays, Thursdays, Saturdays, and Sundays in the Centerville, Garden City, and Bayou Sale Units until 12 p.m. (noon). We open no other units to hunting of upland game.

5. We prohibit dogs.

6. Conditions A1 through A8 and A13 apply.

*C. Big Game Hunting.* We allow the hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting of deer with firearms (*see* § 27.42 of this chapter) during 7 specific days in November. A youth gun hunt will occur during the first weekend in November. The first of two general gun hunts will occur on the third weekend, and the final general gun hunt will occur during the final full weekend of November. These gun hunts include both Saturday and Sunday only, except the final general gun hunt will additionally include the Friday immediately before the weekend.

2. We allow hunting of deer with archery equipment from the start of the State archery season until the last day of November, except for those days that deer gun hunts occur.

3. All archery hunters must possess and carry proof of completion of the International Bowhunters Education Program.

4. We allow hunting in the Centerville, Garden City, Bayou Sale, North Bend-East, and North Bend-West Units only. We do not open the Bayou Sale Unit for all big game firearm hunts.

5. We only allow each hunter to possess 1 deer of either sex per day. State season limits apply.

6. You may take no other native or feral wildlife other than white-tailed deer while engaged in big game hunting (*see* § 27.21 of this chapter).

7. We prohibit possession of buckshot.

8. We require a minimum of 400 square inches (2,600 $cm^2$) of unbroken hunter orange on the outermost layer of clothing on the chest and back, and, in addition, we require a hat or cap of unbroken hunter orange. You must wear the solid hunter-orange items while in the field.

9. Conditions A1 through A8 and B3 apply.

*D. Sport Fishing.* We allow fishing in all refuge waters in accordance with State regulations subject to the following conditions:

1. We only allow recreational fishing. We prohibit all commercial fishing activity unless authorized by a Special Use Permit.

2. We prohibit the use of unattended nets, traps, or lines (trot, jug, bush, etc.).

3. The refuge is daylight use only.

4. We prohibit the take of turtle (*see* § 27.21 of this chapter).

5. Conditions A1 and A5 through A8 apply.

**Big Branch Marsh National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* You may hunt duck, coot, and goose on designated areas of the refuge during the State waterfowl season in accordance with State regulations subject to the following conditions:

1. We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays, until 12 p.m. (noon), including the special teal season and youth waterfowl hunt.

2. We do not open the refuge to goose hunting for that part of the season that extends beyond the regular duck season.

3. You must remove blinds and decoys (*see* § 27.93 of this chapter) by noon.

4. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

5. You must possess and carry a valid refuge hunt permit.

6. We prohibit air-thrust boats, motorized pirogues, mud boats, and air-cooled propulsion engines on the refuge.

7. Youth hunters under age 16 must have completed a hunter education course and possess and carry evidence of completion. An adult age 21 or older

must closely supervise youth hunters (within sight and normal voice contact). One adult may supervise no more than two youth hunters while hunting migratory game.

8. We only open the refuge during daylight hours.

9. We prohibit possession of buckshot, slugs, rifles, or rifle ammunition.

10. We prohibit hunting within 150 feet (45 m) of the maintained rights-of-way of roads, refuge road, trail, building, residence, designated public facility, above-ground oil and gas or electrical facilities, or from across ATV trails (*see* § 27.31 of this chapter).

11. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, snipe, woodcock, quail, gallinule, and rail in accordance with State regulations subject to the following conditions:

1. We allow upland game hunting during the open State season using only approved nontoxic (*see* § 32.2(k)) shot size #4 or smaller.

2. You may only use dogs for squirrel and rabbit after the close of the State gun deer season.

3. We only allow dogs to locate, point, and retrieve when hunting for snipe, woodcock and quail.

4. Conditions A5 through A11 apply.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We are open during the State season for archery hunting of deer.

2. We only allow portable stands.

3. We prohibit dogs and driving deer.

4. You may take deer of either sex for the entire archery deer season. The State season limits apply.

5. You must remove all deer stands within 14 days of the end of the refuge deer season (*see* § 27.93 of this chapter).

6. You may only take hogs during the refuge archery hunt with bow and arrow.

7. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals or other feed or any nonnaturally occurring attractant on the refuge (*see* § 32.2(h)).

8. Conditions A5 through A11 apply.

9. Youth hunters under age 16 must have completed a hunter education course and possess and carry evidence of completion. An adult age 21 or older must closely supervise youth hunters (within sight and normal voice contact). One adult may supervise no more than one youth hunter while hunting big game.

*D. Sport Fishing.* We allow fishing in designated waters of the refuge in accordance with State regulations subject to the following conditions:

1. You may only fish during daylight hours.

2. You must only use rods and reel or pole and lines while fishing.

3. We prohibit trotlines, slat traps, jug lines, or nets.

4. We allow recreational crabbing.

5. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

6. Condition A6 applies.

**Black Bayou Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit.

2. We allow hunting north of "cemetery pipeline'' and east of the main body (permanent water) of Black Bayou Lake.

3. We allow waterfowl hunting until 12 p.m. (noon) during the State season except we do not open during the special teal season and State youth waterfowl hunt.

4. We prohibit accessing the hunting area by boat from Black Bayou Lake.

5. You may enter the refuge no earlier than 4 a.m.

6. We prohibit hunting within 150 feet (45 m) of the maintained rights-of-way of roads, from or across ATV trails (*see* § 27.31 of this chapter), and from above-ground oil or gas or electrical transmission facilities.

7. We prohibit leaving boats, blinds, and decoys unattended.

8. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

9. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. One adult may supervise two youth hunters.

10. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

11. We only allow ATVs on trails (*see* § 27.31 of this chapter) designated for their use and marked by signs. We do not open ATV trails March 1 through August 31. An all-terrain vehicle (ATV) is an off-road vehicle with factory specifications not to exceed the following: weight 750 lbs. (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 x 12 with a maximum of 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

B. *Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A4, A6, A9, and A10 apply.

2. We prohibit possession of firearms (*see* § 27.42 of this chapter) larger than .22 caliber rimfire, shotgun slugs, and buckshot.

3. You may hunt raccoon and opossum from ½ hour before sunrise to ½ hour after sunset of rabbit and squirrel season and at night during December and January. You may use dogs for night hunting. We prohibit selling raccoon and opossum taken on the refuge for human consumption.

4. We allow use of dogs to hunt squirrel and rabbit after the refuge archery deer hunt.

5. We allow use of horses and mules to hunt raccoon and opossum at night only after obtaining a Special Use Permit at the refuge office.

6. We prohibit opossum and raccoon night hunters from using ATVs.

7. You may enter the refuge no earlier than 4 a.m. and must exit no later than 1 hour after legal shooting hours.

8. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting on the refuge. This requirement only applies to the use of shotgun ammunition.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A6, A10, A11, and B7 apply.

2. We allow archery deer hunting during October, November, and December north of "cemetery pipeline'' and east of the main body (permanent water) of Black Bayou Lake.

3. We prohibit gun deer hunting.

4. The daily bag limit is one deer of either sex. The State season limit applies.

5. Hunters must possess and carry proof of completion of the International Bowhunters Education Program.

6. We prohibit leaving deer stands, blinds, and other equipment unattended.

7. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. One adult may supervise no more than one youth hunter.

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may enter the refuge ½ hour before legal sunrise, and you must exit no later than ½ hour after legal sunset.

2. You may only launch boats at the concrete ramp adjacent to the visitor center. We prohibit launching boats with motors greater than 50 hp. We prohibit personal watercraft (Jet Skis).

3. We prohibit trotlines, limb lines, yo-yos, traps, or nets.

4. We prohibit commercial fishing.

5. We prohibit leaving boats or other equipment on the refuge overnight (*see* § 27.93 of this chapter).

6. We require a boat launch fee. You must pay launch fees and fill out and properly display your launch permit before launching boat.

7. We prohibit take of frog, turtle, and mollusk (*see* § 27.21 of this chapter).

8. We prohibit crossing the water hyacinth blooms in a boat.

**Bogue Chitto National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting until 12 p.m. (noon).

2. We only allow woodcock hunting using approved nontoxic shot (*see* § 32.2(k)) size #4 or smaller.

3. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. For waterfowl hunts, one adult may supervise two youth hunters.

4. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

5. We require a signed refuge hunt permit.

6. We allow public hunting refuge-wide during the open State season for listed species, except for the east levee of the Pearl River Navigation Canal as indicated on refuge permit map.

7. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail, building, residence, designated public facility or from or across above-ground oil or gas or electrical facilities.

8. We prohibit possession of slugs, buckshot, or rifle or pistol ammunition larger than .22 caliber rimfire.

*B. Upland Game Hunting*. We allow hunting of squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)). This requirement only applies to the use of shotgun ammunition.

2. You may use dogs for squirrel during a portion of the squirrel season, typically in November and from after the close of the refuge gun deer season until the end of the State squirrel season.

3. You may use dogs for rabbit during a portion of the squirrel season, typically in November and after the close of the State gun deer season.

4. You may use dogs for raccoon; the season is typically during the months of January and February.

5. We will close the refuge to hunting (except waterfowl) and camping when the Pearl River reaches 15.5 feet (4.65 m) on the Pearl River Gauge at Pearl River, Louisiana.

6. We prohibit the take of feral hog during any upland game hunts.

7. Condition A3 (upland game hunts), and A5 through A8 apply.

*C. Big Game Hunting*. We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A3 (one adult can only supervise one youth hunter during refuge Gun Deer Hunts), A5 through A7, and B5 apply.

2. You must remove all deer stands within 14 days following the end of the refuge deer season (*see* § 27.93 of this chapter).

3. We typically open archery deer season (either sex) from October 1 through 31 and also for 1 to 2 weeks in January.

4. General Gun Deer Hunts are typically in November and December.

5. Primitive weapons season is typically open in December.

6. We prohibit the use of dogs.

7. We prohibit shotguns using larger shot than No. 2 during turkey season.

8. You may only take gobblers.

9. You may take hogs during refuge archery and general Gun Deer Hunts only. Additionally, you may take hogs typically during varying dates in January and February, and you must only take them with the aid of trained hog-hunting dogs during daylight hours.

10. You must kill all hogs prior to removal from the refuge.

11. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed or nonnaturally occurring attractant on the refuge (*see* § 32.2(h)).

*D. Sport Fishing*. We allow fishing year-round in accordance with State regulations subject to the following conditions:

1. We only allow cotton limb lines.

2. Condition B5 applies.

3. We close the fishing ponds at the Pearl River Turnaround to fishing during the months of April, May, and June.

4. We prohibit boats in the fishing ponds at the Pearl River Turnaround.

5. We prohibit the take of turtle (*see* § 27.21 of this chapter).

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**Cameron Prairie National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose (except Canada goose), duck, coots, snipe, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The waterfowl hunt is a youth hunt only. We set hunt dates in September, and you may obtain information from the refuge. We will accept permit applications September 1 through October 15 and limit applications to a choice of 2 dates. We will notify successful applicants.

2. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. For waterfowl hunts, one adult may supervise two youth hunters.

3. We require every hunter to possess and carry signed refuge hunting regulations and permit.

4. You must complete a Hunter Information Card at a self-clearing check station after each hunt before leaving the refuge.

5. We allow dove hunting in designated areas on Tuesdays, Thursdays, Saturdays, and Sundays from 12 p.m. (noon) to legal sunset during the first split of State dove season only.

6. We allow snipe hunting in designated areas on Tuesdays,

Thursdays, Saturdays, and Sundays from 12 p.m. (noon) to legal sunset for the remainder of the State season after closure of the waterfowl season.

7. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail, building, residence, or designated public facility.

8. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow archery as the only form of hunting for white-tailed deer in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry proof of completion of the International Bowhunters Education Program to bowhunt on the refuge.

2. Conditions A2 (for big game hunt, one adult may supervise no more than one youth hunter), A3, A4, A7, and A8 apply.

*D. Sport Fishing.* We allow fishing, boating, crabbing, and cast netting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must fish with a rod and reel or a pole and line. We prohibit the possession of any other type of fishing gear, including limb lines, gill nets, jug lines, yo-yos or trotlines.

2. You may fish, crab, or cast net in the East Cove unit year-round from legal sunrise to legal sunset, except during the State waterfowl season and when we close the Grand Bayou Boat Bay.

3. We prohibit fishing, crabbing, or cast netting from or trespassing on refuge water control structures at any time.

4. We prohibit walking, wading, or climbing in or on the marsh, levees, or structures.

5. We allow sport fishing, crabbing, and cast netting in the Gibbstown Unit Bank Fishing Road waterways and adjacent borrow pits and the Outfall Canal from March 15 through October 15 only.

6. We only allow nonpowered boats in the Bank Fishing Road waterways.

7. We only allow recreational crabbing with cotton hand lines or dropnets up to 24 inches (60 cm) outside diameter.

8. You must attend all lines, nets, and bait and remove them from the refuge (see § 27.93 of this chapter) when you leave.

9. We allow a daily limit of five dozen crabs per boat or vehicle.

10. We allow recreational cast netting for shrimp during the Louisiana Inland Shrimp Season when we open the East Cove Unit for boats.

11. You may only use a cast net that does not exceed a 5 foot (12.5 cm) hanging radius.

12. We allow a daily limit of 5 gallons (19 L) of heads-on shrimp per boat.

13. We only allow recreational cast netting for bait year-round when we open the East Cove Unit for boats.

14. We prohibit the use of ATVs, air-thrust boats, personal motorized watercraft (Jet Skis), and air-cooled propulsion engines (go devil-style motors) in any refuge area (*see* § 27.31(f) of this chapter).

15. You may operate outboard motors in refuge canals, bayous, and lakes. We only allow trolling motors in the marsh.

16. Condition A8 applies.

17. We prohibit the taking of turtle (see § 27.21 of this chapter).

**Cat Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge as shown on the refuge hunt brochure map in accordance with State regulations subject to the following conditions:

1. We require hunters/anglers age 16 and older to purchase and carry a signed refuge hunting/fishing/ATV permit.

2. Each hunter must sign in at the refuge check station when entering and leaving the refuge.

3. The refuge opens at 4 a.m. and closes 1 hour after legal sunset.

4. We prohibit possession of firearms in areas posted as "No Hunting Zones.''

5. You may only enter and exit the refuge from designated parking areas.

6. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult must possess and carry a refuge permit and may supervise no more than two youth hunters during waterfowl/upland game hunting.

7. We allow take of beaver, feral hog, nutria, raccoon, and coyote incidental to any refuge hunt with weapons legal for that hunt until you take the daily bag limit of game.

8. You must report all harvested game at the refuge check station upon leaving the refuge. If you harvest game at a time when the refuge is closed to vehicular traffic, you must report it to the refuge office.

9. We allow use of all-terrain vehicles on designated refuge trails (*see* § 27.31 of this chapter) for wildlife-dependent activities from the first Saturday in September to the last day of the State-designated rabbit season. An all-terrain vehicle (ATV) is an off-road vehicle with factory specifications not to exceed the following: weight 750 lbs. (337.5 kg), length 85 inches (212.5 cm) , and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 X 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

10. We prohibit transport of loaded weapons on an ATV (*see* § 27.42(b) of this chapter).

11. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail or ATV trail, building, residence, or designated public facility.

12. We prohibit the possession or use of nonbiodegradable flagging tape.

13. We prohibit horses or mules.

14. We only allow parking in designated parking areas.

15. We prohibit camping or overnight parking on the refuge.

16. We prohibit air-thrust boats on the refuge.

17. We prohibit all other hunting during the special youth and Gun Deer Hunts.

18. We allow waterfowl hunting on Tuesdays, Thursdays, Saturdays, and Sundays until 12 p.m. (noon) during the designated State duck season, except during the refuge quota deer hunts.

19. You must remove boats, blinds, and decoys (*see* § 27.93 of this chapter) daily.

20. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

*B. Upland Game Hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge as shown on the refuge hunt brochure map in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A17, and A19 apply.

2. We allow the use of .22 caliber or less rimfire rifles and 12 gauge or higher shotguns to hunt upland game.

3. We allow the use of squirrel and rabbit dogs from the day after the close of the State-designated deer rifle season to the end of the State-designated season. We allow up to two dogs per hunting party.

4. We require the owner's name and phone number on the collars of all dogs.

5. You may only possess approved nontoxic shot while hunting on the

refuge (*see* § 32.2(k)). This requirement only applies to the use of shotgun ammunition.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge as shown on the refuge hunt brochure map in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A17, and A19 apply. For A6 each adult may only supervise one youth hunter during big game hunts.

2. You must only hunt deer using bow and arrow during the State-designated deer season, except during the refuge quota deer hunts and the youth deer hunt.

3. You must possess and carry proof of completion of the International Bowhunter Education Course to archery hunt on the refuge.

4. You must only use portable deer stands. Deer stands must have the owner's name, address, and phone number clearly printed on the stand.

5. We prohibit the use of dogs to trail wounded deer.

6. You may only take one deer of either sex per day during the deer season. State season limits apply. During the deer quota hunts, you may only take one deer of either sex during the quota hunt weekend.

7. We require a minimum of 400 square inches (2,600 cm2) of unbroken hunter orange on the outermost layer of clothing on the chest and back, and in addition we require a hat or cap of unbroken hunter orange.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge as shown on the refuge hunting and fishing brochure map in accordance with State regulations subject to the following conditions:

1. We prohibit commercial fishing or commercial crawfishing.

2. Conditions A1, A3, A4, A9 (on the open portions of Wood Duck ATV Trail for wildlife-dependent activities throughout the year), A13 through A16, and A19 apply.

3. We only allow hook and line to catch bait fish.

4. We prohibit slat traps or hoop nets on the refuge.

5. You may use trotlines and yo-yos on the refuge. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water. You must attend yo-yos (within sight) at all times.

6. We prohibit possession of cleaned or processed fish on the refuge.

7. We allow recreational crawfishing on the refuge with either traps or nets April 1 through July 31, according to State regulations regarding trap requirements and licensing. The harvest limit is 100 pounds (45 kg) per vehicle or boat per day.

8. You must attend all crawfish traps and nets at all times and may not leave them on the refuge overnight. We allow up to and not exceeding 20 traps per angler on the refuge.

9. We prohibit harvest of frog or turtle on the refuge (*see* § 27.21 of this chapter).

**Catahoula National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds only on designated areas of the Bushley Bayou Unit in accordance with State hunting regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge hunting permit. Prior to entering and leaving the hunt area, we require hunters to sign in and out at designated locations as indicated on the refuge hunt/fish permit.

2. We allow goose, duck, and coot hunting on the Bushley Bayou Unit on Tuesdays, Thursdays, Saturdays, and Sundays only, from ½ hour before official sunrise until 12 p.m. (noon).

3. We open the refuge to hunters 2 hours before official sunrise for migratory game bird hunting.

4. We allow ATVs on ATV trails (*see* § 27.31 of this chapter) designated on the refuge hunt/fish permit from September 1 through the end of rabbit season. We open Bushley Creek, Black Lake, Boggy Bayou, Round Lake, Dempsey Lake Roads, and that portion of Minnow Ponds Road at Highway 8 to Green's Creek Road and then south to Green's Creek Bridge to ATVs year-round. We only allow ATVs for wildlife-dependent activities. We define an ATV as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 lbs. (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 x 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

5. We require hunters to remove all portable blinds, boats, decoys, and other personal equipment (*see* § 27.93 of this chapter) from the refuge by 1 p.m. daily.

6. We prohibit all migratory game bird hunting during deer-gun and muzzleloader hunts.

7. We prohibit hunting or shooting within 150 feet (45 m) of any public road, refuge road, ATV trail, building, residence, or designated public facility. We prohibit parking, walking, or hunting with 150 feet (45 m) of any active oil well site, production facility, or equipment.

8. We prohibit the use of air-thrust boats, inboard water-thrust boats, or personal watercraft. We only allow nonmotorized boats, boats with electric motors, or boats with a motor of 10 hp or less on Black Lake, Dempsey Lake, Long Lake, Rhinehart Lake, and Round Lake.

9. We prohibit the use of mules or horses.

10. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult must possess and carry a refuge permit and may supervise no more than two youth hunters while hunting migratory game birds.

11. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)). This requirement only applies to the use of shotgun ammunition.

12. We prohibit the possession of buckshot, slugs, or rifle ammunition larger than .17-caliber rimfire while engaged in migratory game bird hunts.

13. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

14. We prohibit marking areas or trails with tape, paint, paper, flagging, or any other material.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, raccoon, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4 (at the Bushley Bayou Unit), and A7 through A13 apply. For A10, each adult must supervise no more than two youth hunters during upland game hunts.

2. At the Headquarters Unit, we only allow squirrel, rabbit, raccoon, and feral hog hunting from the first day of the State squirrel season through October 31.

3. At the Bushley Bayou Unit, we allow squirrel, rabbit, raccoon, and feral hog hunting in accordance with the State season.

4. We open the refuge to hunters from 2 hours before legal sunrise until 2 hours after legal sunset.

5. At the Headquarters Unit, we only allow ATV use year-round on the Muddy Bayou Road.

6. We prohibit squirrel, rabbit, and raccoon hunting during deer-gun and muzzleloader hunts.

7. We prohibit the use of airboats, inboard water-thrust boats, or personal watercraft. We only allow nonmotorized boats, boats with electric motors, or boats with a motor of 10 hp or less on Black Lake, Dempsey Lake, Long Lake, Rhinehart Lake, and Round Lake of the Bushley Bayou Unit and Duck Lake, Cowpen Bayou, Willow Lake, and the Highway 28 and 84 borrow pits of the Headquarters Unit.

8. At the Headquarters Unit, we close upland game hunting during high water conditions with an elevation of 42 feet (12.6 m) or above as measured at the Corps of Engineers river gauge at Archie or the center of the lake gauge on Catahoula Lake. At the Bushley Bayou Unit, we close upland game hunting during high water conditions with an elevation of 44 feet (13.2 m) or above as measured at the Corps of Engineers river gauge at Archie or center of the lake gauge on Catahoula Lake.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A10 (one adult may only supervise one youth hunter during big game hunts), A12, A13, and B4 through B8 (big game hunting) apply.

2. At the Bushley Bayou Unit, we allow deer-archery hunting during the State archery season, except when closed during deer-gun and deer-muzzleloader hunts. We allow either-sex muzzleloader hunting during the first segment of the State season for Area 1, weekdays only (Monday through Friday) and the third weekend in December. We allow either-sex, deer-gun hunting for the Friday, Saturday, and Sunday immediately following Thanksgiving Day and for the second weekend following Thanksgiving Day.

3. At the Headquarters Unit, we allow deer-archery hunting during the State archery season, except when closed during the deer-gun hunt south of the French Fork of the Little River. We only allow either-sex, deer-gun hunting on the Friday and Saturday immediately following Thanksgiving Day on the area south of the French Fork of the Little River.

4. We allow portable stands and climbing stands, but hunters must remove them from the refuge daily (see § 27.93 of this chapter).

5. We prohibit possession of buckshot.

6. We require a minimum of 400 square inches (2,600 $cm^2$) of unbroken hunter orange on the outermost layer of clothing on the chest and back, and in addition we require a hat or cap of unbroken hunter orange. You must wear the solid hunter-orange items while in the field.

7. You may only take one deer per day during any refuge deer hunt. The State season limits apply.

8. We prohibit organized drives for deer and/or hog.

9. Archery hunters must possess and carry proof of completion of the International Bowhunters Education Program.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4 (at the Bushley Bayou Unit), A12 (as a fishing guide), B5, and B7 apply.

2. We require anglers to obtain and carry at all times a signed copy of a current refuge hunting/fishing permit.

3. At the Bushley Bayou Unit, we allow fishing and crawfishing year-round. We allow trotlines, but you must tend them at least once every 24 hours and reset them when receding water levels expose them. You must attach them with a length of cotton line that extends into the water. We allow yo-yos, but you must attend and only use them from 1 hour before legal sunrise until ½ hour after legal sunset. We only allow recreational gear (slat traps, wire nets, and hoop nets) by refuge Special Use Permit and only in Bushley Creek, Big Bushley Creek, and Little Bushley Creek.

4. At the Headquarters Unit, we allow year-round fishing on Cowpen Bayou and the Highway 28 borrow pits. We open fishing on the remainder of the Headquarters Unit including Duck Lake, Muddy Bayou, Willow Lake, and the Highway 84 borrow pits from March 1 through October 31. We only allow pole and line or rod and reel fishing. We prohibit snagging.

5. We allow fishing from 1 hour before legal sunrise until ½ hour after legal sunset.

6. At the Headquarters Unit, we only allow launching of trailered boats at designated boat ramps. You may launch small, hand-carried boats at nonboat ramp sites. We prohibit dragging boats or driving vehicles (see § 27.31 of this chapter) onto road shoulders to launch boats.

7. We prohibit the taking or possession of all snakes, frogs, turtles, salamanders, and mollusks by any means (see § 27.21 of this chapter).

**D'Arbonne National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We prohibit waterfowl hunting in the "Beanfield'' area west of Bayou D'Arbonne and between Holland's Bluff Road and the "Big Powerline'' east of Bayou D'Arbonne. We mark prohibited areas with blue paint and signs.

3. We prohibit woodcock hunting in the "Beanfield'' area west of Bayou D'Arbonne.

4. We allow waterfowl hunting until 12 p.m. (noon) during the State season except when closed during the special teal season and State youth waterfowl hunt.

5. Hunters may enter the refuge no earlier than 4 a.m.

6. We prohibit hunting within 150 feet (45 m) of any public road.

7. We prohibit leaving boats, blinds, and decoys unattended.

8. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

9. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult must possess and carry a refuge permit and may supervise no more than two youth hunters during waterfowl hunts.

10. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A6, A9 (an adult may supervise no more than two youth hunters while upland game hunting), and A10 apply.

2. We prohibit hunting in the "Beanfield'' area west of Bayou D'Arbonne after October 31.

3. We prohibit possession of firearms larger than .22 caliber rimfire, shotgun

slugs, and buckshot while engaged in upland game hunting.

4. You may hunt raccoon and opossum during the daylight hours of rabbit and squirrel season and at night during December and January. You may use dogs for night hunting. You may take raccoon and opossum on the refuge, but we prohibit their sale for human consumption.

5. You may use dogs to hunt squirrel and rabbit after the last refuge Gun Deer Hunt.

6. You may only use horses and mules to hunt raccoon and opossum at night after obtaining a special permit at the refuge office.

7. Hunters may enter the refuge no earlier than 4 a.m. and must exit no later than 2 hours after legal shooting hours.

8. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)). This requirement only applies to the use of shotgun ammunition.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3 (for gun deer hunting), A6, A9 (an adult may supervise no more than one youth hunter while big game hunting), A10, and B7 apply.

2. We allow general gun deer hunting on the following days: the first consecutive Saturday and Sunday of November, the Friday, Saturday, and Sunday following Thanksgiving Day, and the second Saturday and Sunday after Thanksgiving Day. We allow archery deer hunting during the entire State season.

3. We allow a restricted Gun Deer Hunt for hunters with Class I Wheelchair Bound Permit issued by the Louisiana Department of Wildlife and Fisheries on the second consecutive Saturday and Sunday of November. Only permitted hunters may carry firearms (*see* § 27.42 of this chapter).

4. The daily bag limit is one antlered and one antlerless deer. The State season limit applies.

5. You must check all deer taken during general Gun Deer Hunts at a refuge check station between 7 a.m. and 7 p.m. on the same day taken unless stated otherwise in the annual refuge hunting brochure and permit.

6. Archery hunters must possess and carry proof of completion of the International Bowhunters Education Program.

7. We prohibit leaving deer stands, blinds, and other equipment unattended.

8. Deer hunters must wear hunter orange as per State deer hunting regulations on Wildlife Management Areas.

9. We prohibit hunters placing, or hunting from, stands on pine trees with white painted bands/rings.

*D. Sport Fishing.* We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit leaving boats and other personal property on the refuge unattended.

2. You must tend trotlines daily. You must attach ends of trotlines by a length of cotton line that extends into the water.

3. We prohibit commercial fishing. Recreational fishing using commercial gear (slat traps, etc.) requires a special refuge permit (that you must possess and carry) available at the refuge office.

4. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

**Delta National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions.

1. We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays until 12 p.m. (noon), including special teal season, youth waterfowl season, and "light goose'' special conservation season.

2. We only allow temporary blinds. You must remove both blinds and decoys (*see* § 27.93 of this chapter) by 12 p.m. (noon).

3. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

4. Hunters must possess and carry a valid refuge hunt permit.

5. We only allow hunting on those portions of the refuge that lie northwest of Main Pass and south of Raphael Pass.

6. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)).

7. We prohibit air-thrust boats, motorized pirogues, mud boats, and air-cooled propulsion engines on the refuge.

8. We close all refuge lands between Raphael Pass and Main Pass to all entry during the State waterfowl hunting season.

9. We prohibit discharge of firearms (*see* § 27.42 of this chapter) within 250 yards (225 m) of buildings or worksites, such as oil or gas production facilities.

10. We prohibit possession of buckshot, slugs, rifles, or rifle ammunition.

11. We allow primitive camping year-round in designated areas (*see* refuge map). No person or party will remain camped, nor will any campsite remain established, in excess of 14 consecutive days.

12. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult must possess and carry a refuge permit and may supervise no more than two youth hunters during waterfowl hunts.

13. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* We allow hunting of rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge rabbit season opens the day after the State duck season closes and continues through the remainder of the State rabbit season.

2. We restrict hunting to shotgun only.

3. We allow dogs for rabbit hunting.

4. Conditions A4 through A12 (each adult may supervise no more than two youth hunters during upland game hunting), and A13 apply.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. For archery hunting of deer and hogs, conditions A4 through A11, A12 (each adult may supervise no more than one youth hunter during big game hunting), and A13 apply.

2. We allow archery deer hunting October 1 through 31 (either sex) and from the day after the close of the State duck season through the end of the State deer archery season.

3. Hunters must only use portable stands for archery deer hunting.

4. We prohibit dogs and driving of deer for archery deer hunting.

5. You may only take hog with archery equipment.

6. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals or other feed or any nonnaturally occurring attractant on the refuge (*see* § 32.2(h)).

*D. Sport Fishing.* We allow recreational fishing and crabbing on designated areas of the refuge in

accordance with State regulations subject to the following conditions:

1. We only allow recreational fishing and crabbing from legal sunrise to legal sunset.

2. We prohibit the use of trotlines, limblines, slat traps, jug lines, nets, or alligator lines.

3. Condition A8, A11, and A13 (fishing guide) applies.

4. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

**Grand Cote National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, mourning dove, and woodcock on designated areas of the refuge on designated areas (shown on the refuge hunting brochure map) in accordance with State regulations subject to the following conditions:

1. We require hunters/anglers age 16 and older to purchase and carry a signed refuge hunting/fishing/ATV permit.

2. Hunters must fill out a free daily "check-in'' and "check out'' refuge hunting permit obtained at designated check stations and must properly display the associated windshield permit while in parking lots.

3. The refuge opens at 4 a.m. and closes 1 hour after legal sunset.

4. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters during waterfowl hunts.

5. You may only enter and exit the refuge from designated parking lots.

6. We prohibit camping or parking overnight on the refuge.

7. We prohibit discharge of firearms (*see* § 27.42 of this chapter) except when hunting.

8. We prohibit marking of trails with nonbiodegradable flagging tape.

9. We allow use of ATVs on designated trails (*see* § 27.31 of this chapter) from the first Saturday in September to the last day of the State rabbit season. An ATV is an off-road vehicle with factory specifications not to exceed the following: weight 750 pounds (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 × 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer.

10. We prohibit horses and mules.

11. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail or ATV trail, building, residence, above-ground oil or gas or electrical transmission facilities, or designated public facility.

12. We prohibit transport of loaded weapons on an ATV (*see* § 27.42(b) of this chapter).

13. We prohibit blocking of gates or trails (*see* § 27.31(h) of this chapter) with vehicles or ATVs.

14. We prohibit ATVs on trails/roads (*see* § 27.31 of this chapter) not specifically designated by signs for ATV use.

15. We only allow nonmotorized boats.

16. We allow incidental take of raccoon, feral hog, beaver, nutria, and coyote while you are hunting migratory birds, upland game, or big game, with weapons legal for that hunt only.

17. We only allow waterfowl (duck, goose, coot) hunting on Wednesdays and Saturdays until 12 p.m. (noon) during the Statewide duck season.

18. We only allow the use of shotguns while waterfowl hunting.

19. We prohibit the construction or use of permanent blinds.

20. You must remove all decoys, portable blinds, and boats (*see* § 27.93 of this chapter) daily.

21. We only allow incidental take of mourning dove while migratory bird hunting on days open to waterfowl hunting.

22. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

*B. Upland Game Hunting.* We allow hunting of rabbit on designated areas of the refuge as shown on the refuge hunting brochure map in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A16 and A20 apply.

2. We allow rabbit hunting from December 1 until the end of the Statewide season.

3. We only allow use of shotguns during designated hunts.

4. We only allow rabbit dogs after the close of the State deer rifle season.

5. We require the owner's name and phone number on the collars of all dogs.

6. You may only possess approved nontoxic shot (*see* § 32.2(k)) for upland game hunting. This requirement only applies to the use of shotgun ammunition.

7. We allow the use of .22 caliber or less rimfire rifles and 12 gauge or higher shotguns to hunt upland game.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge as shown on the refuge hunting brochure map in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A16 and A20 apply, except in A4 each adult may only supervise one youth hunter during big game hunts.

2. We allow archery-only deer hunting on the refuge from October 1 through October 31 in the Gremillion Unit, Island of the Owls Unit, and Concrete Bridge Unit (*see* refuge brochure).

3. The hunter must permanently attach their name, address, and phone number to all deer stands.

4. We prohibit hunters to drive deer or to use pursuit dogs. We prohibit the use of dogs to trail wounded deer.

5. We only allow archery equipment during designated seasons.

6. We require hunters to complete and possess and carry proof of completion of the International Bowhunters' Safety Course.

7. You may kill one deer of either sex per day during the deer season.

*D. Sport Fishing.* We allow fishing and seasonal take of crawfish in designated waters of the refuge as shown on the crawfish permit map in accordance with State regulations subject to the following conditions:

1. Conditions A1, A5, A6, A8, A10, A13 through A15, and A20 (remove boats [*see* § 27.93 of this chapter] daily) apply.

2. We only allow fishing in Coulee Des Grues along Little California Road.

3. We only allow fishing with pole and line.

4. We prohibit leaving parking areas to fish until legal sunrise.

5. We allow fishing and crawfishing from legal sunrise to legal sunset.

6. We allow crawfishing from April 1 through July 31, subject to available water in designated areas as depicted on the crawfish permit map available at refuge headquarters.

7. We require anglers to take crawfish using pyramid nets with webbing made of cotton or nylon. We prohibit wire traps.

8. You may harvest 100 lbs. (45 kg.) of crawfish per vehicle per day.

9. We prohibit sale of crawfish taken from the refuge.

10. We prohibit glass containers on the refuge.

11. You must remove all crawfishing gear (*see* § 27.93 of this chapter) from refuge property after each day's visit.

12. We prohibit possession of cleaned or processed fish on the refuge.

**Lacassine National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, gallinule, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a refuge hunting permit.

2. We only allow hunting on designated areas of the refuge. These areas include the marshes south of the Intracoastal Waterway and the area east of the Lacassine Bayou excluding Unit B (lottery hunt area west of Streeter Road), Unit F, and the headquarters area along Streeter Road (see refuge map).

3. We allow hunting Wednesdays through Sundays of the State teal and duck seasons (Western Zone). We close the refuge to hunting during the "goose only'' waterfowl season. State daily and season harvest limits apply.

4. We prohibit entering the hunting area earlier than 4 a.m., and shooting hours end at 12 p.m. (noon) each day.

5. We only allow firearms (see § 27.42 of this chapter) legal for waterfowl hunting in the refuge hunting area.

6. We prohibit all boat motors, including trolling motors, in refuge marshes. We prohibit air-thrust boats and ATVs on the refuge (*see* § 27.31(f) of this chapter).

7. We prohibit hunting closer than 150 feet (45 m) to a canal or waterway, and hunting parties must maintain a distance of no less than 150 yards (135 m) apart.

8. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult must possess and carry a refuge permit and may supervise no more than two youth hunters during waterfowl hunts.

9. You must remove all hunting-related equipment (*see* § 27.93 of this chapter) immediately following each day's hunt.

10. Only selected lottery hunt applicants may hunt on the designated lottery hunt area (Unit B) of the refuge. We designate hunt days on the lottery hunt for seniors and youth of the second split of the State duck season (Western Zone). You must contact the refuge office concerning the application process.

11. We prohibit overnight camping on the refuge.

12. We prohibit possession of alcohol in the hunt areas during the hunting season (*see* § 32.2(j)).

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A6, A8 (each adult may supervise no more than one youth hunter during big game hunts), A9, A11, and A12 apply.

2. We only allow archery hunting for white-tailed deer from October 1 through October 31.

3. We prohibit entrance to the hunting area earlier than 4 a.m. Hunters must leave no later than 1 hour after legal sunset.

4. Each bowhunter must possess and carry a Bowhunter Education Certificate indicating completion of the State bowhunter safety class.

5. The daily bag limit is one deer per day (either sex). The State season limits apply.

6. We prohibit hunting in the headquarters area along Nature Road and along the Lacassine Pool Wildlife Drive (see refuge map).

7. We only allow boats with motors of 25 hp or less in Lacassine Pool.

8. We prohibit boats in Lacassine Pool and Unit D from October 16 through March 14. We prohibit boats in Units A and C.

9. We restrict access in the Unit F area to walking only.

10. We prohibit firearms while deer hunting or scouting.

11. We allow the use of crossbows for hunters age 60 or older, or hunters with a State handicapped crossbow permit.

12. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals, or other feed on any nonnaturally occurring attractant on the refuge (see § 32.2(h)).

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A11, C7, and C8 apply.

2. We allow fishing March 15 through October 15.

3. You may enter the refuge 1 hour before legal sunrise, and you must leave 1 hour after legal sunset.

4. We prohibit fishing in the headquarters display pond.

5. We prohibit bank fishing on the Lacassine Pool Wildlife Drive.

6. We prohibit air-thrust boats, ATVs, and Jet Skis on the refuge (*see* § 27.31(f) of this chapter).

7. We prohibit dragging or driving of boats over levees.

8. You must only launch trailered boats at the cement ramps at the public boat launches in Lacassine Pool.

9. We only allow boats powered by paddling or trolling motors in the Unit D impoundment within Lacassine Pool.

10. We prohibit motors in the refuge marshes outside of Lacassine Pool.

11. We only allow fishing with rod and reel or pole and line on refuge waters.

12. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

**Lake Ophelia National Wildlife Refuge**

*A. Hunting of Migratory Birds.* We allow hunting of duck, goose, coot, woodcock, and snipe on designated areas of the refuge as shown on the refuge hunting brochure map in accordance with State regulations subject to the following conditions:

1. We require hunters/anglers age 16 and older to purchase and carry a signed refuge hunting/fishing/ATV permit.

2. Hunters must fill out a free daily "check-in'' and "check out'' refuge hunting permit obtained at designated check stations and must properly display associated windshield permit while in the parking lots.

3. The refuge opens at 4 a.m. and closes 1 hour after legal sunset.

4. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters during waterfowl hunts.

5. You may only enter and exit the refuge from designated parking lots.

6. We prohibit camping or parking overnight on the refuge.

7. We prohibit marking of trails with nonbiodegradable flagging tape.

8. We allow use of ATVs on designated trails (*see* § 27.31 of this chapter) from the first Saturday in September until the last day of refuge turkey season. We define ATV as an off-road vehicle with factory specifications not to exceed the following: weight 750 lbs. (337.5 kg), length 85 inches (212.5 cm), and width–48 inches (120 cm). We restrict ATV tires to those no larger than 25 by 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi (3.15 kg) as indicated on the tire by the manufacturer.

9. We prohibit horses or mules.

10. We prohibit hunting within 150 feet (45 m) of any designated road, ATV or hiking trail, or refuge facility.

11. We prohibit transport of loaded weapons on an ATV (*see* § 27.42(b) of this chapter).

12. We prohibit blocking of gates or trails (*see* § 27.31(h) of this chapter) with vehicles or ATVs.

13. We prohibit all other hunting during special youth and muzzleloader-quota deer hunts.

14. We allow incidental take of raccoon, feral hog, beaver, nutria, and coyote while migratory bird hunting,

upland game hunting, and big game hunting with weapons legal for that hunt.

15. We allow motors up to 25 hp from the first Saturday in September through January 31 in Possum Bayou (North of Boat Ramp), Palmetto Bayou, and Nicholas Lake.

16. We only allow electric-powered or nonmotorized boats in Westcut Lake, Duck Lake, Dooms Lake, Point Basse Lakes, Lake Long, and Possum Bayou (South of Boat Ramp).

17. We only allow waterfowl (duck, goose, coot) hunting on Tuesdays, Thursdays, Saturdays, and Sundays until 12 p.m. (noon) during the Statewide duck season.

18. We only allow the use of shotguns while waterfowl hunting.

19. You must remove all decoys, portable blinds, and boats (*see* § 27.93 of this chapter) daily.

20. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

*B. Upland Game Hunting.* We allow hunting of squirrel and rabbit on designated areas of the refuge as shown on the refuge hunting brochure map in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A16 and A19 apply.

2. We allow squirrel and rabbit hunting in Hunt Unit 2B from November 1 through November 30.

3. We only allow squirrel and rabbit dogs after the close of the State deer rifle season. We allow no more than two dogs per hunting party.

4. Dog owners must place their name and phone number on the collars of all their dogs.

5. You may only possess approved nontoxic shot (*see* § 32.2(k)) for upland game hunting. This requirement only applies to the use of shotgun ammunition.

6. We allow the use of .22 caliber or less rimfire rifles and 12 gauge or higher shotguns to hunt upland game.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge as shown on the refuge hunting brochure map in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, A5 through 16, and A19 apply.

2. We require hunters to permanently attach their name, address, and phone number to the deer stand.

3. We allow archery hunting from November 1 to the end of the State archery season, except during the youth and muzzleloader deer hunts, when we prohibit archery hunting.

4. We allow archery deer hunting in Hunt Units 1B and 2B from October 1 through November 30.

5. We allow youth deer hunting in all units during the State youth deer season.

6. We only allow portable deer stands.

7. We prohibit the use of organized drives for taking or attempting to take game or using pursuit dogs.

8. We only allow archery equipment during designated seasons.

9. Hunters must complete, possess, and carry proof of completion of the International Bowhunters' Safety Course.

10. We prohibit the use of dogs to trail wounded deer.

11. We allow nonmotorized boats in Lake Ophelia from November 1 through 30.

12. You may kill one deer of either sex per day during the deer season, except during the deer quota hunts, when you may only kill one deer of either sex during the entire quota hunt period.

13. We require a minimum of 400 square inches (2,600 $cm^2$) of unbroken hunter orange on the outermost layer of clothing on the chest and back, and in addition we require a hat or cap of unbroken hunter orange during all deer gun hunts and the quota muzzleloaders deer hunts.

14. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise one youth hunter during big game hunts.

*D. Sport Fishing.* We allow fishing in designated areas as described in the refuge hunting brochure in accordance with State regulations subject to the following conditions:

1. Conditions A1, A3, A5 through A9, A16, and A19 (remove boats [*see* § 27.93 of this chapter]) apply.

2. We allow sport fishing in Duck Lake, Westcut Lake, Possum Bayou, Lake Long, and the immediate vicinity of the Lake St. Agnes drainage culverts on the Red River.

3. We prohibit the use of gear or equipment other than hook and line to catch bait fish.

4. We allow fishing from March 1 through October 15 from legal sunrise to legal sunset.

5. You must attend yo-yos (within sight) at all times.

6. We prohibit possession of largemouth bass less than14 inches long (35 cm) and black and white crappie less than 10 inches long (25 cm).

8. We prohibit cleaned or processed fish on the refuge.

9. We allow use of ATVs on the Duck Lake ATV trail from March 15 through October 15.

**Mandalay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of migratory game birds on Wednesdays and Saturdays until 12 p.m. (noon). Hunters may only enter the refuge after 4 a.m.

2. Prior to hunting, we must assign a refuge blind and issue a refuge lottery waterfowl permit to any person entering, using, or occupying the refuge for hunting migratory game birds. You may only hunt from your assigned blind.

3. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult can supervise no more than two refuge-permitted youth hunters. We require all adult supervisors and hunters of migratory game birds to possess and carry a State Hunter Safety Course certificate.

4. All hunters must check-in and check out at a refuge self-clearing check station. Each hunter must list their name and certificate number on the self-clearing check station form and deposit the form at a refuge self-clearing check station prior to hunting. Hunters must report all game taken on the refuge when checking out by using the self-clearing check station form.

5. We allow no more than three hunters to hunt from a blind at one time.

6. We prohibit firearms (*see* § 27.42 of this chapter) other than those used to take migratory game birds in boats or in the possession of migratory game bird hunters.

7. We prohibit air-thrust boats or marsh buggies on the refuge. We restrict motorized boat use to existing canals, ditches, trenasses, and ponds.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow the hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge to hunting of deer and hog during the State deer season, except prior to 12 p.m. (noon) on Wednesdays and Saturdays during State waterfowl seasons, when we close

areas north of the Intra-Coastal Waterway to hunting of big game.

2. Hunters may only enter the refuge after 4 a.m. and must exit by 1 hour after legal sunset.

3. You may take big game with archery equipment and in accordance with State law. You may only take one deer of either sex per day, and hunters may only possess one deer. The State season limits on deer apply. There is no daily or possession limit on the number of feral hogs.

4. All hunters must possess and carry proof of completion of the International Bowhunters' Education Program when hunting.

5. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals or other feed, or any nonnaturally occurring attractant on the refuge (*see* § 32.2(h)).

6. Condition A7 applies.

*D. Sport Fishing.* We allow fishing in all refuge waters in accordance with State regulations subject to the following conditions:

1. We only allow recreational fishing. We prohibit commercial fishing on the refuge.

2. We prohibit the use of unattended nets, traps, or lines (trot, jog, bush, etc.).

3. We only allow fishing in refuge canals during the period of October 1 to January 31.

4. We close the refuge to any nighttime activities unless specifically stated.

5. Condition A7 applies.

6. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

**Red River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We allow waterfowl and woodcock hunting on all refuge lands except the areas within the Headquarters Focus Area in Bossier Parish and north of Interstate 49 within the Spanish Lake Focus Area in Natchitoches Parish.

3. We only allow dove hunting during the first 3 days of the State season on all refuge lands except the areas within the Headquarters Focus Area in Bossier Parish and north of Interstate 49 within the Spanish Lake Focus Area in Natchitoches Parish.

4. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

5. Hunters may enter the refuge no earlier than 3 a.m.

6. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail or ATV trail, residence, building, aboveground oil or gas or electrical transmission facilities, or designated public facility.

7. We prohibit leaving boats, blinds, and decoys unattended.

8. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

9. Youth hunters age 15 and under must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult can supervise no more than two youth hunters during waterfowl hunts.

10. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A7, A8, A9 (an adult may supervise no more than one youth hunter while hunting upland game) apply.

2. We allow hunting on all refuge lands except the areas within the Headquarters Focus Area in Bossier Parish and north of Interstate 49 within the Spanish Lakes Focus Area in Natchitoches Parish.

3. We prohibit the possession of firearms (see § 27.42 of this chapter) larger than .22 caliber rimfire, shotgun slugs, and buckshot.

4. We allow hunting of raccoon and opossum during the daylight hours of rabbit and squirrel season. We allow night hunting during December and January, and you may use dogs for night hunting. We prohibit selling of raccoon and opossum taken on the refuge for human consumption.

5. We allow use of dogs to hunt squirrel and rabbit after the last refuge Gun Deer Hunt.

6. If you want to use horses and mules to hunt raccoon and opossum at night, you must first obtain a special permit at the refuge office.

7. Hunters may enter the refuge no earlier than 3 a.m. and no later than 2 hours after legal shooting hours.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A7, A8, A9 (an adult may supervise no more than one youth hunter while hunting big game) and B7 apply.

2. We only allow archery hunting.

3. We allow deer hunting on all refuge lands except the areas within the Headquarters Focus Area in Bossier Parish and north of Interstate 49 within the Spanish Lake Focus Area in Natchitoches Parish.

4. The daily bag limit is one deer of either sex. The State season limit applies.

5. Archery hunters must possess and carry proof of completion of the International Bowhunters' Education Program.

6. We prohibit leaving deer stands, blinds, and other equipment unattended.

7. We prohibit hunters placing stands or hunting from stands on pine trees with white painted bands/rings.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit leaving boats and other personal property on the refuge unattended.

2. We prohibit boat launching with motors greater than 50 hp on all refuge waters.

3. You must tend trotlines daily. You must attach ends of trotlines by a length of cotton line that extends into the water.

4. We prohibit commercial fishing. Recreational fishing using commercial gear (slat traps, etc.) requires a special refuge permit (that you must possess and carry) available at the refuge office.

5. We prohibit the taking of alligator snapping turtle (*see* § 27.21 of this chapter).

**Sabine National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose (except Canada goose), and coot on areas designated by signs stating "Waterfowl Hunting Only'' and delineated on the refuge regulations and permit brochure map in accordance with State regulations subject to the following conditions:

1. We require all hunters to possess and carry a signed refuge permit.

2. We only allow waterfowl hunting on Wednesdays, Saturdays, and Sundays during the special teal season and during the regular waterfowl season.

3. We only allow hunters to enter the refuge and launch boats after 3 a.m. All participants must be out of the refuge hunt areas and back at West Cove Public Use Area by 12 p.m. (noon).

4. We prohibit hunting on Christmas Day or New Year's Day should these days fall on a designated hunt day.

5. Youth hunters age 17 and under must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two refuge-permitted youth hunters.

6. We prohibit nonhunters entering the refuge hunt areas, with the exception of youth age 15 or under experiencing the hunt with their parent or guardian.

7. You may access the hunt areas via the boat launches at the West Cove Public Use Area, by vehicle on Vastar Road, and at designated turnouts within the refuge public hunt area along State Highway 27 (*see* § 27.31 of this chapter). We prohibit refuge entrance through adjacent private property or using the refuge to access private property or leases.

8. We only allow launching of boats on trailers at West Cove Public Use Area. We allow hand launching of small boats along Vastar Road (no trailers permitted).

9. We prohibit dragging boats across the levee.

10. We only allow operation of outboard motors in designated refuge canals and Old North Bayou. We allow trolling motors within the refuge marshes.

11. We prohibit air-thrust boats, personal motorized watercraft (*e.g.*, Jet Skis), or boats with air-cooled propulsion engines (Go-Devil-type motors).

12. We prohibit hunting within 300 feet (90 m) of another hunter or within 150 feet (45 m) of refuge canals, public roads, buildings, above-ground oil or gas or electrical transmission facilities, or designated public facility.

13. You must only use portable blinds and those made of native vegetation. You must remove portable blinds, decoys, spent shells, and all other personal equipment (*see* §§ 27.93 and 27.94 of this chapter) each day.

14. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

15. We require you to complete and return a waterfowl harvest data form to the check station or designated drop box after each hunt.

16. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

17. We prohibit all-terrain vehicles (ATVs) (*see* § 27.31(f) of this chapter).

*B. Upland Game Hunting*. [Reserved]

*C. Big Game Hunting*. [Reserved]

*D. Sport Fishing*. We allow fishing, crabbing, and cast netting in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Bank and wharf access for fishing are available year-round at the Public Use Areas along State Highway 27. You may only access the refuge by boat during the March 15 to October 15 open period.

2. We allow use of rod and reel, pole and line, or jug and line. We prohibit the use or possession of any other type of fishing gear, including limb lines, gill nets, or trot lines. We limit jug and line to 10 per boat, and you must attend them at all times. You must mark all jugs with the attendant's fishing license number and remove them (*see* § 27.93 of this chapter) from the refuge daily.

3. You must only launch boats with motors at the designated boat ramps at the Hog Island Gully and West Cove Public Use Areas.

4. You must launch nonmotorized boats at the 1A–1B Public Use Area.

5. We only allow operation of outboard motors in designated refuge canals, Old North Bayou, and Management Unit 3 (40 hp maximum in Unit 3). We allow trolling motors within the refuge marshes.

6. Conditions A9, A11, A16 (fishing guide), and A17 apply.

7. Crabbing: We allow crabbing in designated areas of the refuge subject to the following conditions:

i. You must only take crabs with cotton hand lines or drop nets with up to 24″ (60 cm) outside diameter.

ii. You must remove all hand lines, drop nets, and bait (*see* § 27.93 of this chapter) from the refuge upon leaving.

iii. We allow a daily limit on crabs of 5 dozen (60) per vehicle or boat.

8. Cast Netting: We only allow cast netting in designated areas of the refuge during the Louisiana Inland Shrimp Season subject to the following conditions:

i. We require each individual, regardless of age, to possess and carry a signed refuge cast-netting permit.

ii. An adult age 21 or older must directly supervise all youth hunters age 17 and under.

iii. We only allow cast netting from 12 p.m. (noon) to legal sunset.

iv. If you use a cast net, it must not exceed a 5 foot (1.5 m) hanging radius.

v. We only allow recreational cast netting for shrimp. You must immediately return all fish, crabs, or other incidental take (by catch) to the water before continuing to cast net.

vi. We allow a daily shrimp limit of 5 gallons (19 L) of heads-on shrimp per day, per vehicle, or per boat.

vii. Shrimp must remain in your actual custody while on the refuge.

viii. You must cast net from the bank and wharves at Northline, Hog Island Gully, and 1A–1B Public Use Areas or at sites along Hwy. 27 that provide safe access and that we do not post and sign as closed areas.

ix. We prohibit cast netting at or around the West Cove Public Use Area or on or around any boat launch.

x. You may cast net from a boat throughout the refuge except where posted and signed as closed.

xi. We prohibit reserving a place or saving a space for yourself or others by any means to include placing unattended equipment in designated cast-netting areas.

xii. We prohibit swimming in the refuge canals or wading into canals to cast net.

9. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

**Tensas River National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, coot, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of duck and coot on Tuesdays, Thursdays, Saturdays, and Sundays until 12 p.m. (noon) during the State season. We prohibit migratory bird hunting during refuge gun hunts for deer.

2. We allow hunting of woodcock on designated areas of the refuge in accordance with State regulations.

3. We allow hunters to enter the refuge no earlier than 4 a.m.

4. In areas posted "Area Closed'' or "No Hunting Zone,'' we prohibit hunting of migratory birds at any time. We also close open fields, marked on the Public Use Regulations brochure map, to migratory bird hunting. You may obtain the Public Use Regulations brochure at the refuge headquarters in July.

5. We prohibit shooting to unload guns or muzzleloaders (*see* § 27.42(a) of this chapter) on the refuge at any time.

6. Hunters must remove all blind materials and decoys (*see* § 27.93 of this chapter) following each day's hunt.

7. We allow nonmotorized boats, electric motors, and boats with motors 10 hp or less in refuge lakes, streams, and bayous. We prohibit storage of boats on the refuge, and you must remove them (*see* § 27.93 of this chapter) daily.

8. We require all waterfowl hunters to report their game immediately after each hunt at the check station nearest to the point of take.

9. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals or other feed, or any nonnaturally occurring attractant on the refuge (*see* § 32.2(h)).

10. We allow all-terrain vehicle travel on designated trails (*see* § 27.31 of this chapter) for access typically from September 15 to the last day of the State squirrel season. We open designated trails from 4 a.m. until no later than 2 hours after legal sunset unless otherwise specified. We define an ATV as an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight 750 pounds (337.5 kg), length 85 inches (212.5 cm), and width 48 inches (120 cm). We restrict ATV tires to those no larger than 25 × 12 with a maximum 1 inch (2.5 cm) lug height and a maximum allowable tire pressure of 7 psi as indicated on the tire by the manufacturer. We require an affixed refuge all-terrain vehicle permit obtained from the refuge headquarters (typically in July). Disabled hunters using the refuge handicapped all-terrain trails must possess and carry the State's Disabled Hunter Permit. Additional handicapped or disabled access information will be available at the refuge headquarters.

11. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, trail or ATV trail, building, residence, above-ground oil or gas or electrical transmission facilities, or designated public facility.

12. We prohibit use and possession of any type of trail-marking material.

13. We prohibit use of organized drives for taking or attempting to take game.

14. We require a refuge access permit for all migratory bird hunts. You may find permits on the front of the Public Use Regulations brochure.

15. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult can supervise no more than two youth hunters during waterfowl hunts.

*B. Upland Game Hunting*. We allow hunting of raccoon, squirrel, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow raccoon hunting beginning January 1 and typically ending the first week in February. We allow raccoon hunters to hunt from legal sunset to legal sunrise with the aid of dogs, horses, mules, and use of lights. We only allow such use of lights on the refuge at the point of kill. We prohibit all other use of lights for hunting on the refuge. Hunt dates will be available at refuge headquarters in July. We prohibit ATVs during the raccoon hunt.

2. We allow squirrel and rabbit hunting with and without dogs. We will allow hunting without dogs from the beginning of the State season and typically ending the day before the refuge deer muzzleloader hunt. We do not require wearing of hunter orange during the squirrel and rabbit hunt without dogs. Squirrel and rabbit hunting, with or without dogs, will begin the day after the refuge deer muzzleloader hunt and will conclude the last day of the State squirrel season.

3. We close squirrel and rabbit hunting during the following gun hunts for deer: refugewide youth hunt, muzzleloader hunt, and modern firearms hunts.

4. We allow hunters to enter the refuge after 4 a.m., and they must depart no later than 2 hours after legal sunset unless they are participating in the refuge raccoon hunt.

5. Conditions A5, A7, A8 (all upland game hunters), A9, A10, A11, A12, A14 (upland game hunts), and A15 (upland game hunts) apply.

6. In areas posted "Area Closed'' or "No Hunting Zone,'' we prohibit upland game hunting at any time.

7. We allow .22 caliber rimfire weapons for upland game. You may only possess approved nontoxic shot while on the refuge (*see* § 32.2(k)). This requirement only applies to the use of shotgun ammunition.

*C. Big Game Hunting*. We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Deer archery season will begin the first Saturday in November and will conclude on the last day of the State archery season (typically January 31). We require that archery hunters, including crossbow hunters, possess and carry proof of completion of the International Bowhunters Safety course. We prohibit archery hunting during the following: refuge and youth gun hunt, muzzleloader hunt, and modern firearms hunt.

2. Deer muzzleloader season lasts 3 days, on a Friday, Saturday, and Sunday between the two refuge modern firearms hunts. We allow in-line muzzleloaders and magnified scopes.

3. We will conduct two 2-day quota modern firearms hunts for deer, typically in the months of November and December. Hunt dates and permit application procedures will be available at refuge headquarters in July. Hunters may use a muzzleloader during this hunt.

4. We will conduct a 2-day population control quota youth deer hunt in the Greenlea Bend area typically in December. Hunt dates and permit application procedures will be available at the refuge headquarters in July.

5. We will conduct a refugewide youth deer hunt the weekend before Thanksgiving Day. Each participating youth hunter must be age 8 to15 and supervised by an adult who is at least age 21.

6. You may only take one deer per day during refuge deer hunts. The State season limit applies.

7. We allow turkey hunting the first 16 days of the State turkey season. We will conduct a youth turkey hunt the Saturday and Sunday before the regular State turkey season. You may harvest two bearded turkeys per season. We allow the possession of lead shot while turkey hunting on the refuge (*see* § 32.2(k)). You may use nonmotorized bicycles on designated all-terrain vehicle trails (*see* § 27.31 of this chapter).

8. Conditions A5, A7, A8 (deer and turkey hunters), A9 through A14 (deer and turkey hunters), A15 (each adult can supervise no more than one youth hunter during big game hunts), and B4 apply.

9. In areas posted "Area Closed'' or "No Hunting Zone,'' we prohibit big game hunting at all times. We close open fields, which we mark on the Public Use Regulations brochure map, during the deer muzzleloader and deer modern firearms hunts; but we open those fields for deer archery hunting. We prohibit shooting into or across any open field with a gun.

10. We allow shotguns equipped with a single piece magazine plug that allows the gun to hold no more than two shells in the magazine and one in the chamber.

11. We only allow shotgun hunters to use rifled slugs when hunting deer.

12. We prohibit possession of buckshot while on the refuge.

13. You must remove all stands, blind materials, and decoys from the refuge

following each day's hunt (*see* § 27.93 of this chapter).

14. We require a minimum of 400 square inches (2,600 $cm^2$) of unbroken hunter orange on the outermost layer of clothing on the chest and back, and in addition we require a hat or cap of unbroken hunter orange. You must wear the solid hunter-orange items while in the field.

15. We prohibit possession or distribution of bait or hunting with the aid of bait, including any grain, salt, minerals or other feed, or any nonnaturally occurring attractant on the refuge (*see* § 32.2(h)).

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow trotlines attached with a length of cotton line that extends into the water. You must tend the trotlines at least once every 24 hours and reset them when receded waters expose them.

2. Conditions A7, A10 (the only exceptions are the Rainey Lake and Mower Woods all-terrain trails (*see* § 27.31 of this chapter), which are open year-round with the same time restrictions as the seasonal all-terrain trails), A12, and B4 (anglers) apply.

3. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

**Upper Ouachita National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, woodcock, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit.

2. We allow waterfowl hunting on the west side of the Ouachita River north of RCW Road. We allow waterfowl hunting on the east side of the Ouachita River outside the Mollicy levee, west of Kelby Road, and south of School Board South Road within the levee.

3. We allow woodcock hunting west of the Ouachita River. We allow woodcock hunting on the east side of the Ouachita River outside the Mollicy levee, west of Kelby Road, and south of School Board South Road within the levee.

4. We only allow dove hunting during the first 3 days of the State season east of the Ouachita River outside the Mollicy levee, west of Kelby Road, and south of School Board South Road within the levee.

5. We allow waterfowl hunting until 12 p.m. (noon) during the State season.

6. We will hold a limited lottery hunt during the State Youth Waterfowl Hunt. Application instructions are available at the refuge office.

7. Hunters may enter the refuge no earlier than 3 a.m.

8. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, building, residence, above-ground oil, gas, or public facility and within 50 feet (15 m) of ATV trails (see § 27.31 of this chapter).

9. We prohibit leaving boats, blinds, and decoys unattended.

10. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds.

11. Youth hunters under age 16 must successfully complete a State-approved hunter education course. While hunting, each youth must possess and carry a card or certificate of completion. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Each adult may supervise no more than two youth hunters during waterfowl hunts.

12. We prohibit any person or group to act as a hunting guide, outfitter, or in any other capacity that any other individual(s) pays or promises to pay directly or indirectly for services rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A9, A11 (each adult may supervise no more than one youth hunter while hunting upland game), and A12 (to hunt upland game) apply.

2. We allow hunting west of the Ouachita River. We allow hunting on the east side of the Ouachita River outside the Mollicy levee, west of Kelby Road, and south of School Board South Road within the levee.

3. We prohibit possession of firearms (see § 27.42 of this chapter) larger than .22 caliber rimfire, shotgun slugs, and buckshot.

4. We allow hunting of raccoon and opossum during the daylight hours of rabbit and squirrel season. We allow night hunting during December and January, and you may use dogs for night hunting. We prohibit selling of raccoon and opossum taken on the refuge for human consumption.

5. We allow use of dogs to hunt squirrel and rabbit after the last refuge Gun Deer Hunt.

6. If you want to use horses and mules to hunt raccoon and opossum at night, you must first obtain a special permit at the refuge office.

7. Hunters may enter the refuge no earlier than 3 a.m. and must exit no later than 2 hours after legal shooting hours.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A8, A9, A11 (an adult may supervise no more than one youth hunter while hunting big game), A12 (to hunt big game), and B7 apply.

2. We allow general gun deer hunting on the following days: the first consecutive Saturday and Sunday of November; the Friday, Saturday, and Sunday following Thanksgiving Day; and the second Saturday and Sunday after Thanksgiving Day. We allow archery deer hunting during the entire State season.

3. We allow deer hunting west of the Ouachita River. We allow deer hunting on the east side of the Ouachita River outside the Mollicy levee, west of Kelby Road, and south of School Board South Road within the levee.

4. The daily bag limit is one deer of either sex. The State season limit applies.

5. During general Gun Deer Hunts, you must check all deer on the day taken during general Gun Deer Hunts at a refuge check station between 7 a.m. and 7 p.m. unless stated otherwise in the annual refuge hunting brochure and permit.

6. Archery hunters must possess and carry proof of completion of the International Bowhunters' Education Program.

7. We prohibit leaving deer stands, blinds, and other equipment unattended.

8. Deer hunters must wear hunter orange as per State deer hunting regulations on Wildlife Management Areas.

9. We prohibit hunters placing stands or hunting from stands on pine trees with white-painted bands/rings.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow sport fishing year-round except within the Mollicy levee. We allow fishing in the Wigeon Ponds and Reservoir March 1 through October 15, from 30 minutes before legal sunrise until 30 minutes after legal sunset.

2. We prohibit outboard motors in the Wigeon Ponds. We prohibit boat launching with motors greater than 50 hp in the Reservoir.

3. We prohibit leaving boats and other personal property on the refuge unattended.

4. You must tend trotlines daily. You must attach ends of trotlines by a length of cotton line that extends into the water.

5. We prohibit commercial fishing. Recreational fishing using commercial gear (slat traps, etc.) requires a special refuge permit (that you must possess and carry) available at the refuge office.

6. We prohibit the taking of turtle (*see* § 27.21 of this chapter).

20. Amend § 32.38 Maine by:

a. Revising "Lake Umbagog National Wildlife Refuge;''

b. Revising "Moosehorn National Wildlife Refuge;''

c. Revising "Petit Manan National Wildlife Refuge;'' and

d. Revising "Rachel Carson National Wildlife Refuge'' to read as follows:

**§ 32.38 Maine.**

* * * * *

**Lake Umbagog National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, American crow, and woodcock in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. You must wear two articles of hunter-orange clothing or material. One article must be a solid-colored hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho and must be a minimum of 50 percent hunter orange in color (such as orange camouflage) except when hunting waterfowl.

2. We will provide permanent refuge blinds at various locations that you may reserve. You may make reservations for blinds up to 1 year in advance, for a maximum of 1 week, running Monday through Sunday during the hunting season. You may make reservations for additional weeks up to 1 week in advance, on a space-available basis. We prohibit other permanent blinds. You must remove temporary blinds, boats, and decoys (*see* § 27.93 of this chapter) from the refuge following each day's hunt.

3. You may use trained dogs to assist in the retrieval of harvested birds (*see* § 26.21(b) of this chapter).

4. We open the refuge to hunting during the hours stipulated under each State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. You must unload all firearms (*see* § 27.42 of this chapter) outside of legal hunting hours.

5. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) (*see* § 27.31(f) of this chapter).

*B. Upland Game Hunting.* We allow hunting of coyote, fox, raccoon, woodchuck, red and eastern gray squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, ruffed grouse, and northern bobwhite in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. We prohibit night hunting.

2. You may only possess approved nontoxic shot (*see* § 32.2(k)) while on the refuge.

3. We open the refuge to hunting during the hours stipulated under State hunting regulations, but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. You must unload all firearms (*see* § 27.42 of this chapter), and nock no arrows outside of legal hunting hours.

4. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) (*see* § 27.31(f) of this chapter).

5. You must wear two articles of hunter-orange clothing or material. One article must be a solid-colored hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho and must be a minimum of 50 percent hunter orange in color (such as orange camouflage) except when hunting turkey.

6. We allow hunting of coyote and snowshoe hare with dogs during State hunting seasons. Hunting with trailing dogs on the refuge will be subject to the following regulations:

i. You must equip all dogs used to hunt coyote with working radio-telemetry collars, and you must be in possession of a working radio-telemetry receiver that can detect and track the frequencies of all collars used. We do not require radio-telemetry collars for dogs used to hunt snowshoe hare.

ii. We prohibit training during or outside of dog season for coyote or hare.

iii. We allow a maximum of four dogs per hunter.

iv. You must pick up all dogs the same day you release them.

*C. Big Game Hunting.* We allow hunting of bear, white-tailed deer, and moose in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. We open the refuge to hunting during the hours stipulated under State hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. You must unload all firearms (*see* § 27.42 of this chapter) and nock no arrows outside of legal hunting hours.

2. We allow bear hunting with dogs during State hunting seasons. Hunting with trailing dogs on the refuge will be subject to the following regulations:

i. You must equip all dogs used to hunt bear with working radio-telemetry collars, and hunters must be in possession of a working radio-telemetry receiver that can detect and track the frequencies of all collars used.

ii. We prohibit training during or outside of dog season for bear.

iii. We allow a maximum of four dogs per hunter.

iv. You must pick up all dogs the same day you release them.

3. We allow prehunt scouting of the refuge; however, we prohibit dogs and firearms (*see* § 27.42 of this chapter) during prehunt scouting.

4. Each hunter must wear two articles of hunter-orange clothing or material. One article must be a solid-colored hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho and must be a minimum of 50 percent hunter orange in color (*i.e.*, orange camouflage).

5. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) (*see* § 27.31(f) of this chapter).

6. We allow temporary tree stands and blinds, but hunters must remove them by the end of the season (*see* § 27.93 of this chapter). We prohibit nails, screws, or screw-in climbing pegs to build or access a stand or blind (*see* § 32.2(i)).

*D. Sport Fishing.* [Reserved]

**Moosehorn National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may enter the refuge ½ hour before legal shooting hours, and you must leave the refuge by ½ hour past legal shooting hours.

2. During firearms big game season, you must wear in a conspicuous manner on head, chest and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

3. You must only use portable tree stands, blinds, and ladders. We prohibit the use of nails, screws, or bolts to attach them to trees (*see* § 32.2(i)). You must clearly label any tree stand, blind, or ladder left on the refuge overnight with your name, address, phone number, and hunting license number. You must remove all tree stands, blinds,

and ladders from the refuge on the last day of the muzzleloader deer season (*see* § 27.93 of this chapter).

4. You may only use a long, recurved or compound bow to hunt during the archery season.

5. We prohibit hunting in the following areas:

i. The South Magurrewock Area: The boundary of this area begins at the intersection of the Charlotte Road and U.S. Route 1; it follows the Charlotte Road in a southerly direction to the fishing pier and observation blind, where it turns in an easterly direction, crosses the East Branch of the Magurrewock Stream, and proceeds in a northerly direction along the upland edge of the Upper and Middle Magurrewock Marshes to U.S. Route 1 where it follows Route 1 in a southerly direction to the point of origin.

ii. The North Magurrewock Area: The boundary of this area begins where the northern exterior boundary of the refuge and Route 1 intersect; it follows the boundary line in a westerly direction to the railroad grade where it follows the boundary in a southwest direction to the upland edge of the Lower Barn Meadow Marsh; it then follows the upland edge of the marsh in a southerly direction to U.S. Route 1, where it follows Route 1 to the point of origin.

iii. The posted safety zone around the Refuge Headquarters Complex: The boundary of this area starts where the southerly edge of the Horse Pasture Field intersects with the Charlotte Road. The boundary follows the southern edge of the Horse Pasture Field, across the abandoned Maine Central Railroad grade, where it intersects with the North Fireline Road. It follows the North Fireline Road to a point near the northwest corner of the Lane Construction Tract. The line then proceeds along a cleared and marked trail in a northwesterly direction to the northern upland edge of Dudley Swamp. The line follows the shore of Dudley Swamp to the Barn Meadow Road. It proceeds south along the Barn Meadow Road to the intersection with the South Fireline Road, where it follows the South Fireline Road across the Headquarters Road to the intersection with the Mile Bridge Road. It then follows the Mile Bridge Road in a southerly direction to the intersection with the Lunn Road, then along the Lunn Road leaving the road in an easterly direction at the site of the old crossing, across the abandoned Maine Central Railroad grade to the Charlotte Road. The line follows the Charlotte Road in a northerly direction to the point of origin.

iv. The Southern Gravel Pit: The boundary of this area starts at a point where Cranberry Brook crosses the Charlotte Road and proceeds south along the Charlotte Road to the Baring/Charlotte Town Line, along the Town Line to a point where it intersects the railroad grade where it turns in a northerly direction, and follows the railroad grade to Cranberry Brook and the point of origin.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit motorized boats on Bearce and Conic Lakes.

2. We only allow fishing during daylight hours.

3. We allow fishing in the following areas on the Baring Division of the refuge:

i. Bearce Lake, Conic Lake, James Pond, Ledge Pond, and Vose Pond;

ii. Clark Brook and the West Branch of the Magurrewock Stream from the outlet of the Howard Mill Flowage water control structure to the handicapped-accessible fishing pier located off the Charlotte Road; and

iii. Barn Meadow Brook, Cranberry Brook, Mahar Brook, and Moosehorn Stream.

4. We allow fishing in the following areas on the Edmunds Division of the refuge: Hobart Lake, Hobart Stream, Cranberry Brook, Crane Meadow Brook, Crane Mill Stream, and Crane Mill Flowage.

5. We prohibit fishing on the stretch of Moosehorn Stream on the Baring Division that lies west of the Charlotte Road and east of the Mile Bridge Road between March 31 and July 14.

6. We prohibit trapping of bait fish on the refuge.

**Petit Manan National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, woodcock, rail, gallinule, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit erection of permanent waterfowl blinds.

2. You must remove all temporary blinds, concealment materials, boats, and decoys (*see* § 27.93 of this chapter) following each day's hunt.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

2. We prohibit the use of pursuit or trailing dogs.

3. We prohibit the hunting of crows.

4. You may hunt coyotes from November 1 to March 31.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and bear on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition B2 applies.

2. We only allow black bear hunting during the firearm season for white-tailed deer.

3. You must remove all tree stands by the last day of the white-tailed deer hunting season (*see* § 27.93 of this chapter).

4. We normally close the refuge to all visitors from legal sunset to legal sunrise. However, during hunting season, we allow hunters to enter the refuge ½ hour prior to legal sunrise and remain on the refuge ½ hour after legal sunset.

*D. Sport Fishing.* [Reserved]

**Rachel Carson National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, coot, woodcock, and snipe on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, and Spurwink River Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. Prior to entering designated refuge hunting areas, you must obtain a refuge hunting permit, pay a recreation fee, and sign and carry the permit at all times.

2. You may only take sea duck when the State sea duck season coincides with the regular duck season.

3. You may take waterfowl by falconry during State seasons.

4. We open Designated Youth Hunting Areas to hunters age 17 and under who possess and carry a refuge hunting permit. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. The accompanying adult must possess and carry a refuge hunting permit and may also hunt.

5. We allow seasonal blinds and require a Special Use Permit. A permitted seasonal blind is available to all permitted hunters on a first-come, first-served basis. The permit holder for the blind is responsible for the removal of the blind at the end of the season and compliance with all conditions of the Special Use Permit.

6. We close the Moody, Little River, Biddeford Pool, and Goosefare Brook divisions of the refuge to all migratory bird hunting.

*B. Upland Game Hunting.* We allow hunting of pheasant and grouse on designated areas of the Brave Boat

Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Goosefare Brook, and Spurwink River Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. You may take pheasant and grouse by falconry during State seasons.

3. We close the Moody, Little River, and Biddeford Pool Divisions of the refuge to all upland game hunting.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the Brave Boat Harbor, Lower Wells, Upper Wells, Mousam River, Goose Rocks, Little River, Goosefare Brook, and Spurwink River Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A4 apply.

2. We only allow hunting of deer with shotgun and archery. We prohibit rifles and muzzleloading firearms.

3. We allow portable, climbing, or ladder stands.

4. We close the Moody and Biddeford Pool Division of the refuge to white-tailed deer hunting.

5. We only allow archery on those areas of the Little River division open to hunting.

6. We only allow hunting of fox and coyote during daylight hours of the State firearm deer season.

7. Bow hunters with refuge permits (you must possess and carry) may apply for the special "Wells Hunt.'' We must receive letters of interest by November 1 for consideration in a random drawing. Selected hunters must comply with regulations as set by the State.

8. You must report any harvested deer to the refuge office within 48 hours.

*D. Sport Fishing.* We allow recreational fishing along the shoreline on the following designated areas of the refuge in accordance with State regulations and seasons subject to the following conditions:

1. At the Brave Boat Harbor Division on the north side (York) of the stream crossing under Route 103, you may fish beginning at Route 103 then downstream to the first railroad trestle.

2. At the Moody Division on the north side of the Ogunquit River and downstream of Route 1, you may fish beginning at the refuge boundary then downstream a distance of 500 feet (150 m).

3. At the Moody Division on the east side of Stevens Brook and downstream of Bourne Avenue, you may fish beginning at Bourne Avenue then downstream to where the refuge ends near Ocean Avenue.

4. At the Lower Wells Division on the west side of the Webhannet River downstream of Mile Road, you may fish from Mile Road north to the first creek.

5. At the Upper Wells Division on the south side of the Merriland River downstream of Skinner Mil Road, you may fish beginning at the refuge boundary and then east along the oxbow to the woods.

6. At the Mousam River Division on the north side of the Mousam River downstream of Route 9, you may fish beginning at the refuge boundary and then east to a point opposite Great Hill Road. Access is from the Bridle Path along the first tidal creek.

7. At the Goosefare Brook Division on the south side of Goosefare Brook, you may fish where it flows into the Atlantic Ocean.

8. At the Spurwink River Division on the west side (Scarborough) of the Spurwink River upstream of Route 77, you may fish beginning at Route 77 and then upstream approximately 1,000 feet (300 m) to a point near the fork in the river.

9. You may launch car-top boats during daylight hours at Brave Boat Harbor Division on Chauncey Creek at the intersection of Cutts Island Road and Sea Point Road.

10. You may launch car-top boats during daylight hours at the Spurwink River Division on the upstream side of Route 77 at the old road crossing.

11. We allow fishing from legal sunrise to legal sunset.

12. We require the use of nonlead jigs and sinkers.

13. Anglers must attend their lines at all times.

14. We prohibit the collection of bait fish on the refuge.

* * * * *

21. Amend § 32.39 Maryland by:

a. Revising "Blackwater National Wildlife Refuge;''

b. Revising "Eastern Neck National Wildlife Refuge;'' and

c. Revising "Patuxent Research Refuge'' to read as follows:

**32.39 Maryland.**

* * * * *

**Blackwater National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge permits for all hunters regardless of age. We require that permits must be in the hunter's possession along with a valid Maryland State hunting license, any required stamps, and a photo identification. Permits are nontransferable.

2. We require that hunters obtain deer hunt permits only through the mail, by mailing an application and administration fee to the refuge after applications are available in July. To obtain an application and regulations leaflet (including designated areas and map, dates of hunts, bag limits, and permit fees) for archery, youth, muzzleloader, and shotgun hunts, we require hunters to contact the refuge hunt coordinator or refuge Visitor Center, which is open from 9 a.m. to 4 p.m. daily.

3. We allow archery hunters to obtain a permit; permits are available at the Visitor Center, after the first week of September until the end of the archery season.

4. We allow walk-in youth hunters to obtain a permit at the check station on the day of the hunt.

5. A licensed or exempt-from-licensed unarmed adult, age 21 or older, must accompany youth hunters (at least age 12 but less than age 16) at all times in the field.

6. We require a physician to certify "wheelchair-bound'' permanently disabled hunters; and an assistant, who must not use a firearm, must accompany these hunters. We require the permanently disabled certification to accompany the hunters' permit application.

7. We only allow participants possessing authorized permits to enter the hunt areas.

8. Beginning at 5 a.m., we require check-in for the youth hunts, muzzleloader hunts, and shotgun hunts.

9. At the refuge check station on the day of the kill for all firearm hunts, we require hunters to properly tag and present for examination all deer killed.

10. We require hunters to seek refuge employee assistance to retrieve deer from closed areas.

11. We do not require check-in or check out at the refuge for the archery hunt, but we require hunters to register harvested deer at one of the State check stations designated by the refuge.

12. We only allow weapons that meet State regulations (bows and arrows for archery, shotguns with slugs and/or No. 1 buckshot or larger for youth hunts and shotgun hunts, and muzzleloading rifles and muzzleloading shotguns only for muzzleloader hunts). We prohibit handguns and breech-loading rifles.

13. We only allow access to hunt areas on designated roads and parking areas indicated on hunt maps in the regulations leaflet (obtained with application by mail or at the Visitor Center) (*see* § 27.31 of this chapter). The

only other access we allow is walk-in or bicycles. We prohibit access by boats or ATVs.

14. We only allow scouting on designated days listed in the regulations for permitted hunters.

15. We do not require check-in or check out for scouting.

16. We prohibit firearms or other weapons on the refuge when scouting.

17. We require adult hunters, age 21 or older, to accompany permitted youth hunters while scouting.

18. We require a minimum of 400 square inches (2,600 $cm^2$) of solid-colored daylight fluorescent-orange clothing to be worn on the head, chest, and back of all hunters during the youth, muzzleloader, and shotgun hunts.

19. We require the use of a tree stand that elevates the hunter a minimum of 8 feet (240 cm) above the ground for hunting Area B2 (except disabled hunters). We allow temporary, removable, ladder, fixed, and climbing-type tree stands that do not damage trees in all other areas (*see* § 32.2(i)).

20. We prohibit screw-in steps, spikes, or other objects that may damage trees.

21. We prohibit hunting from a permanently constructed tree stand.

22. We allow hunters to preinstall tree stands during the scouting days for use during selected hunts and to leave the tree stands in the hunting area at the hunter's discretion. We require hunters to remove all stands the last day of the refuge hunting season (we are not responsible for damage, theft, or other hunter occupancy) (*see* § 27.93 of this chapter).

23. We prohibit pets in hunt areas.

24. We prohibit hunting from or shooting across a roadway where we allow vehicle traffic.

25. We prohibit driving deer during youth hunts.

26. We prohibit commercialized guiding.

*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing and crabbing from April 1 through September 30 during daylight hours.

2. We restrict fishing and crabbing to boats and the Key Wallace roadway across the Little Blackwater River.

3. We require a valid State sport fishing license. We do not require a refuge permit.

4. We require anglers to attend all fish and crab lines.

5. We prohibit boat launching from refuge lands except for canoes/kayaks at the canoe/kayak ramp located near the Blackwater River Bridge on Route 335. A public launching ramp is available at Shorter's Wharf.

6. We prohibit the use of air boats on refuge waters.

**Eastern Neck National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State hunting regulations subject to the following conditions:

1. We require hunters to carry a signed refuge hunt permit when scouting on the designated scouting days and when hunting. Hunters must turn in their hunt permit at the end of the hunt day or when leaving the refuge during the hunt day at the check-in station.

2. We only allow use of bow and arrows, shotguns, and muzzleloaders for deer hunting and shotguns for turkey hunting.

3. We prohibit possession of a loaded weapon (*see* § 27.42(b) of this chapter) on or within 50 feet (15 m) of any graveled, dirt, or paved refuge road or any designated parking area.

4. You must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid hunter-orange clothing or material when deer hunting.

5. You must wear a hunter-orange cap or hat when moving to or from your blind or stand when turkey hunting.

6. Each youth hunter (age 15 or under) must remain within sight and normal voice contact of an adult age 18 or older. Children must be at least age 10 to hunt on the refuge.

7. We only allow parking in designated parking areas.

8. We prohibit hunting in the No Hunting Zones; however, you may walk through these areas with an unloaded weapon (*see* § 27.42(b) of this chapter) (no shells in the chamber or magazine cap off of the muzzleloader).

9. For deer hunting, the legal shooting hours are from legal sunrise to legal sunset.

10. For turkey hunting, the legal shooting hours are from ½ hour before legal sunrise to 12 p.m. (noon).

11. We prohibit entry to the refuge by boats during refuge hunts.

12. We only allow persons possessing a refuge hunt permit to be on the refuge during hunting days.

13. We prohibit the use of ATVs during refuge hunts (*see* § 27.31(f) of this chapter).

14. We allow the use of marking tape, reflective pins, or other removable materials to mark trails to and from stands. You must remove the marking material (*see* § 27.93 of this chapter) at the end of your hunt day. We prohibit paint or any other permanent marker to mark trails to and from hunt stands.

*D. Sport Fishing.* We allow fishing and crabbing in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing and crabbing from Eastern Neck Island bridge.

2. We only allow fishing and crabbing from April 1–September 30 during daylight hours at the Ingleside Recreation Area.

3. We only allow fishing from the Boxes Point and Duck Inn Trails during daylight hours.

4. We allow fishing and crabbing from boardwalk located adjacent to the Eastern Neck Island bridge.

**Patuxent Research Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and dove on the North Tract in accordance with State regulations subject to the following conditions:

1. We require a hunting permit.

2. We require hunters age 17 years of age or younger to have a parent or guardian countersign to receive a hunting permit. An adult, age 21 or older possessing a hunting permit, must accompany hunters age 15 and younger in the field.

3. You must check-in and out at the Hunter Control Station (HCS) and exchange your hunting permit for a daily hunting pass and a vehicle pass every time you enter or exit the refuge.

4. We will restrict you to the selected area and activity until you check out at the HCS.

5. You may only carry one shotgun in the field. We prohibit additional firearms.

6. You must wear at least a fluorescent-orange hat or cap when walking from your vehicle to your hunting site. "Jump Shooters'' must wear at least a fluorescent-orange hat or cap while hunting. If you stop and stand, you may replace the orange hat or cap with a camouflage one.

7. We only allow the taking of Canada goose during the special September season for resident Canada goose.

8. We prohibit hunting of duck or goose during the deer firearm seasons and the early deer muzzleloader seasons that occur in October.

9. We prohibit hunting quail or dove during any deer muzzleloader or firearms seasons.

10. We require waterfowl hunters to use retrievers on any impounded waters. Retrievers must be of the traditional breeds, such as Chesapeake Bay, Golden, Labrador, etc.

11. We require dogs to be under the immediate control of their owner at all times (see § 26.21(b) of this chapter). Law enforcement officers may seize dogs running loose or unattended.

*B. Upland Game Hunting.* We allow hunting of turkey, bobwhite quail, grey squirrel, eastern cottontail rabbit, and woodchuck on the North Tract and turkey on the Central Tract in accordance with State regulations subject to the following conditions:

1. We require a fee hunting permit.

2. Conditions A2 and A4 apply.

3. We require hunters to check-in and out at the Hunter Control Station every time they enter or exit the refuge and exchange their hunting permit for a daily hunting pass and vehicle pass.

4. You must wear a minimum of 400 square inches (2,600 $cm^2$) of fluorescent orange on your head, chest, and back while hunting upland game except for turkey hunting. We encourage turkey hunters to wear fluorescent orange.

5. We prohibit hunting of upland game during the firearms and muzzleloader seasons.

6. We select turkey hunting permits by computerized lottery. We will generate a computerized lottery list for the youth, disabled, mobility impaired, and general public. We require documentation for disabled and mobility-impaired hunters.

7. We require each turkey hunter to attend a turkey clinic. See the refuge office for further information.

*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following conditions:

1. We require you to pass a proficiency test with each weapon that you desire to use prior to issuing you a hunting permit.

2. Conditions A1 through A4 apply.

3. You must wear a minimum of 400 square inches (2,600 $cm^2$) of fluorescent orange on your head, chest, and back while hunting. Bow hunters must follow this requirement when moving to and from the deer stand while tracking. We do not require bow hunters to wear the fluorescent orange when positioning to hunt except during the deer muzzleloader season.

4. You must use established roads, park within the selected boundary, and not block traffic.

5. We prohibit hunting on or across any road, within 50 yards (45 m) of a road, within 150 yards (135 m) of any occupied structure, or within 25 yards (22.5 m) from any designated "No Hunting'' area. Only those with a State "Hunt from a Vehicle Permit'' may hunt from the roadside.

6. We prohibit using dogs to hunt or track wounded deer.

7. We publish the daily and yearly bag limits and hunting dates for the North, Central, and South Tracts in July and will include them with each hunting permit.

8. North Tract: We allow shotgun, muzzleloader, and bow hunting.

i. You must use a portable tree stand equipped with a safety belt. The stand must be at least 10 feet (3 m) off the ground. You must wear the safety belt while in the tree stand. You must remove tree stands daily from the refuge (see § 27.93 of this chapter).

9. Central Tract: We allow shotgun and bow hunting in accordance with the following regulations:

i. We allow bow hunters to hunt on the Schaefer Farm.

ii. We will select hunters interested in the Central Tract hunt by a computerized lottery and assign them to a specific hunting location.

iii. Shotgun hunters must use portable tree stands with safety belts. The stand must be at least 10 feet (3 m) off the ground.

iv. You must carry a flashlight, whistle, and a compass while hunting.

10. South Tract: We allow shotgun, muzzleloader, and bow hunting in accordance with the following regulations:

i. We prohibit entry on internal fire roads.

ii. Conditions 8i and 9iv apply.

11. You must check out at the Hunter Control Station no later than 1½ hours after legal sunset.

12. All deer harvested will have a jaw extracted before leaving the refuge.

13. If you wish to track wounded deer beyond 1½ hours after legal sunset, you must report in person to the HCS or if you are hunting on the refuge's South Tract, call the HCS. The HCS will call a refuge law enforcement officer to gain consent to track. We prohibit tracking later than 2½ hours after legal sunset. We may revoke your hunting privilege if you wound a deer and do not make a reasonable effort to retrieve it. This may include next-day tracking.

*D. Sport Fishing.* We allow sport fishing in accordance with State hook and line fishing regulations subject to the following conditions:

1. We allow the use of earthworms as the only source of live bait.

2. We prohibit harvesting bait on the refuge.

3. You must attend all fishing lines.

4. We prohibit fishing from any bridge.

5. North Tract: We allow sport fishing at Lake Allen, Rieve's Pond, New Marsh, Cattail Pond, Bailey Bridge Marsh, and Little Patuxent River (downstream only from Bailey's Bridge) in accordance with the following regulations:

i. We require a free refuge permit (you must possess and carry) to access North Tract. If you are age 17 or younger, you must have a parent or guardian countersign to receive an access permit. A parent or legal guardian must accompany those age 15 and younger.

ii. You may take the following species: catfish, chain pickerel, black crappie, eels, sunfish, golden shiner, and large and smallmouth bass. Bass limit is one per day.

iii. You may fish year-round at Lake Allen, New Marsh, Cattail Pond, Bailey Bridge Marsh, and Little Patuxent River (downstream only from Bailey Bridge) except during the white-tailed deer firearm hunting season and the waterfowl hunting season. We also reserve the right to close Lake Allen at any time.

iv. You may fish at Rieve's Pond from February 1 to August 31 and on Sundays from September 1 to January 31.

v. We allow wading, for fishing purposes only, downstream from Bailey Bridge on the Little Patuxent River. We prohibit wading in other bodies of water.

vi. We prohibit use of any type of watercraft.

6. South Tract: We allow sport fishing at Cash Lake in accordance with the following regulations:

i. We require a free refuge fishing permit. You must carry a copy of the permit with you at all times while fishing. Organized groups may request a group permit. The group leader must carry a copy of the permit and stay with the group at all times while fishing.

ii. You must park your vehicle in the parking lot located behind Refuge Gate 8 off Maryland Highway 197 (see § 27.31 of this chapter). You must prominently display your fishing permit on your vehicle's dashboard.

iii. You may fish on Cash Lake except areas designated as closed on the fishing permit map and by posted signs stating "No fishing beyond this point.''

iv. You may take the following fish species: catfish, black crappie, eels, sunfish, golden shiner, and chain pickerel. Chain pickerel limit is one per day.

v. You must catch and release all bass.

vi. You may fish from mid-June until mid-October.

vii. You may fish between the hours of 6 a.m. until legal sunset. We open the

refuge trails (see § 27.31 of this chapter) from 8 a.m. until 5:30 p.m. daily.

viii. The permit holder may take one additional licensed adult or two youths age 15 or younger to fish on Cash Lake. The permit holder must be present for guests to fish.

ix. We prohibit boat trailers.

x. You may use watercraft for fishing in accordance with the State boating laws subject to the following conditions: You may use car-top boats 14 feet (4.2 m) or less and canoes. You may only use electric motors, 4 HP or less. We prohibit sailboats, kayaks, or inflatables.

22. Amend § 32.40 Massachusetts by:

a. Revising "Monomoy National Wildlife Refuge;''

b. Revising "Nantucket National Wildlife Refuge;''

c. Revising "Oxbow National Wildlife Refuge;'' and

d. Revising paragraph C. of "Parker River National Wildlife Refuge'' to read as follows:

**§ 32.40 Massachusetts.**

* * * * *

**Monomoy National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on the portions of the Monomoy Islands that we do not post as closed to public use from legal sunrise to legal sunset.

2. We allow surf fishing from the Morris Island shore 24 hours a day.

**Nantucket National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We close the western refuge shoreline and beach area to surf fishing during the period of April 15 through July 31 annually, and you may not operate a vehicle on the west-facing beach and shoreline (*see* § 27.31 of this chapter). We only allow surf fishing on the northeast-facing shoreline during this period of time.

2. We may close the northeast-facing shoreline and beach if piping plover nesting is occurring in this portion of the refuge.

3. We require a permit for the use of over-the-sand, surf-fishing vehicles.

4. If we do not otherwise close an area because of these conditions, we allow fishing 24 hours a day.

**Oxbow National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow shotgun hunting of woodcock and snipe on the portion of the refuge located south of Massachusetts Route 2 and west of the Boston and Maine Railroad tracks in accordance with State regulations subject to the following conditions:

1. We restrict vehicles to the designated parking area accessible from the Still River Depot Road (see § 27.31 of this chapter). We prohibit entry by routes other than Still River Depot Road.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of upland game birds, turkey, and small game on the portion of the refuge located south of Massachusetts Route 2 and west of the Boston and Maine Railroad tracks in accordance with State regulations subject to the following conditions:

1. We only allow shotguns.

2. We restrict vehicles to the designated parking area that is accessible from the Still River Depot Road (*see* § 27.31 of this chapter). We prohibit entry by routes other than Still River Depot Road.

3. You may only possess approved nontoxic shot while in the field, except while hunting turkey (*see* § 32.2(k)).

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing along the banks of the Nashua River in accordance with State regulations.

**Parker River National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the Plum Island portion of the refuge in accordance with State hunting regulations. You may hunt deer on designated day(s) during the regular State shotgun season subject to the following conditions:

1. We require that all hunters have a valid State hunting license, applicable deer tags, and firearms identification card (FID) or license to carry (LTC). The FID and LTC only apply to Massachusetts residents. All hunters regardless of age must possess and carry a refuge permit. This is a quota hunt, and we will randomly select a limited number of hunters from those that apply. You may apply by mail from September 1 until October 1.

2. If selected from the random drawing, you must attend a refuge-specific hunter orientation session prior to the hunt.

3. We only allow shotguns (slugs only) and shoulder-fired muzzleloaders (single projectile only) for our deer hunt.

4. You must check-in and out at the refuge entrance gatehouse.

5. We prohibit alcoholic beverages (*See* § 32.2 (j)).

6. We prohibit hunting from the North Pool or Stage Island Observation towers.

7. We prohibit loaded firearms (*see* § 27.42 of this chapter) on or within 150 feet (45 m) of the refuge road.

8. You must bring all deer to the refuge deer check station located at our subheadquarters 2.5 miles (4 km) south of the refuge entrance gate. This site is an official State check station.

9. We will only allow permitted refuge hunters or those individuals hunting at Sandy Point State Reservation at the southern end of Plum Island access to the refuge or Sandy Point on the day(s) of the deer hunt.

10. We prohibit vehicular travel (emergency excepted) on refuge roads from ½ hour before legal sunrise until 8:30 a.m. We prohibit accessing the refuge after 2:30 p.m. during the deer hunt.

11. Parking regulations are subject to change and will be determined based on the number of permitted hunters and available hunt areas. We will provide this information in detail to all permitted hunters attending the required hunter-orientation session.

* * * * *

23. Amend § 32.41 Michigan by:

a. Revising paragraphs A., B., D.2., D.5., D.6., D.7., and removing paragraph D.8. of "Seney National Wildlife Refuge;'' and

b. Revising paragraphs A., C., and D. of "Shiawassee National Wildlife Refuge'' to read as follows:

**§ 32.41 Michigan.**

* * * * *

**Seney National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We only allow hunting of woodcock and snipe on designated areas of the refuge in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of ruffed grouse and snowshoe hare on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of snowshoe hare on Unit B during the entire State season.

2. We only allow hunting of snowshoe hare on Unit A from December 1 through March 31.

* * * * *

*D. Sport Fishing.* * * *

* * * * *

2. We allow ice fishing from January 1 through the end of February from legal sunrise to legal sunset.

* * * * *

5. We allow fishing on designated refuge pools, and the Creighton, Driggs, and Manistique Rivers from May 15 through September 30 from legal sunrise to legal sunset.

6. We prohibit boats and flotation devices on the refuge pools.

7. We prohibit motorized boats on the Creighton and Driggs Rivers.

**Shiawassee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose on designated areas in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. We allow goose hunting on designated cropland fields until 12 p.m. (noon) with a required checkout time of 1 p.m.

3. You may only possess approved nontoxic shotgun shells (see § 32.2(k)) in quantities of 10 or less.

4. We require hunters to stay within 50 feet (15 m) of posted site.

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. Hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored hunter orange clothing or material.

3. We require that portable blinds must display solid-colored, hunter-orange material on the outside.

4. During muzzleloader hunts we require only guns capable of firing one round before reloading.

5. We allow hunters with a State medical permit to use crossbows.

*D. Sport Fishing.* We allow sport fishing on designated areas in accordance with State regulations subject to the following conditions:

1. We allow fishing by boat in navigable waterways but not within any managed refuge units.

2. We allow bank fishing from legal sunrise to legal sunset only at designated sites along the Spaulding Drain and the Tittabawassee and Cass Rivers.

24. Amend § 32.42 Minnesota by:

a. Revising the introductory text of paragraph C. and adding paragraphs C.3. and C.4. of "Agassiz National Wildlife Refuge;''

b. Revising "Fergus Falls Wetland Management District;''

c. Revising the introductory text of paragraph A., adding paragraphs A.3. and A.4., and revising paragraphs B., the introductory text of paragraph C., and revising paragraph D. of "Litchfield Wetland Management District;''

d. Adding paragraphs B.3., C.5., and C.6. of "Minnesota Valley National Wildlife Refuge;''

e. Revising "Morris Wetland Management District;''

f. Revising the introductory text of paragraphs A. and B. and adding paragraph B.2. of "Rice Lake National Wildlife Refuge;''

g. Revising paragraph A.5. and adding paragraphs B.2., C.3., and C.4. of "Sherburne National Wildlife Refuge;''

h. Revising paragraphs A.1., B.1., B.2., C.1., and D. of "Tamarac National Wildlife Refuge'' to read as follows:

**§ 32.42 Minnesota.**

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**Agassiz National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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3. We allow the use of wheeled, nonmotorized conveyance devices (*i.e.,* bikes, retrieval carts) except we prohibit them in the Wilderness Area.

4. We prohibit entry into the "Closed Area''.

* * * * *

**Fergus Falls Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district (except that we allow no hunting on the Townsend, Headquarters, Mavis, and Gilmore Waterfowl Production Areas (WPA) in Otter Tail County, and Larson WPA in Douglas County) in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. You must remove boats, decoys, blinds, and blind materials (*see* § 27.93 of this chapter) brought onto the WPAs at the end of each day's hunt.

3. We allow the use of hunting dogs provided the dog is under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting throughout the district (except that we allow no hunting on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County, and Larson WPA in Douglas County) in accordance with State regulations subject to the following condition: Condition A3 applies.

*C. Big Game Hunting.* We allow big game hunting throughout the district (except that we allow no hunting on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County, and Larson WPA in Douglas County) in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders.

2. You must remove all portable hunting stands and blinds from the area at the end of each day's hunt (*see* § 27.93 of this chapter).

*D. Sport Fishing.* We allow sport fishing throughout the district (except that we allow no fishing on the Townsend, Headquarters, Mavis, and Gilmore WPAs in Otter Tail County and Larson WPA in Douglas County) in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. You must remove all ice fishing structures, devices, and personal property (*see* § 27.93 of this chapter) brought onto the area following each day of fishing.

**Litchfield Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district except we prohibit hunting on the Phare Lake Waterfowl Production Area in Renville County. All hunting is in accordance with State regulations subject to the following conditions:

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3. We prohibit the use of motorized boats.

4. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

*B. Upland Game Hunting.* We allow upland game hunting throughout the district, except we prohibit hunting on the Phare Lake Waterfowl Production Area in Renville County. Hunting is in accordance with State regulations subject to the following condition: Condition A4 applies.

*C. Big Game Hunting.* We allow big game hunting throughout the district, except we prohibit hunting on the Phare Lake Waterfowl Production Area in Renville County. Hunting is in

accordance with State regulations subject to the following conditions:

* * * * *

*D. Sport Fishing.* We allow sport fishing throughout the district in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. You must remove all ice fishing structures, devices, and personal property (*see* § 27.93 of this chapter) brought onto the area following each day of fishing.

**Minnesota Valley National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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3. We allow the use of .22 caliber rimfire rifles on designated areas of the refuge.

*C. Big Game Hunting.* * * *

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5. We prohibit the possession of centerfire rifles or handguns on the refuge.

6. We allow the use of shotguns and muzzleloaders on designated areas.

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**Morris Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district except that we prohibit hunting on the designated portions of the Edward-Long Lake Waterfowl Production Area (WPA) in Stevens County in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorized boats.

2. You must remove boats, decoys, blinds, and blind materials (see § 27.93 of this chapter) brought onto the WPAs at the end of each day's hunt.

3. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

*B. Upland Game Hunting.* We allow hunting of upland game except that we prohibit hunting on the designated portions of the Edward-Long Lake Waterfowl Production Area in Stevens County in accordance with State regulations subject to the following condition: Condition A3 applies.

*C. Big Game Hunting.* We allow hunting of deer throughout the district except that we prohibit hunting on the designated portions of the Edward-Long Lake Waterfowl Production Area in Stevens County in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, platforms, or ladders.

2. You must remove all portable hunting stands and blinds from the area at the end of each day's hunt (*see* § 27.93 of this chapter).

*D. Sport Fishing.* We allow fishing throughout the district except that we prohibit fishing on the designated portions of the Edward-Long Lake Waterfowl Production Area (WPA) in Stevens County in accordance with State regulations subject to the following conditions:

1. Condition A1 applies

2. You must remove all ice fishing structures, devices, and personal property (see § 27.93 of this chapter) brought onto the WPA at the end of each day's fishing.

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**Rice Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of woodcock and common snipe on designated areas in accordance with State regulations subject to the following conditions:

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*B. Upland Game Hunting.* We allow hunting of ruffed grouse, spruce grouse, gray and fox squirrels, cottontail rabbit, and snowshoe hare on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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2. We require that the visible portion of at least one article of clothing worn above the waist be blaze orange.

* * * * *

**Sherburne National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

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5. We prohibit hunting during the State Special Goose Hunt (the early September and late December Canada goose hunting seasons).

*B. Upland Game Hunting.* * * *

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2. We prohibit field possession of upland game species on areas closed to upland game hunting.

*C. Big Game Hunting.* * * *

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3. You must dismantle hunting blinds, platforms, and ladders made from natural vegetation at the end of each day's hunt.

4. We prohibit the possession of firearms or archery equipment on areas closed to white-tailed deer hunting.

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**Tamarac National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* * * *

1. Hunting by tribal members is in accordance with White Earth Reservation regulations on those portions of the Reservation that are a part of the refuge.

* * * * *

*B. Upland Game Hunting.* * * *

1. Hunting by tribal members is in accordance with White Earth Reservation regulations on those parts of the Reservation that are part of the refuge.

2. You may only hunt red fox, raccoon, and striped skunk from ½ hour before legal sunrise until legal sunset from September 1 through the last day of February.

* * * * *

*C. Big Game Hunting.* * * *

1. Hunting by tribal members is in accordance with White Earth Reservation regulations on those parts of the Reservation that are part of the refuge.

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*D. Sport Fishing.* We allow fishing on designated areas of the refuge between the hours of 5 a.m. and 10 p.m. in accordance with State regulations subject to the following conditions:

1. We allow fishing in North Tamarac Lake, Wauboose Lake, and Two Island Lake all year in accordance with State and/or White Earth Reservation regulations.

2. We allow fishing in Blackbird Lake and Lost Lake from the first day of the State walleye season through Labor Day under State and/or White Earth Reservation regulations.

3. We only allow bank fishing in an area 50 yards (45 m) on either side of the Ottertail River Bridges on County Roads #26 and #126 during State seasons.

4. We allow fishing in Pine Lake from December 1 until March 31.

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25. Amend § 32.43 Mississippi by:

a. Revising "Dahomey National Wildlife Refuge;''

b. Revising paragraphs A., B., and C. of "Grand Bay National Wildlife Refuge;''

c. Revising "Hillside National Wildlife Refuge;''

d. Revising "Mathews Brake National Wildlife Refuge;''

e. Revising "Morgan Brake National Wildlife Refuge;''

f. Revising "Panther Swamp National Wildlife Refuge;''

g. Revising "St. Catherine Creek National Wildlife Refuge;''

h. Revising "Tallahatchie National Wildlife Refuge;'' and

i. Revising "Yazoo National Wildlife Refuge'' to read as follows:

**§ 32.43 Mississippi.**

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**Dahomey National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory waterfowl, coot, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. All hunters must possess and carry a valid, signed refuge hunting permit certifying that you understand and will comply with all regulations, and hunters must carry a State license and a signed Federal and State duck stamp on their person while hunting on the refuge. Hunters born after January 1, 1972, also must carry a Hunter Education Safety Course card or certificate. You may obtain permits at North Mississippi Refuges Complex Headquarters, 2776 Sunset Drive, Grenada, Mississippi 38901, or at the Dahomey National Wildlife Refuge Office, Box 831, Highway 446, Boyle, Mississippi 38730, or by mail from the above addresses.

2. All users may enter the refuge 2 hours before legal sunrise and must exit the refuge no later than 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

3. We only allow hunting of migratory game birds on Wednesdays, Saturdays, and Sundays, from ½ hour before legal sunrise to 12 p.m. (noon). Hunters must remove all decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day. After duck, merganser, and coot season closes, you may hunt goose daily from ½ hour before legal sunrise until legal sunset.

4. Each hunter must obtain a daily User Information Card (pink) available at each refuge information station and follow the printed instructions on the card. Hunters must place the card in plain view on the dashboard of their vehicle so the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the hunter information stations. Include all game harvested, and if there is none, report "0.''

5. We may close certain areas of the refuge for sanctuary or administrative purposes. We will mark such areas with "No Hunting'' or "Area Closed'' signs.

6. We prohibit handguns of all kinds.

7. Waterfowl hunters may leave boats meeting all State registration requirements on refuge water bodies throughout the waterfowl season. You must remove boats (*see* § 27.93 of this chapter) within 72 hours after the season closes.

8. We restrict motor vehicle use to roads designated as vehicle access roads on the refuge map (see § 27.31 of this chapter). We prohibit blocking access to any road or trail entering the refuge (see § 27.31(h) of this chapter).

9. All hunters or persons on the refuge for any reason during any open refuge hunting season must wear a minimum of 500 square inches (3,250 $cm^2$) of visible, unbroken, fluorescent orange-colored material above the waistline. Waterfowl hunters must comply while walking/boating to and from actual hunting area. Waterfowl hunters may remove the fluorescent orange while actually hunting.

10. We only allow dogs on the refuge when specifically authorized for hunting. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain in the immediate control of their handlers at all times (*see* § 26.21(b) of this chapter).

11. You must remove decoys, blinds, other personal property, and litter (*see* §§ 27.93 and 27.94 of this chapter) from the hunting area following each morning's hunt. We prohibit cutting or removing trees and other vegetation (*see* § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

12. We prohibit ATVs (*see* § 27.31(f) of this chapter), horses, and mules on the refuge.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, beaver, nutria, raccoon, coyotes, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A8, and A12 apply.

2. We restrict all public use to the period beginning 2 hours before legal sunrise and ending 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours. We establish special provisions for raccoon hunting; contact the refuge office for details.

3. You may only possess shotguns with approved nontoxic shotgun shot (*see* § 32.2(k)) and .22 caliber rifles. We prohibit all handguns.

4. All hunters or persons on the refuge for any reason during any open refuge hunting season must wear a minimum of 500 square inches (3,250 $cm^2$) of visible, unbroken, fluorescent orange-colored material above the waist line.

5. We only allow dogs on the refuge after the general Gun Deer Hunt. Dogs must remain in the immediate control of their handlers at all times (*see* § 26.21(b) of this chapter).

6. We prohibit cutting or removing trees and other vegetation (see § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A6, A8, and A12 apply.

2. We restrict all public use to 2 hours before legal sunrise until 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

3. All hunters or persons on the refuge for any reason during any open refuge hunting season must wear a minimum of 500 square inches (3,250 $cm^2$) of visible, unbroken, fluorescent orange-colored material above the waistline. We do not require this for turkey hunting.

4. We prohibit dogs for any big game hunt.

5. We prohibit use or possession of any drug or device for employing such drug for hunting.

6. We prohibit organized drives for deer.

7. We prohibit hunting or shooting across any open, fallow, or planted field from ground level or on or across any public road, public highway, railroad, or their right-of-way during all general gun and primitive weapon hunts.

8. You may erect portable deer stands (*see* § 32.2i)) 2 weeks prior to the opening of archery season on the refuge, and you must remove them by January 31 (*see* § 27.93 of this chapter). We prohibit cutting or removing trees and other vegetation (*see* § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All anglers must possess and carry a valid, signed refuge fishing permit certifying that you understand and will comply with all regulations.

2. We close the refuge to fishing from October 1 through February 28.

3. We prohibit possession of any weapon (*see* § 27.42 of this chapter) while fishing on the refuge.

4. We prohibit possession or use of jugs, seines, nets, hand-grab baskets, slat traps/baskets, or any other similar devices and commercial fishing of any kind.

5. We allow trotlines, yo-yos, limb lines, crawfish traps, or any other similar devices for recreational use only. You must tag or mark these devices with your full name, full residence address including zip code, written with waterproof ink, legibly inscribed or legibly stamped on the tag. You must attend these devices a minimum of once a day. If you do not attend these devices (*see* § 27.93 of this chapter), you must remove them from the refuge.

6. We prohibit snagging or attempting to snag fish.

7. We allow crawfishing.

8. We only allow the taking of frog by Special Use Permit.

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**Grand Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting from 30 minutes before legal sunrise until 12 p.m. (noon) on Saturdays, Sundays, Wednesdays, and Thursdays. Hunters may enter the refuge 2 hours before legal sunrise. Hunters must remove all decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

2. You must only use portable or temporary blinds.

3. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting waterfowl in the field.

4. The refuge is a day-use area only with the exception of legal hunting activities.

5. We prohibit the use of all-terrain vehicles on all refuge hunts.

6. We prohibit target practice on refuge property.

7. We prohibit mules and horses on refuge hunts.

8. We allow retrievers for waterfowl hunting. We require all dogs to wear a collar displaying the owner's name, address, and telephone number.

9. You must unload and case or dismantle firearms (*see* § 27.42(b) of this chapter) before transporting them in a vehicle or boat within the boundaries of the refuge or along rights-of-way for public or private land within the refuge.

10. Each hunter must possess and carry a current, signed copy of the refuge hunting permit while participating in refuge hunts.

11. Youth hunters under age 16 must possess and carry a State-approved hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. An adult may supervise no more than two youths during small game hunts and one youth during big game hunts.

*B. Upland Game Hunting.* We allow hunting of squirrel on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4 through A7 and A9 through A11 apply.

2. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)). All shotgun ammunition must meet legal shot-size requirements. We only allow .22 caliber rimfire.

3. We prohibit the use of dogs.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4 through A7, A9 through A11, and B3 apply.

2. We only allow hunting with bow and arrow. We prohibit the use of poisonous arrows. We prohibit firearms.

3. We prohibit the use or construction of any permanent tree stand. We allow portable and climbing stands, but you must remove them from the tree when not in use or they will be subject to confiscation (*see* § 27.93 of this chapter).

4. We prohibit hunting by organized deer drives of two or more hunters. We define "drive" as the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animals more susceptible to harvest.

5. We prohibit hunting with the aid of bait (see § 32.2(h)).

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**Hillside National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, merganser, coot, and dove in accordance with State regulations subject to the following conditions:

1. We are open for hunting during the State season except during the muzzleloader deer hunt.

2. There is no early teal season.

3. We allow hunting from ½ hour before legal sunrise until 12 p.m. (noon).

4. Hunters must remove all decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

5. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters age 16 and older must possess and carry a valid signed refuge Public Use Permit certifying that he or she understands and will comply with all regulations. One adult may supervise no more than one youth hunter.

6. Each day before hunting, all hunters must obtain a daily User Information Card (pink) available at the hunter information stations (*see* refuge brochure map) and follow the printed instructions on the card. You must display this card in plain view on the dashboard of your vehicle while hunting or fishing so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations.

7. Failure to display the User Information Card will result in the loss of the hunter's refuge annual Public Use Permit.

8. We prohibit hunting or entry into areas designated as "CLOSED" (*see* refuge brochure map).

9. We prohibit possession of alcoholic beverages (*see* § 32.2(j)).

10. We prohibit plastic flagging tape.

11. We prohibit handguns.

12. You must unload and case guns (*see* § 27.42(b) of this chapter) transported in/on vehicles, ATVs, and boats under power.

13. You must park vehicles in such a manner as to not obstruct roads, gates, turnrows, or firelanes (*see* § 27.31(h) of this chapter).

15. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal firearms used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

16. We only allow ATVs on designated trails (*see* § 27.31 of this chapter) (*see* refuge brochure map).

17. We open for dove hunting the first and second State season. Contact the refuge headquarters for specific dates and open areas.

18. You may only take dove with shotguns shooting approved nontoxic shot.

19. You may only possess approved nontoxic shot (*see* § 32.2(k)) while in the field.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A5 through A15 apply.

2. We only allow shotguns with approved nontoxic shot (*see* § 32.2(k)) and .22 caliber rimfire rifles for taking small game (we prohibit .22 caliber magnums).

3. We only allow dogs for rabbit and quail hunting typically during the last 2 weeks in February. Hunt dates are available at the refuge headquarters and printed in the refuge brochure. We restrict hunting to the waterfowl hunting area (*see* refuge brochure map).

4. During the rabbit-with-dog and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment.

5. Beginning the first day after the deer muzzleloader hunt, we restrict hunting to the designated waterfowl hunting area (*see* refuge brochure map).

6. We prohibit horses.

*C. Big Game Hunting.* We allow hunting of white-tail deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

2. We only allow ATVs on designated trails (*see* § 27.31 of this chapter) beginning the second Saturday in September through February 28 (*see* refuge brochure map).

3. Beginning the first day after the muzzleloader hunt, we restrict hunting to the designated waterfowl hunting area (*see* refuge brochure map).

4. Conditions A5 through A7 and B6 apply.

5. During all gun and muzzleloader deer hunts: all participants must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment while hunting and enroute to and from hunting areas; we prohibit hunting from tripods and other free-standing platforms in fields and tree plantations (during muzzleloader deer hunt); and we prohibit all other public use on the refuge.

6. We prohibit organized drives for deer.

7. We prohibit hunting from or shooting across open fields from ground level.

8. We only allow crossbows in accordance with State law.

9. You must unload guns (*see* § 27.42(b) of this chapter) while standing beside, in, or walking across any portion of a field, tree plantation, road, pipeline, or powerline right-of-way. We define "a loaded gun'' as shells in the gun or percussion caps on muzzleloaders.

10. Stands adjacent to fields and tree plantations must be a minimum of 10 feet (300 cm) above ground.

11. We prohibit attaching stands to any power or utility pole.

12. You may place stands on the refuge 7 days prior to and must remove them (*see* § 27.93 of this chapter) by day 7 after the close of the refuge deer season.

13. You must remove stands in the January/February closed area by the last day of the muzzleloader hunt.

14. You must field-dress deer.

15. We designate check station dates and requirements in the refuge brochure.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during the muzzleloader deer hunt.

2. We allow fishing in the borrow ponds along the north levee (see refuge brochure map) throughout the year except during the muzzleloader Gun Deer Hunt.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We prohibit fishing from bridges.

6. We allow frogging during the State bullfrog season.

7. We only allow ATVs on designated trails (*see* § 27.31 of this chapter) (see refuge brochure map) September 15 through February 28.

**Mathews Brake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, merganser, and coot in accordance with State regulations subject to the following conditions:

1. We allow hunting during the open State season.

2. There is no early teal season.

3. Beginning the opening day of duck season, we restrict hunting to the designated waterfowl hunt area only (see refuge brochure map).

4. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older.

5. During the refuge youth hunts, scheduled the first 2 weekends in January, both youth and accompanying adult may hunt. Only one adult may accompany each youth hunter.

6. We allow hunting from ½ hour before legal sunrise until 12 p.m. (noon).

7. Hunters must remove all decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

8. If you are a hunter age 16 or older, you must possess and carry a valid, signed refuge Public Use Permit certifying that you understand and will comply with all regulations.

9. Each day before hunting, each hunter must obtain a daily User Information Card (pink) available at the hunter information stations (see refuge brochure map) and follow the printed instructions on the card. You must display this card on the dashboard of your vehicle while hunting or fishing so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations.

10. Failure to display the User Information Card will result in the loss of the hunter's refuge annual Public Use Permit.

11. We prohibit hunting or entry into areas designated as "CLOSED'' (see refuge brochure map).

12. We prohibit possession of alcoholic beverages (*see* § 32.2(j)).

13. We prohibit plastic flagging tape.

14. We prohibit handguns.

15. You must unload and case guns (*see* § 27.42(b) of this chapter) transported in/on vehicles and boats under power.

16. We prohibit parking vehicles in such a manner as to obstruct roads, gates, turnrows, or firelanes (*see* § 27.31(h) of this chapter).

17. Valid permit holders may take the following furbearers in season incidental to other refuge hunts with legal firearms used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A4 applies.

2. We only allow shotguns with approved nontoxic shot (*see* § 32.2(k)) and .22 caliber rimfire rifles for taking small game (we prohibit .22 caliber magnums).

3. We only allow dogs for rabbit hunting typically the last 2 weeks in February. Hunt dates are available at the refuge headquarters and printed in the refuge brochure. We restrict hunting to the waterfowl hunting area (see refuge brochure map).

4. During the rabbit-with-dog hunt, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 $cm^2$) of

unbroken flourescent-orange material visible above the waistline as an outer garment.

5. We prohibit horses.

*C. Big Game Hunting*. We allow archery hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow archery hunting October 1 through January 31.

2. State bag limits apply.

3. Beginning the first day of duck season, we restrict hunting to the designated waterfowl hunt area only (see refuge brochure map).

4. Conditions A7 through A9 and B5 apply.

5. We prohibit organized drives for deer.

6. We only allow crossbows in accordance with State law.

7. We prohibit attaching stands to any power or utility pole.

8. You may place stands on the refuge 7 days prior to and must remove them (see § 27.93 of this chapter) by day 7 after the close of the refuge deer season.

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing in all refuge waters throughout the year, except in the waterfowl sanctuary, which we close from the first day of duck season through March 15 (see refuge brochure map).

2. We prohibit trot lines, limb lines, jugs, seines, and traps.

3. We allow frogging during the State bullfrog season.

**Morgan Brake National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, merganser, and coot on the refuge in accordance with State regulations subject to the following conditions:

1. We open for hunting during the State season, except we close during the muzzleloader deer hunt.

2. There is no early teal season.

3. We allow hunting from ½ hour before legal sunrise until 12 p.m. (noon).

4. Hunters must remove all decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

5. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. If you are a hunter age 16 or older you must possess and carry a valid, signed refuge Public Use Permit certifying that you understand and will comply with all regulations.

6. Each day before hunting, all hunters must obtain a daily User Information Card (pink) available at each refuge information station (*see* refuge brochure map) and follow the printed instructions on the card. You must display this card in plain view on the dashboard of your vehicle while hunting or fishing so the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations.

7. Failure to display the User Information Card will result in the loss of the hunter's refuge annual Public Use Permit.

8. We prohibit hunting or entry into areas designated as "CLOSED'' (see refuge brochure map).

9. We prohibit possession of alcoholic beverages (*see* § 32.2(j)).

10. We prohibit plastic flagging tape.

11. We prohibit handguns at all times.

12. You must unload and case guns (*see* § 27.42(b) of this chapter) transported in/on vehicles, ATVs, and boats under power.

13. We prohibit parking of vehicles in such a manner as to obstruct roads, gates, turnrows, or firelanes (*see* § 27.31(h) of this chapter).

14. We allow take by valid permit holders of the following in-season furbearers, incidental to other refuge hunts with legal firearms used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

15. We only allow ATVs on designated trails (*see* § 27.31 of this chapter) (see refuge brochure map).

16. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)).

*B. Upland Game Hunting*. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A5 (we only allow one adult per youth hunter), and A6 through A14 apply.

2. We only allow shotguns shooting approved nontoxic shot (*see* § 32.2(k)) and .22 caliber rimfire rifles for taking small game (we prohibit .22 caliber magnums).

3. We only allow dogs for rabbit and quail hunting typically during the last 2 weeks in February. Hunt dates are available at the refuge headquarters and printed in the refuge brochure. We restrict hunting to the waterfowl hunting area (*see* refuge brochure map).

4. During the rabbit and quail-with-dog hunt, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment.

5. Beginning the first day after the deer muzzleloader hunt, we restrict hunting to the designated waterfowl hunting area (see refuge brochure map).

6. We prohibit horses.

*C. Big Game Hunting*. We allow hunting of white-tail deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunt information and dates are available both at the refuge headquarters in July and posted in the refuge brochure.

2. We only allow ATVs on designated trails (*see* § 27.31 of this chapter) beginning the second Saturday in September through February 28 (see refuge brochure map).

3. Beginning the first day after the muzzleloader hunt, we restrict hunting to north of Providence Road and the area west and south of Spring Branch (*see* refuge brochure map).

4. During all gun and muzzleloader deer hunts, all participants must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment while hunting and enroute to and from hunting areas.

5. During muzzleloader deer hunts, we prohibit all other public use.

6. We prohibit organized drives for deer.

7. We prohibit hunting from or shooting across open fields from ground level.

8. We only allow crossbows in accordance with State law.

9. We define a loaded gun as shells in the gun or percussion caps on muzzleloaders.

10. You must unload guns (*see* § 27.42(b) of this chapter) while standing beside, in, or walking across any portion of a field, tree plantation, road, pipeline, or powerline right-of-way.

11. During the muzzleloader deer hunt, we prohibit hunting from tripods and other free-standing platforms in fields and tree plantations.

12. Stands adjacent to fields and tree plantations must be a minimum of 10 feet (3 m) above ground.

13. We prohibit attaching stands to any power or utility pole.

14. You may place stands on the refuge 7 days prior to and must remove them (*see* § 27.93 of this chapter) by day 7 after the close of the refuge deer season.

15. You must remove stands in the January/February closed area by the last day of the muzzleloader hunt.

16. Hunters must field-dress their deer.

17. We designate check station dates and requirements in the refuge hunt brochure.

18. Conditions A5 through A7 and B6 apply.

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during the muzzleloader deer hunt.

2. We only allow fishing in refuge waters north of Providence Road throughout the year except during the muzzleloader deer hunt.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We prohibit fishing from bridges.

6. We allow frogging during the State bullfrog season.

7. We only allow ATVs on designated trails (*see* § 27.31 of this chapter) (*see* refuge brochure map) September 15 through February 28.

8. We will post separate fishing regulations for Providence Ponds on Morgan Brake at the Morgan Brake office.

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**Panther Swamp National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, merganser, and coot in accordance with State regulations subject to the following regulations:

1. We allow hunting during the open State season except we close during all Limited Permit Hunts.

2. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Both youth and accompanying adult may hunt. Only one adult may accompany each youth hunter.

3. There is no early teal season.

4. We allow hunting from ½ hour before legal sunrise until 12 p.m. (noon).

5. Hunters must remove all decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

6. Each hunter age 16 and older must possess and carry a valid, signed refuge Public Use Permit certifying that they understand and will comply with all regulations.

7. Each day before hunting, all hunters must obtain a daily User Information Card (pink) available at the hunter information stations (*see* refuge brochure map) and follow the printed instructions on the card. You must display this card in plain view on the dashboard of your vehicle while hunting or fishing so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations.

8. Failure to display the User Information Card will result in the loss of the hunter's refuge annual Public Use Permit.

9. You may obtain hunt dates both at the refuge headquarters in July and posted in the refuge brochure.

10. We prohibit hunting or entry into areas designated as "CLOSED'' (*see* refuge brochure map).

11. We prohibit possession of alcoholic beverages (*see* § 32.2(j)).

12. We prohibit plastic flagging tape.

13. We prohibit handguns at all times.

14. You must unload and case guns (*see* § 27.42(b) of this chapter) transported in/on vehicles, ATVs, and boats under power.

15. We prohibit parking of vehicles in such a manner as to obstruct roads, gates, turnrows, or firelanes (*see* § 27.31(h) of this chapter).

16. We allow take by valid permit holders of the following furbearers in season, incidental to other refuge hunts with legal firearms used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

17. We only allow ATVs, beginning the second Saturday in September through February 28, on designated trails (*see* § 27.31 of this chapter) (*see* refuge brochure map).

*B. Upland Game Hunting*. We allow hunting of squirrel, rabbit, quail, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting during the open State season except we close during limited refuge deer hunts. You may obtain information on the hunts and hunt dates both at the refuge headquarters in July and posted in the refuge brochure.

2. Conditions A2 (squirrel hunting), A6 through A8, and A10 through A17 apply.

3. We only allow shotguns with approved nontoxic shot (*see* § 32.2(k)) and .22 caliber rimfire rifles for taking small game (we prohibit .22 caliber magnums). We prohibit possession of toxic shot, buckshot, and slugs.

4. We only allow dogs for rabbit hunting typically the last 2 weeks in February. You may obtain hunt dates both at the refuge headquarters and printed in the refuge brochure (*see* refuge brochure map for open areas).

5. During the rabbit-with-dog and quail hunts, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment.

6. Beginning the first day after the last Limited Deer Gun Hunt, we restrict hunting to the designated waterfowl hunting area (*see* refuge brochure map).

7. We prohibit horses.

*C. Big Game Hunting*. We allow hunting of white-tail deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A7, A8, A9, A17, B6, and B7 apply.

2. We may require a Limited Hunt Permit for spring turkey hunting, regular gun deer, and muzzleloader deer hunting. We issue the Limited Hunt Permit by random computer drawing. If we draw your name, there is a fee for each permit. Limited Hunt Permits are not transferable and are nonrefundable. Contact the refuge headquarters for specific requirements. The regular gun deer and muzzleloader deer hunts require a Limited Hunt Permit that we assign by random computer drawing. If we draw your name, there is a fee for each permit. Limited Hunt Permits are not transferable and nonrefundable. Contact the refuge headquarters for specific requirements, hunt, and application dates.

3. We may designate dates for youth (ages 12 to 15) turkey hunting. Contact the refuge headquarters or see the refuge brochure for youth hunt dates. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older (one youth per adult).

4. During spring turkey season we only allow ATVs on Southern Natural Gas pipeline, from Cotton's access to Tupelo Brake Duck Club boundary (*see* refuge brochure map).

5. You must immediately tag all harvested turkeys prior to moving them.

6. We only allow shotguns shooting approved nontoxic shot (*see* § 32.2(k)) and archery while turkey hunting.

7. You must immediately tag all game harvested prior to moving it during limited hunts; we provide the tags.

8. We designate check station dates and requirements in the refuge hunt brochure.

9. If you are a hunter age 16 or older, you must possess and carry a valid, signed refuge Public Use Permit or Limited Hunt Permit certifying that you

understand and will comply with all regulations.

10. During all gun or muzzleloader deer hunts, all participants must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment while hunting and enroute to and from hunting areas.

11. We prohibit all other public use on the refuge during all gun and muzzleloader deer hunts.

12. We prohibit organized drives for deer.

13. We prohibit hunting from or shooting across open fields from ground level.

14. During all Limited Permit Hunts, each hunter must possess and carry only their own current permit and/or tags.

15. We only allow crossbows in accordance with State law.

16. We define a loaded gun as shells in the gun or percussion caps on muzzleloaders.

17. You must unload guns (*see* § 27.42(b) of this chapter) while standing beside, in, or walking across any portion of a field, tree plantation, road, pipeline, or powerline right-of-way.

18. During muzzleloader, rifle, and youth Gun Deer Hunts, we prohibit hunting from tripods and other free-standing platforms in fields and tree plantations.

19. Stands adjacent to fields and tree plantations must be a minimum of 10 feet (3 m) above ground.

20. We prohibit attaching stands to any power or utility pole.

21. You may place stands on the refuge 7 days prior to and must remove them (*see* § 27.93 of this chapter) by day 7 after the close of the refuge deer season.

22. You must remove stands in the January/February closed area by the last day of the muzzleloader hunt.

24. You must field-dress deer.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all refuge waters during limited deer gun hunts.

2. We open waters between the East and West levee, the Landside Ditch, and the portion of Panther Creek adjacent to the West Levee year-round except during limited Gun Deer Hunts.

3. We open all other refuge waters March 1 through November 15.

4. We prohibit trot lines, limb lines, jugs, seines, and traps.

5. We allow frogging during the State bullfrog season.

6. We only allow ATVs for fishing access on designated gravel roads when we close such roads to vehicular traffic.

**St. Catherine Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, and coot during the State season in accordance with State regulations subject to the following conditions:

1. We allow hunting in Butler Lake, Salt Lake, and Gilliard Lake from ½ hour before legal sunrise until 12 p.m. (noon) on Tuesdays, Thursdays, and Saturdays.

2. If you are a hunter age 16 or older you must possess and carry a valid, signed refuge Public Use Permit certifying that you understand and will comply with all regulations.

3. We will close waterfowl hunting in Butler Lake and Salt Lake after the Natchez River gauge reaches 28 feet (8.4 m) or higher.

4. We will close waterfowl hunting in Gilliard Lake when the Natchez River gauge reaches 32 feet (9.6 m) or higher.

5. We restrict access to Butler Lake waterfowl hunting only to Butler Lake Road.

6. Hunters must remove decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day.

7. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

8. You must use portable blinds.

9. All users must obtain a daily use reporting card and place it in plain view on the dashboard of their vehicle so that the personal information is readable. Users must return cards to a refuge kiosk upon departure from the refuge.

10. Hunters may enter the refuge 2 hours before legal sunrise and must exit the refuge no later than 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

11. All persons in all underway boats must wear U.S. Coast Guard-approved personal flotation devices.

12. You must hand-launch boats except at designated boat ramps, where you may trailer-launch them.

13. We only open ATV trails (*see* § 27.31 of this chapter) to ATV traffic during scheduled hunts and scouting periods.

14. Hunters must be age 16 or older to operate an ATV on the refuge.

15. We allow use of retrievers.

16. State bag limits apply.

17. We prohibit hunting on Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Day.

18. We prohibit the following acts: possession of alcohol (*see* § 32.2(j)); entering the refuge from private property; hunters entering from public waterways; overnight parking; parking or hunting within 150 feet (45 m) of any petroleum facility or equipment, or refuge residences and buildings; parking by hunters in refuge headquarters parking lot; and possession of hand guns on the refuge.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, raccoon, opossum, and woodcock in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotguns, .22 caliber long rifles, and muzzleloading rifles under .38 caliber shooting patched round balls.

2. You must wear a hunter-orange hat and upper garment when hunting in open fields or reforested areas.

3. We prohibit use of motorized boats after the Natchez River gauge reaches 28 feet (8.4 m) or higher.

4. We only allow raccoon hunting during the month of February from legal sunset to legal sunrise with the following conditions:

i. We require dogs.

ii. We prohibit hunting along/from Carthage-Linwood Road.

iii. We prohibit the use of boats and ATVs.

iv. You may only use .22 caliber rimfire rifles (no magnums).

5. You may take beaver, nutria, coyote, and bobcat incidental to the hunt.

6. Conditions A2, A7 through A14, and A16 through A18 apply.

7. We prohibit the following acts: possession of .22 caliber magnum rifles; target practice; marking trails with tape, paper, paint, or any other artificial means; riding horses or mules; and possession of slugs, buckshot, or rifle ammunition larger than .22 caliber rimfire.

*C. Big Game Hunting.* We allow deer, hog, and lottery youth turkey hunting in accordance with State regulations subject to the following conditions:

1. We only allow still hunting.

2. You may only take one deer per day: we allow residents to take one deer of either sex per day; however, we prohibit nonresidents from harvesting antlerless deer.

3. We require hunters to wear a hunter-orange hat and upper garment at all times during all muzzleloader hunts and during the youth gun hunt.

4. During late muzzleloader (after December 25) hunts, the following specific conditions apply: You may only take bucks with a minimum of 14-inch (35 cm) inside antler spread.

5. During traditional primitive weapon season, the following specific conditions apply:

i. You must only use flintlock and sidelock percussion muzzleloaders with iron sights and patched-round balls.

ii. We prohibit in-line muzzleloaders, electronic sights, scopes, fiber optic sights, and conical bullets.

iii. You must use recurve and long bows without sights.

6. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older.

7. We must receive all applications for the limited youth lottery draw turkey hunt by February 28 of each year.

8. Youth (ages 10 to15) gun deer and waterfowl hunts will coincide with designated State youth hunts each year. Youth deer hunters may use any weapon deemed legal by the State except for buckshot, which we prohibit.

9. We prohibit insertion of metal objects into trees or hunting from trees that contain inserted metal objects (*see* § 32.2(i)).

10. We prohibit the use or possession of climbing spurs.

11. You must dismantle blinds and tripods, and you must remove stands from the tree after each day's hunt. You must remove all stands, blinds, and tripods (see § 27.93 of this chapter) from the refuge before February 7 of each year.

12. You may only take feral hog with bow and arrow and muzzleloading rifles during and incidental to archery and primitive weapon deer seasons.

13. You must check all deer harvested on the refuge at one of the three self-clearing, mandatory deer check stations.

14. You must immediately field-dress all deer upon harvest.

15. State season bag limits apply.

16. Conditions A2, A7 through A14, A17, A18, B3, B5, and B7 apply.

*D. Sport Fishing.* We allow fishing during daylight hours only from March 1 through the last day of archery season each year in accordance with State regulations subject to the following conditions:

1. We require a public use permit for all anglers between the ages of 16 and 65.

2. We prohibit the use of ATVs (*see* § 27.31(f) of this chapter).

3. On the Sibley Unit, we prohibit boats north of the Ring Levee, except you may hand-launch boats in Swamp Lake during nonflood conditions.

4. An adult age 21 or older must supervise youth age 15 and under who may fish in the Kids Pond. We prohibit adults from fishing in this pond.

5. We allow bow fishing. Bow anglers must abide by State law.

6. We allow nighttime bow fishing on the refuge but only through a Special Use Permit issued by the refuge manager.

7. We prohibit the following acts: possession of alcohol (*see* § 32.2(j)); entering the refuge from private property; overnight parking; target practice; riding horses or mules; possession or use of commercial fishing or trotline equipment, including limb lines, nets, traps, yo-yos, or jugs; and possession of any firearms (see § 27.42 of this chapter).

8. Conditions A9, A11, and A12 apply.

**Tallahatchie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory waterfowl, coots, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. Hunters born after January 1, 1972, also must carry a Hunter Education Safety Course card or certificate. All hunters must possess and carry a valid, signed refuge Hunting Permit certifying that he or she understands and will comply with all regulations. You may obtain permits at North Mississippi Refuges Complex Headquarters, 2776 Sunset Drive, Grenada, Mississippi 38901, or at the Dahomey National Wildlife Refuge Office, Box 831, Highway 446, Boyle, Mississippi 38730, or by mail from the above addresses.

2. We restrict all public use to the period beginning 2 hours before legal sunrise and ending 2 hours after legal sunset except during the raccoon hunt. We prohibit entering or remaining on the refuge before or after hours.

3. We only allow hunting of migratory game birds on Wednesdays, Saturdays, and Sundays from ½ hour before legal sunrise and ending at 12 p.m. (noon). Hunters must remove all decoys, blind material (*see* § 27.93 of this chapter), and harvested waterfowl from the area no later than 1 p.m. each day. After duck, merganser, and coot season closes, we allow hunting of goose daily, during the period beginning ½ hour before legal sunrise and ending at legal sunset.

4. We prohibit public hunting north of Mississippi Highway 8.

5. Each hunter must obtain a daily User Information Card (pink) available at each refuge information station and follow the printed instructions on the card. You must display the card in plain view on the dashboard of your vehicle so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations. Include all game harvested, and if you harvest no game, report "0."

6. We may close certain areas of the refuge for sanctuary or administrative purposes. We will mark such areas with "No Hunting" or "Area Closed" signs.

7. We prohibit all handguns.

8. Waterfowl hunters may leave boats meeting all State registration requirements on refuge water bodies throughout the waterfowl season. You must remove boats (*see* § 27.93 of this chapter) within 72 hours after the season closes.

9. We restrict motor vehicle use to roads designated as vehicle access roads on the refuge map (*see* § 27.31 of this chapter). We prohibit blocking access to any road or trail entering the refuge (*see* § 27.31(h) of this chapter).

10. All hunters or persons on the refuge for any reason during any open refuge hunting season must wear a minimum of 500 square inches (3,250 $cm^2$) of visible, unbroken, fluorescent orange-colored material above the waistline. Waterfowl hunters must comply while walking/boating to and from actual hunting area. Waterfowl hunters may remove the fluorescent orange while actually hunting.

11. We only allow dogs on the refuge when specifically authorized for hunting. We encourage the use of dogs to retrieve dead or wounded waterfowl. Dogs must remain in the immediate control of their handlers at all times (*see* § 26.21(b) of this chapter).

12. You must remove decoys, blinds, other personal property, and litter (*see* §§ 27.93 and 27.94 of this chapter) from the hunting area following each morning's hunt. We prohibit cutting or removing trees and other vegetation (*see* § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

13. We prohibit ATVs (*see* § 27.31(f) of this chapter), horses, and mules on the refuge.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, beaver, nutria, raccoon, coyote, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A6, A9, and A13 apply.

2. We restrict all public use to the period beginning 2 hours before legal sunrise and ending 2 hours after legal sunset. We prohibit entering or

remaining on the refuge before or after hours. We establish special provisions for raccoon hunting; contact the refuge office for details.

3. We only allow shotguns with approved nontoxic shotgun shot (*see* § 32.2(k)) and .22 caliber rifles. We prohibit all handguns.

4. All hunters or persons on the refuge for any reason during any open refuge hunting season must wear a minimum of 500 square inches (3,250 $cm^2$) of visible, unbroken, fluorescent orange-colored material above the waistline.

5. We only allow dogs on the refuge after the general Gun Deer Hunt. Dogs must remain in the immediate control of their handlers at all times (*see* § 26.21(b) of this chapter).

6. We prohibit the cutting or removal of trees and other vegetation (*see* § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A6, A7, A9, and A13 apply.

2. We restrict all public use to 2 hours before legal sunrise and to 2 hours after legal sunset. We prohibit entering or remaining on the refuge before or after hours.

3. All hunters or persons on the refuge for any reason during any open refuge hunting season must wear a minimum of 500 square inches (3,250 $cm^2$) of visible, unbroken, fluorescent orange-colored material above the waistline. We do not require this for turkey hunting.

4. We prohibit dogs for any big game hunt.

5. We prohibit use or possession of any drug or device for employing such drug for hunting.

6. We prohibit organized drives for deer.

7. We prohibit hunting or shooting across any open, fallow, or planted field from ground level or on or across any public road, public highway, railroad, or their rights-of-way during all general gun and primitive weapon hunts.

8. You may erect portable deer stands 2 weeks prior to the opening of archery season on the refuge, and you must remove them (*see* § 27.93 of this chapter) by January 31. We prohibit the cutting or removal of trees and other vegetation (*see* § 27.51 of this chapter). We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All anglers must possess and carry a valid, signed refuge fishing permit certifying that you understand and will comply with all regulations. You may obtain permits at North Mississippi Refuges Complex Headquarters, 2776 Sunset Drive, Grenada, Mississippi 38901, or at the Dahomey National Wildlife Refuge Office, Box 381, Highway 446, Boyle, Mississippi 38730, or by mail to the above addresses.

2. We close the refuge to fishing from October 1 through February 28.

3. We only allow bank or boat sport fishing south of Mississippi Highway 8.

4. We prohibit possession of any weapon (*see* § 27.42 of this chapter) while fishing on the refuge.

5. We prohibit possession or use of jugs, seines, nets, hand-grab baskets, slat traps/baskets, or any other similar devices and commercial fishing of any kind.

6. We only allow trotlines, yo-yos, limb lines, crawfish traps, or any other similar devices for recreational use. You must tag or mark them with the angler's full name and full residence address, including zip code written with waterproof ink, legibly inscribed or legibly stamped on the tag; and attend the devices a minimum of once daily. When not attended, you must remove these devices (*see* § 27.93 of this chapter) from the refuge.

7. We prohibit snagging or attempting to snag fish.

8. We allow crawfishing.

9. We only allow take of frog by Special Use Permit.

**Yazoo National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of dove and snow goose on the refuge in accordance with State regulations subject to the following conditions:

1. If you are a hunter age 16 or older, you must possess and carry a valid, signed refuge Public Use Permit that certifies that you understand and will comply with all regulations.

2. Each day before hunting, all hunters must obtain a daily User Information Card (pink) available at each refuge information station (*see* refuge brochure map) and follow the printed instructions on the card. You must display this card in plain view on the dashboard of your vehicle while hunting or fishing so that the personal information is readable. Prior to leaving the refuge, you must complete the reverse side of the card and deposit it at one of the refuge information stations.

3. Failure to display the User Information Card may result in the loss of the hunter's refuge annual Public Use Permit.

4. We only allow hunting of snow goose by Special Use Permit. Contact the refuge office for details.

5. Hunt dates are available at the refuge headquarters in July and posted in the refuge brochure.

6. Youth hunters age 15 and under must possess and carry a hunter safety course card or certificate. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. We only allow one adult per youth hunter.

7. We prohibit hunting or entry into areas designated as "CLOSED'' (see refuge brochure map).

8. We prohibit possession of alcoholic beverages (*see* § 32.2(j)).

9. We prohibit plastic flagging tape.

10. We prohibit handguns at all times.

11. You may only possess approved nontoxic shot while hunting on the refuge (*see* § 32.2(k)).

12. You must unload and case guns (*see* § 27.42(b) of this chapter) transported in/on vehicles, ATVs, and boats under power.

13. We prohibit parking of vehicles in such a manner as to obstruct roads, gates, turnrows, or firelanes (*see* § 27.31(h) of this chapter).

14. We allow valid permit holders to take the following furbearers in season, incidental to other refuge hunts with legal firearms used for that hunt: raccoon, opossum, coyote, beaver, bobcat, and nutria.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A3, A5 through10, and A12 through A14 apply.

2. We only allow shotguns with approved nontoxic shot (*see* § 32.2(k)) and .22 caliber rimfire rifles (we prohibit .22 caliber magnums).

3. During the rabbit-with-dog hunt, any person hunting or accompanying another person hunting must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment.

4. We prohibit horses.

5. We allow hunting for rabbit on the Herron Tract, Brown Tract (east of the Sunflower River), Middleton-Miller-Zepponi Tracts, and Carter Tract. Contact refuge headquarters for hunt dates, maps, and additional information.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2, A3, A5, B4, and B5 (we allow archery except on the Carter Tract) apply.

2. If you are a hunter age 16 or older, you must possess and carry a valid refuge annual Public Use Permit or Limited Hunt Permit that certifies that you understand and will comply with all regulations. Permits are not transferable and are nonrefundable.

3. The youth regular gun deer, muzzleloader deer, and senior citizen Gun Deer Hunts require a Limited Hunt Permit assigned by random computer drawing. If we draw your name, there is a fee for each permit. Contact the refuge headquarters for specific requirements, hunt, and application dates.

4. During all gun or muzzleloader deer hunts, all participants must wear at least 500 square inches (3,250 $cm^2$) of unbroken flourescent-orange material visible above the waistline as an outer garment while hunting and enroute to and from hunting areas.

5. We prohibit all other public use during all gun and muzzleloader deer hunts.

6. We prohibit organized drives for deer.

7. We prohibit hunting from or shooting across open fields from ground level.

8. During all Limited Permit Hunts, each hunter shall possess and carry only their own current permit and/or tags.

9. We only allow crossbows in accordance with State law.

10. We define a loaded gun as shells in the gun or percussion caps on muzzleloaders.

11. You must unload guns (*see* § 27.42(b) of this chapter) while standing beside, in, or walking across any portion of a field, tree plantation, road, pipeline, or powerline right-of-way.

12. We prohibit hunting from tripods and other free-standing platforms during muzzleloader, rifle, and youth Gun Deer Hunts in fields and tree plantations.

13. Stands adjacent to fields and tree plantations must be a minimum of 10 feet (3m) above ground. We prohibit attaching stands to any power or utility pole. You may place stands on the refuge 7 days prior to and must remove them (*see* § 27.93 of this chapter) by day 7 after the close of the refuge deer season. You must remove stands in the January/February closed area by day 7 after the last deer hunt.

14. You must field dress and check all deer at refuge headquarters.

*D. Sport Fishing.* [Reserved]

26. Amend § 32.44 Missouri by:

a. Revising "Big Muddy National Wildlife Refuge;''

b. Revising paragraphs C. and D. of "Clarence Cannon National Wildlife Refuge;'' and

c. Revising "Mingo National Wildlife Refuge'' to read as follows:

**§ 32.44 Missouri.**

* * * * *

**Big Muddy National Fish and Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge subject to posted regulations in accordance with State regulations subject to the following conditions:

1. You must remove all your blinds, boats, and decoys (*see* § 27.93 of this chapter) from the refuge following each day's hunt except for blinds made entirely of marsh vegetation.

2. We prohibit cutting of woody vegetation (*see* § 27.51 of this chapter) on the refuge for blinds.

*B. Upland Game Hunting.* We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting for upland game, except turkeys. You may use lead shot while hunting for turkey.

*C. Big Game Hunting.* We allow big game hunting on designated areas of the refuge accordance with State regulations subject to posted regulations and the following conditions:

1. We prohibit use of tree spikes to assist in climbing trees for the purpose of hunting on the refuge (*see* § 32.2(i)).

2. We prohibit the construction or use of permanent blinds, platforms, or ladders at any time.

3. We prohibit hunting over or placing on the refuge any salt or other mineral blocks (*see* § 32.2(h)).

4. We only allow portable tree stands from September 15 through January 31. You must place your full name and address on your stands.

5. We only allow archery hunting in the portion of Boone's Crossing unit within the City of Chesterfield.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following condition: You must operate all motorized boats at no-wake speed.

**Clarence Cannon National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting during the State-designated Managed Deer Hunt.

2. We require hunters to check-in and out of the refuge each day.

3. We prohibit shooting at deer that are on any portion of the main perimeter levee.

4. We only allow the use of portable stands, and hunters must remove them (*see* § 27.93 of this chapter) at the end of each day's hunt.

5. We close the area south of Bryants Creek to deer hunting.

6. We require hunters to have all harvested deer checked by refuge personnel before removing them from the refuge.

7. You must park all vehicles in designated parking areas (*see* § 27.31 of this chapter).

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We prohibit the taking of turtle or frog (*see* § 27.21 of this chapter).

2. We only allow fishing from a boat. We prohibit bank fishing.

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**Mingo National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow waterfowl hunting on Pool 8 in accordance with State regulations subject to the following conditions:

1. We allow the use of hunting dogs, but the hunter must leash the dog or have it under strict voice command at all times (*see* § 26.21(b) of this chapter).

2. We allow hunting from ½ hour before legal sunrise until 1 p.m.

*B. Upland Game Hunting.* We allow hunting of squirrel only in the Public Hunting Area of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is open from 1½ hours before legal sunrise until 1½ hours after legal sunset.

2. We require that all hunters register at the Hunter Sign-In/Sign Out Stations and record the number of hours hunted and squirrels harvested.

3. We prohibit hunting of all other species.

4. We prohibit the use of dogs for squirrel hunting.

5. We allow squirrel hunting from the State opening day through September 30.

6. We only allow shotguns and .22 caliber rimfire rifles.

7. Shotgun hunters may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*C. Big Game Hunting.* We allow big game hunting in the Public Hunting Area in accordance with State regulations subject to the following conditions:

1. Condition B1 applies.

2. We require that all hunters register at the Hunter Sign-In/Sign Out Stations and record the number of hours hunted and deer harvested.

3. We allow archery hunting for deer and turkey during the fall season. We prohibit the use or possession of firearms during these seasons.

4. You must possess and carry a refuge permit for the special muzzleloader deer season.

5. We allow spring turkey hunting. We only allow shotguns with approved nontoxic shot (*see* § 32.2(k)).

*D. Sport Fishing.* We allow fishing in designated areas of the refuge in accordance with State "impounded waters'' regulations subject to the following conditions:

1. We prohibit fishing in all areas between Ditch 2 and Ditch 6 (including Ditches 3, 4, and 5) plus the moist soil units, and Monopoly Marsh from October 1 through March 1.

2. We only allow fishing in May Pond and Fox Pond with rod and reel or pole and line. Anglers may only take bass greater than 12 inches (30 cm) in length from May Pond.

3. We prohibit the use or possession of gasoline-powered boat motors. We allow the use of electric trolling motors, except that we prohibit all motors within the Wilderness Area.

4. Anglers must remove watercraft (*see* § 27.93 of this chapter) from the refuge at the end of each day's fishing.

5. Anglers may take nongame fish by nets and seines for personal use only from March 1 through September 30.

6. Anglers must attend trammel and gill nets at all times and plainly label them with the owners's name, address, and phone number.

7. We only allow the use of trotlines, throwlines, limb lines, bank lines, and jug lines from 1 hour before legal sunrise until 1 hour after legal sunset. Anglers must remove all fishing lines (*see* § 27.93 of this chapter) from the refuge at the end of each day's fishing. Anglers must mark each line with their name, address, and phone number.

8. We only allow personal use take of common snapping turtle and soft-shelled turtle using pole and line from 1 hour before legal sunrise until 1 hour after legal sunset. We require that all anglers release all alligator snapping turtle (*see* § 27.21 of this chapter).

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27. Amend § 32.45 Montana by:

a. Revising paragraphs A. and B. of "Benton Lake National Wildlife Refuge;''

b. Revising "Lee Metcalf National Wildlife Refuge;'' and

c. Revising "Red Rock Lakes National Wildlife Refuge'' to read as follows:

**§ 32.45 Montana.**

* * * * *

**Benton Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, swan, and coot in designated areas of the refuge in accordance with State regulations subject to the following conditions (consult refuge manager prior to hunting to learn of changes or updates):

1. We prohibit access to refuge hunting areas from other than authorized refuge parking areas. We prohibit hunting on or within 25 yards (22.5 m) of dikes or roads except the marked portion of the dike between Marsh Units 5 and 6. Hunters must have a means of bird retrieval, using a boat, boots, or a trained dog, while hunting on this dike (*see* § 26.21(b) of this chapter).

2. We allow hunting with the opening of waterfowl season and close November 30.

3. Hunters with a documented mobility disability may reserve an accessible blind in advance by contacting a refuge officer or calling the refuge office.

4. We only allow nonmotorized boats on refuge waters.

5. We allow hunting from temporary portable blinds or blinds made from natural vegetation.

6. We prohibit the retrieval of downed game from areas closed to hunting.

7. You must unload and case all firearms (*see* § 27.42(b) of this chapter) when outside of the refuge hunt area.

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, and gray partridge in designated areas of the refuge in accordance with State regulations subject to the following conditions (consult refuge manager prior to hunting to learn of changes or updates):

1. Conditions A2, A6, and A7 apply.

2. We prohibit access to refuge hunting areas from other than authorized refuge parking areas.

3. We prohibit hunting on or within 25 yards (22.5 m) of dikes or roads except the marked portion of the dike between Marsh Units 5 and 6.

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**Lee Metcalf National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, and coot from established blinds in designated areas of the refuge in accordance with State regulations subject to the following conditions (consult refuge manager prior to hunting to learn of changes or updates):

1. Hunting Access: We have numbered the blinds and assigned them to a single access point designated in the refuge hunting leaflet. Hunters must park at this access point and at the numbered parking space corresponding to a blind. Hunters must walk to the blind along mowed trails designated in the hunting leaflet. We open the access point to hunters who intend to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at the access point.

2. Hunting Hours: We open the hunting area, defined by the refuge boundary fence, 2 hours before and require departure 2 hours after legal waterfowl hunting hours, as defined by the State.

3. Registration: Each hunter must record the date, his or her name, Automated License System number, date of birth, and the time checking into the hunt area at the appropriate register before hunting; must set the appropriate blind selector before and after hunting; and must record hunting data (hours hunted, the number of shots fired, and birds harvested) at the appropriate register before departing the hunting area.

4. Blind selection is on a first-come, first-served basis with the exception of the opening weekend of waterfowl season. We will distribute blind permits for the opening weekend by a public drawing. We will announce the drawing time and place in local newspapers.

5. We prohibit attempting to "reserve'' a blind for use later in the day by depositing a vehicle or other equipment on the refuge. A hunter must be physically present in the hunting area in order to use a blind.

6. We prohibit blocking access to refuge gates (*see* § 27.31(h) of this chapter).

7. Hunters with a documented mobility disability may reserve an accessible blind in advance by contacting a refuge officer.

8. No more than four hunters or individuals may use a blind at one time.

9. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less.

10. You must conduct all hunting from within 10 feet (3 m) of a blind.

11. All hunters must have a visible means of retrieving waterfowl such as a float tube, waders, or a dog capable of retrieving.

12. We prohibit falconry hunting.

13. We prohibit boats, fishing gear, and fires (*see* § 27.95 of this chapter).

14. We require dogs be on a leash at the hunter access point and when walking to and from the hunt area/blind (*see* § 26.21(b) of this chapter).

15. We require hunters to unload shotguns (*see* § 27.42(b) of this chapter)

at the hunter access point and when walking to and from the hunt area/blind.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow archery hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions (consult refuge manager prior to hunting to learn of changes or updates):

1. Hunting Access: Hunters must enter and exit the hunt areas through designated archery hunting access points. We open access points to hunters intending to immediately hunt on the refuge. We prohibit wildlife observation, scouting, and loitering at access points and parking areas.

2. Condition A2 applies.

3. Registration: Each hunter must record the date, his or her name, Automated License System number, and date of birth at the appropriate register before hunting and must record hunting data (hours hunted, the number of arrows released, and deer harvested) at the appropriate register before departing the hunting area.

4. Tree Stands and Blinds: We only allow portable tree stands and blinds. We prohibit leaving tree stands or ground blinds on the refuge overnight (*see* § 27.93 of this chapter).

5. We prohibit preseason entry or scouting.

6. Hunters may not enter or retrieve deer from closed areas of the refuge without the consent of a refuge officer.

7. We prohibit boats, fishing gear, fires (*see* § 27.95 of this chapter), and firearms.

8. Hunters with a documented mobility disability may access designated locations in the hunting area to hunt from ground blinds. To access these areas, hunters must contact the refuge manager in advance to obtain a Special Use Permit.

9. We prohibit the use of any mechanized vehicle to enter or exit the hunt area; this includes bicycles.

*D. Sport Fishing.* We allow fishing on designated areas (Wildlife Viewing Area) of the refuge in accordance with State regulations in effect on the Bitterroot River from Tucker Crossing to Florence Bridge.

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**Red Rock Lakes National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State hunting regulations subject to the following conditions:

1. We only allow hunting on Lower Red Rock Lake and that portion of the River Marsh located directly north of Lower Red Rock Lake. We close all other areas of the refuge to hunting of goose, duck, and coot.

2. Hunters must remove all blinds, decoys, shell casings, and other personal equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge following each day's hunt.

3. We only allow nonmotorized boats in the hunt area east of the Lower Red Rock Lake dam. We allow boats with motors 10 hp or less west of Lower Red Rock Lake dam.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer, elk, moose, and pronghorn antelope on designated areas of the refuge in accordance with State hunting regulations subject to the following conditions:

1. Moose hunting on the refuge portion of Montana moose hunt zone 334 opens October 15 and runs through the end of the State moose season.

2. We restrict moose hunting to the willow bog area south of Elk Springs Creek and nearby foothills at the southeast corner of the refuge. We prohibit moose hunting in all other areas of the refuge.

3. You may hire outfitters or ranchers for the retrieval of big game.

4. We only allow retrieval of game in closed areas of the refuge with the consent of a refuge employee.

5. We prohibit use of wheeled game carts or other mechanical transportation devices for game retrieval on portions of the refuge designated as Wilderness Area.

6. We prohibit horses north of Red Rock Pass Road except for the retrieval of big game. We only allow horses for back-country access to the Centennial Mountains south of Red Rock Pass Road. We require the use of certified weed-free hay or pellets.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State fishing regulations subject to the following conditions:

1. We allow fishing from the third Saturday in May through November 30 on Odell Creek, Red Rock Creek, and Elk Springs Creek west of Elk Lake Road.

2. We allow fishing from July 15 through September 30 on Widgeon Pond, Culver Pond, MacDonald Pond, Picnic Creek, and Elk Springs Creek east of Elk Lake Road.

3. We prohibit fishing on all other refuge waters.

4. We allow fishing in open areas from ½ hour before legal sunrise to ½ hour after legal sunset.

5. You must only use pole and line or rod and reel to fish on the refuge.

6. You must use artificial lures or flies when fishing refuge waters; we prohibit bait fishing.

7. We prohibit the use or possession of lead sinkers or any lead fishing product while fishing.

8. We prohibit tubes and other flotation devices used for fishing unless posted at refuge parking areas as open.

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28. Amend § 32.46 Nebraska by:

a. Revising paragraphs C. and D. of "Boyer Chute National Wildlife Refuge;''

b. Revising "Crescent Lake National Wildlife Refuge;'' and

c. Revising "Fort Niobrara National Wildlife Refuge'' to read as follows:

**§ 32.46 Nebraska.**

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**Boyer Chute National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following condition: We require a refuge hunt permit.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow personally attended hook and line fishing and archery fishing (rough fish only) from ½ hour before legal sunrise to ½ hour after legal sunset.

2. We only allow fishing from the shoreline. We prohibit all watercraft in the Boyer Chute waterway.

3. We prohibit floating lines, limblines, trotlines, crossbows, snagging devices, nets, and spears.

4. We prohibit ice fishing.

5. We prohibit digging or netting bait, frogging, or collecting mussels.

**Crescent Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl and coot in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close the refuge to the general public from legal sunrise to legal sunset. However, hunters may enter the designated hunting area 2 hours before legal sunrise and must be back to their vehicle in the process of leaving the refuge 2 hours after legal sunset. Official shooting hours are ½ hour before legal sunrise and ½ hour after legal sunset for deer, coyote, and furbearer hunters; and ½ hour before legal sunrise until legal sunset for all other hunters.

2. We only allow you to unleash dogs used to locate, point, and retrieve upland and small game and migratory birds on the refuge while hunting (*see* § 26.21(b) of this chapter).

3. We open the refuge to hunting from September 1 through January 31 in accordance with State regulations.

4. We allow decoys, but hunters must remove them (*see* § 27.93 of this chapter) at the end of each day.

5. We restrict vehicles to roads that are open to the public (*see* § 27.31 of this chapter). We prohibit hunters taking vehicles off of approved roads to set up blinds, decoys, or to retrieve game or for any other purposes other than emergencies. We allow parking within one vehicle length of the road.

6. We prohibit publicly organized hunts unless authorized under a Special Use Permit.

7. We only allow temporary blinds and stands, and hunters must remove them (*see* § 27.93 of this chapter) at the end of each day.

8. We only allow floating blinds on Island Lake. We prohibit all boats (including a floating device of any kind) on all other refuge lakes.

*B. Upland Game Hunting.* We allow hunting of cottontail rabbit, jack rabbit, furbearer, coyote, ring-necked pheasant, and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A6 apply.

2. We prohibit baiting. We allow electronic calls for coyote and furbearer hunting.

3. Coyotes and all furbearers or their parts, if left in the field, must be left out of view of the public. Otherwise hunters must remove them from the refuge and properly dispose of them.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and mule deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4, A5, A6, and A7 apply.

2. We prohibit tree stands that cause damage to the tree by penetrating into the bark and tree climbing spikes or screw-in steps that penetrate beyond the outer bark of a tree (*see* § 32.2(i)).

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close the refuge to the general public from legal sunset to legal sunrise. However, anglers may enter the refuge 1 hour before legal sunrise and remain until 1 hour after legal sunset.

2. We open Island Lake to fishing year-round and open Smith and Crane Lakes to fishing seasonally from November 1 through February 15. We close all other refuge lakes.

3. We prohibit the possession or use of live or dead minnows and the possession of any fish not taken lawfully from one of the refuge lakes open to fishing.

4. We only allow boating and float tubes on Island Lake. We prohibit use of internal combustion motors for boats on Island Lake; we close all other refuge lakes to boating or float tubing.

5. We prohibit leaving temporary shelters used for fishing overnight on the refuge.

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**Fort Niobrara National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing on the portions of the Minnechaduza Creek and downstream from Cornell Dam along the Niobrara River that flows through the refuge.

2. We prohibit the use of limb or set lines.

* * * * *

29. Amend § 32.47 Nevada by:

a. Revising the introductory text of paragraph A., revising paragraph A.2., adding paragraphs A.3., and A.4., by revising the introductory text of paragraph B., and by revising paragraphs B.1. and B.2. of "Ash Meadows National Wildlife Refuge;''

b. Revising the introductory text of paragraph A., revising paragraph A.2., adding paragraph A.3., revising the introductory text of paragraph B., adding paragraphs B.1., and B.2., and revising paragraph D. of "Pahranagat National Wildlife Refuge;''

c. Revising "Sheldon National Wildlife Refuge;'' and

d. Revising "Stillwater National Wildlife Refuge'' to read as follows:

**§ 32.47 Nevada.**

* * * * *

**Ash Meadows National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, moorhen, snipe, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

2. We only allow motorless boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

3. We open the refuge to the public from 1 hour before legal sunrise until 1 hour after legal sunset.

4. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of quail and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A3 and A4 apply.

2. We only allow hunting on designated days.

* * * * *

**Pahranagat National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, moorhen, snipe, and dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

2. We only allow motorless boats or boats with electric motors on the refuge hunting area during the migratory waterfowl hunting season.

3. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of quail and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting on designated days.

2. Conditions A3 applies.

* * * * *

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing year-round with the exception of the North Marsh that we close October 1 to February 1.

2. We only allow motorless boats or boats with electric motors on the Upper Lake, Middle Pond, and Lower Lake.

3. We prohibit the use of boats, rubber rafts, or other flotation devices on the North Marsh.

* * * * *

**Sheldon National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the following waters: Big Spring Reservoir, Catnip Reservoir, Dunfurrena Ponds, and the "Little Sheldon'' portion of the refuge.

2. Hunters may only use boats with electric motors.

3. We only allow portable blinds and temporary blinds constructed of synthetic material.

*B. Upland Game Hunting.* We allow hunting of quail, grouse, and chukar on the refuge except in the following areas: the "Little Sheldon'' portion of the refuge and around the Dunfurrena Ponds in accordance with State regulations subject to the following condition: We allow sage grouse hunting and require a State permit.

*C. Big Game Hunting.* We allow hunting of deer, antelope, and bighorn sheep on the refuge except in the following areas: the "Little Sheldon'' portion of the refuge and around Dunfurrena Ponds in accordance with State regulations subject to the following conditions:

1. We allow ground blinds, and you must not construct them earlier than 1 week prior to the opening day of the legal season for which you have a valid permit.

2. You must remove blinds (*see* § 27.93 of this chapter) within 24 hours of harvesting an animal or at the end of the permittee's legal season.

3. You must tag blinds with the owner's name and permit number.

4. We prohibit destruction of native vegetation (see § 27.51 of this chapter) or below-ground excavation.

*D. Sport Fishing.* We allow fishing in Big Spring Reservoir, Catnip Reservoir, and in the Dunfurrena Ponds in accordance with State regulations subject to the following conditions:

1. We only allow boats with electric motors.

2. We only allow individuals who are age 12 or under, age 65 or older, or disabled to fish in McGee Pond.

**Stillwater National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions.

1. We prohibit hunting inside the posted no hunting zone around the residence of the former Alves property.

2. We prohibit hunting inside the posted no hunting zone located south of Division Road as shown in the refuge brochure.

3. We prohibit loaded weapons (*see* § 27.42(b) of this chapter) inside the posted retrieval zone. The zone begins on the north edge of Division Road and extends 200 yards (180 m) northward.

4. We allow persons to transport rifles and pistols through the refuge only when unloaded and cased (*see* § 27.42(b) of this chapter).

5. We prohibit boating outside of the waterfowl and youth waterfowl hunting season except on Swan Check Lake where we allow nonmotorized boating all year.

6. We prohibit boats on Swan Lake, the northeast corner of North Nutgrass Lake, and the north end of Pintail Bay. We allow the use of nonmotorized carts, sleds, floating blinds, and other floating devices in these areas to transport hunting equipment and to conceal hunters, but not to transport hunters.

7. We only allow outboard motor boats on Lead Lake, Tule Lake, Goose Lake, South Nutgrass Lake, the southeast corner of North Nutgrass Lake, and south end of Pintail Bay.

8. We only allow air-thrust boats on Goose Lake, South Nutgrass Lake, the southeast corner of North Nutgrass Lake, and the south end of Pintail Bay.

9. We prohibit air-thrust boats from operating until 1 hour after the legal shooting time on opening day of waterfowl season.

10. We require air-thrust boat owners to get a Special Use Permit from the refuge manager and to display a number on their airboats.

11. We allow nonmotorized boats on all lakes and bays except Swan Lake, the northeast corner of North Nutgrass Lake, and the north end of Pintail Bay.

12. We prohibit all-terrain vehicles on the refuge (*see* § 27.31(f) of this chapter).

13. We only allow parking on boat landings and designated parking areas.

14. We only allow camping in designated areas.

15. We prohibit campfires (*see* § 27.95 of this chapter).

*B. Upland Game Hunting.* We allow hunting of upland game species on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A4, A12, A13, A14, and A15 apply.

2. Hunters must only use shotguns and approved nontoxic shot (*see* § 32.2(k)).

*C. Big Game Hunting.* We allow hunting of mule deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A12, A13, A14, and A15 apply.

2. Hunters must only use shotguns, muzzleloading weapons, or bow and arrow.

3. We allow persons to transport centerfire rifles and pistols through the refuge only when unloaded and cased (*see* § 27.42(b) of this chapter).

*D. Sport Fishing.* [Reserved]

* * * * *

30. Amend § 32.48 New Hampshire by:

a. Revising "Great Bay National Wildlife Refuge;'' and

b. Revising "Lake Umbagog National Wildlife Refuge'' to read as follows:

**§ 32.48 New Hampshire.**

* * * * *

**Great Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl in accordance with State regulations subject to the following conditions:

1. We do not require a separate Federal permit for waterfowl hunting.

2. We only allow hunting from the immediate shoreline of Great Bay.

3. We only allow portable blinds. You must remove all decoys, blinds, and boats (*see* § 27.93 of this chapter) after each day's hunt.

4. Waterfowl hunters may only access shorelines by boat from launching areas outside the refuge and must not retrieve birds beyond refuge signs from shoreline.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The deer hunt will be the first weekend of the State's either-sex season for Wildlife Management Unit M, usually held in November.

2. We close the refuge to all other public use during the hunt weekend.

3. We require refuge permits (you must possess and carry) for the deer hunt for a fee of $20.00. By lottery we draw 20 hunters for each day, for a total of 40. We also draw 20 alternate hunters.

4. A licensed and permit-holding adult who is at least age 18 must accompany youth hunters up to age 16 when hunting. We charge no refuge permit fee to youth hunters.

5. Youth hunters must have successfully completed a State hunter education course.

6. We require deer hunters to wear in a conspicuous manner on the head, chest, and back, a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, blaze-orange clothing or material.

7. We only allow shotgun hunting with slugs. We prohibit other firearms, including handguns, at any time while on the refuge.

8. You must unload shotguns (*see* § 27.42(b) of this chapter) outside of legal State hunting hours and while traveling through any designated safety zone.

9. We only allow portable tree stands that hunters must remove (*see* § 27.93 of this chapter) at the end of the day.

10. Two weeks prior to the hunt, we will allow selected hunters a refuge permit (you must possess and carry) to scout for 4 days. Scout days are Wednesdays through Saturdays during daylight hours only.

11. You must possess and carry the refuge permit with you at all times while scouting and hunting the refuge.

12. You must check-in at the refuge electronic gate between 4:30 a.m. and 5:30 a.m. on your assigned hunt day.

13. We open the entire refuge to deer hunting, with the exception of designated safety zones and the former Weapons Storage Area.

14. In order to protect bald eagles from disturbance, we may, on a daily basis, close Woodman Point to deer hunting if significant numbers of roosting bald eagles are using the area.

15. You must park in designated parking areas and along roads up to barricades; from there, hunters must only travel by foot.

16. You must take killed deer to the refuge office before leaving.

17. The refuge is located in Newington, New Hampshire, along the eastern shoreline of Great Bay. McIntyre Road borders the refuge to the east. The southern boundary begins approximately ¼ mile (.4 km) north of the intersection of Fabyan Point Road and McIntyre Road and continues west to the shoreline of Great Bay. The northern boundary begins approximately 150 feet (45 m) south of the intersection of McIntyre Road and Little Bay Road and continues west to the shoreline of Great Bay. The western boundary is the shoreline of Great Bay.

*D. Sport Fishing.* [Reserved]

**Lake Umbagog National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, American crow, and woodcock in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. You must wear two articles of hunter-orange clothing or material. One article must be a solid-colored hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho and must be a minimum of 50 percent hunter orange in color (such as orange camouflage) except when hunting waterfowl.

2. We will provide permanent refuge blinds that are available by reservation. You may make reservations for particular blinds up to 1 year in advance, for a maximum of 1 week, running Monday through Sunday during the hunting season. You may make reservations for additional weeks up to 1 week in advance, on a space-available basis. We prohibit other permanent blinds. You must remove temporary blinds, boats, and decoys (*see* § 27.93 of this chapter) from the refuge following each day's hunt.

3. You may use trained dogs (*see* § 26.21(b) of this chapter) to assist in the retrieval of harvested birds.

4. We open the refuge to hunting during the hours stipulated under each State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. Hunters must unload all firearms (*see* § 27.42 of this chapter) outside of legal hunting hours.

5. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) on refuge land (*see* § 27.31(f) of this chapter).

*B. Upland Game Hunting.* We allow hunting of coyote, fox, raccoon, woodchuck, red and eastern gray squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, ruffed grouse, and northern bobwhite in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. We prohibit night hunting.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. We open the refuge to hunting during the hours stipulated under State hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We close the refuge to night hunting. Hunters must unload all firearms (*see* § 27.42 of this chapter), and nock no arrows outside of legal hunting hours.

4. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) on refuge land (*see* § 27.31(f) of this chapter).

5. You must wear two articles of hunter-orange clothing or material. One article must be a solid-colored hunter-orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho and must be a minimum of 50 percent hunter orange in color (such as orange camouflage) except when hunting turkey.

6. We allow hunting of coyotes and snowshoe hare with dogs during State hunting seasons. Hunting with trailing dogs on the refuge will be subject to the following regulations:

i. You must equip all dogs used to hunt coyote with working radio-telemetry collars, and you must be in possession of a working radio-telemetry receiver that can detect and track the frequencies of all collars used. We require no radio-telemetry collars for dogs used to hunt snowshoe hare.

ii. We prohibit training during or outside of dog season for coyote or hare.

iii. We allow a maximum of four dogs per hunter.

iv. You must pick up all dogs the same day you release them (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of bear, white-tailed deer, and moose in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. Conditions B3 and B4 apply.

2. We allow bear hunting with dogs during State hunting seasons. Hunting with trailing dogs on the refuge will be subject to the following conditions:

i. You must equip all dogs used to hunt bear with working radio-telemetry collars, and you must be in possession of a working radio-telemetry receiver that can detect and track the frequencies of all collars used.

ii. We prohibit training during or outside of dog season for bear.

iii. We allow a maximum of four dogs per hunter.

iv. You must pick up all dogs the same day you release them (*see* § 26.21(b) of this chapter).

3. We allow prehunt scouting of the refuge; however, we prohibit dogs and firearms during prehunt scouting.

4. Each hunter must wear two articles of hunter-orange clothing or material. One article must be a solid-colored hunter orange hat; the other must cover a major portion of the torso, such as a jacket, vest, coat, or poncho and must be a minimum of 50 percent hunter orange in color (such as orange camouflage).

5. We allow temporary tree stands and blinds, but you must remove them (*see* § 27.93 of this chapter) by the end of the season. We prohibit nails, screws, or screw-in climbing pegs to build or access a stand or blind (*See* § 32.2(i)).

*D. Sport Fishing.* [Reserved]

31. Amend § 32.49 New Jersey by:

a. Revising "Cape May National Wildlife Refuge;''

b. Revising "Edwin B. Forsythe National Wildlife Refuge;''

c. Revising "Great Swamp National Wildlife Refuge;'' and

d. Revising "Wallkill River National Wildlife Refuge'' to read as follows:

**§ 32.49 New Jersey.**

* * * * *

**Cape May National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl, coot, moorhen, rail, common snipe, and woodcock in accordance with State regulations subject to the following conditions:

1. We only allow hunting on those refuge tracts located west of Route 47 in the Delaware Bay Division and on those tracts north of Route 550 in the Great Cedar Swamp Division. We prohibit hunting on the Two Mile Beach Unit.

2. While hunting migratory game birds, except waterfowl, you must wear in a conspicuous manner on your head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

3. You must remove all hunting blind materials, boats, and decoys (*see* § 27.93 of this chapter) at the end of each hunting day. We prohibit permanent or pit blinds.

4. The common snipe season on the refuge begins with the start of the State early woodcock south zone season and continues through the end of the State common snipe season.

5. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the following areas:

i. The posted "Closed Area'' of Tract 200 in the Delaware Bay Division;

ii. The posted "Closed Area'' in Tract 334 in the Delaware Bay Division; and

iii. The Two Mile Beach Unit.

2. During the firearms big game seasons, you must wear, in a conspicuous manner on head, chest, and back, a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

*D. Sport Fishing.* [Reserved]

**Edwin B. Forsythe National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl, coot, moorhen, and rail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must remove all hunting blind materials, boats, and decoys (*see* § 27.93 of this chapter) at the end of each hunting day. We prohibit permanent or pit blinds.

2. You may use trained dogs for the retrieval of authorized game birds (*see* § 26.21(b) of this chapter).

3. You may not possess more than 25 approved nontoxic shotshells per day in all hunting units of the Barnegat Division and not more than 50 approved nontoxic shotshells per day in Unit 1 of the Brigantine Division (*see* § 32.2(k)).

4. In Hunting Unit B of the Barnegat Division, we restrict hunting to designated sites, with each site limited to one party of hunters.

5. In Hunting Units B, D, E, and F of the Barnegat Division, we require a minimum of six decoys, and we prohibit jump shooting.

6. Access is by boat only in all Units of the Barnegat Division except Unit A South and Unit F. You may access these units by foot or boat. Access is by boat only in all Units of the Brigantine Division.

7. You may not occupy hunt Units before 4 a.m.

8. No person including, but not limited to, a guide, guide service, outfitter, club, or other organization, will provide assistance, services, or equipment on the refuge to any other person for compensation unless such guide, guide service, outfitter, club, or organization has obtained a Special Use Permit from the refuge for a fee.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer in New Jersey Deer Management Zones 56, 57, and 58 in accordance with State regulations subject to the following conditions:

1. We require persons hunting on the refuge for the first time to attend one of the four refuge-specific hunter-orientation sessions conducted during the fall.

2. We require a State permit for the appropriate State Deer Management Zone. You must have this permit stamped and validated in person at the Brigantine or Barnegat office. Hunters will receive maps of the refuge-specific zones upon validation.

3. Hunters may enter the refuge no earlier than 2 hours before shooting time and must leave no later than 1 hour after the end of shooting time. Refuge hunting hours are consistent with State hunting hours.

4. During firearm big game season, hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

5. You may scout on the 2 Sundays prior to the opening day of your respective zone permit.

*D. Sport Fishing.* We allow fishing at the Holgate Unit, Little Beach Island, Graveling Point, Lily Lake, and the posted fishing areas along the south side of Parkertown Dock Road, North side of Cedar Run Dock Road, end of Stafford Avenue, and the middle branch of the Forked River in accordance with State regulations subject to the following conditions:

1. We close the Holgate unit and Little Beach Island during the migratory bird nesting season. We may extend the closure of the bay side portion of the Holgate Unit through October.

2. We require a Special Use Permit to fish from Little Beach Island. You may obtain permits from the refuge headquarters.

3. We only allow car-top launches at Lily Lake.

4. We prohibit use of internal combustion engines on Lily Lake.

5. We will close the Forked River fishing area during zone 58 big game hunting season.

6. We will open Forked River and Lily Lake from legal sunrise until legal sunset.

7. We prohibit fishing, clamming, and crabbing from any waters within tract 122X, locally known as the AT&T properties. We close this tract to all public use.

**Great Swamp National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a State permit for the appropriate New Jersey Deer Management Zone.

2. In addition to the State permit, we require a Deer Hunting Permit (along with a fee) issued by the refuge. This permit must be stamped for validation.

3. We require refuge hunters to pass a written examination before allowing them to hunt on the refuge.

4. Hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored hunter-orange clothing or material.

5. Hunters must be in possession of refuge and State hunting permits at all times while hunting on the refuge.

6. Refuge hunting regulations, as listed in the "Great Swamp National Wildlife Refuge Public Deer Hunt Map,'' and found in the examination, will be in effect.

*D. Sport Fishing.* [Reserved]

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**Wallkill River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of all migratory bird species on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunt permit at all times while scouting and hunting on the refuge. We charge a fee for all hunters except youth age 16 and younger.

2. We issue one companion permit at no charge to each hunter. We allow companions to observe and call, but they cannot shoot a firearm or bow. Companion and hunters must set up in the same location.

3. We have seven hunting areas on the refuge. We allow migratory bird hunting in Areas A, D, E, and G. We close Areas C and F to migratory bird hunting. We close Area B to migratory bird hunting except we open 119 Owens Station Road to State-licensed disabled hunters. We provide maps with the refuge permit (you must possess and carry) that show these areas in detail.

4. We provide you with hunt parking areas and issue parking permits that you must clearly display in your vehicle. Hunters who park on the refuge must park in identified hunt parking areas.

5. You must wear, in a conspicuous manner, a minimum of 400 square inches (2,600 $cm^2$) of solid-color, hunter-orange clothing or material on the head, chest, and back, except when hunting duck and goose.

6. You may only possess approved nontoxic shotgun shells (see § 32.2(k)) in quantities of 25 or less daily.

7. We prohibit use or erection of permanent or pit blinds. You must remove all hunting blind material, boats, and decoys (*see* § 27.93 of this chapter) from the refuge at the end of each hunting day.

8. We prohibit the use of all terrain vehicles (ATVs) on the refuge (*see* § 27.31(f) of this chapter), except if you have a State of New Jersey-disabled hunting license, have received a disabled hunting permit from the refuge, have a certificate of ATV safety class completion, and are hunting in the disabled hunter area located at 119 Owens Station Road.

9. We allow prehunt scouting, and we allow the use of dogs while hunting. However, we prohibit dogs during prehunt scouting.

10. We limit the number of dogs per hunting party to no more than two dogs.

11. We allow hunters to enter the refuge 2 hours before shooting time, and they must leave no later than 2 hours after the end of shooting time.

12. We prohibit the hunting of crows on the refuge.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A4, A8, A9, and A11 apply.

2. We have seven hunting areas on the refuge. We allow white-tailed deer and turkey hunting in Areas A, D, E, F, and G. Area B is open for big game hunting east of the abandoned railroad bed. Also in Area B, we only allow State-licensed, disabled hunters to hunt at 119 Owens Station Road. We close Area C to big game hunting. We provide maps with the refuge permit (you must possess and carry) that show these areas in detail.

3. We require firearms hunters to wear, in a conspicuous manner, a minimum of 400 square inches (2,600 $cm^2$) of solid-color, hunter-orange clothing or material on the head, chest, and back. Bow hunters must meet the same requirements when we open the firearm season. We do not require turkey hunters to wear orange at any time.

4. You must remove all stands and other hunting material (*see* § 27.93 of this chapter) from the refuge at the end of each hunting day.

*D. Sport Fishing.* We allow fishing in designated sections of the refuge in both New York and New Jersey in accordance with State regulations subject to the following conditions:

1. We allow fishing in and along the banks of the Wallkill River and in the pond at refuge headquarters.

2. We require that anglers park in designated parking areas to access the Wallkill River through the refuge.

3. You may launch canoes, kayaks, or small boats at designated river access locations.

4. We allow fishing from legal sunrise to legal sunset.

5. We prohibit commercial fishing on the refuge.

6. We prohibit the taking of frog and turtle (*see* § 27.21 of this chapter).

32. Amend § 32.50 New Mexico by:

a. Revising paragraphs A., B., and C. of "Bitter Lake National Wildlife Refuge;''

b. Revising "Bosque Del Apache National Wildlife Refuge;'' and

c. Revising paragraph A. of "Las Vegas National Wildlife Refuge'' to read as follows:

**§ 32.50 New Mexico.**

* * * * *

**Bitter Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, mourning dove, and sandhill crane on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70) all hunting must be in accordance with State seasons and regulations. On the Middle Tract (the portion of the refuge located between U.S. Highway 70 and U.S. Highway 380), we restrict hunting to goose, duck, sandhill crane, and American coot (no dove) in the designated public hunting area in the southern portion of the Tract that never approaches closer than 100 yards (90 m) to the public auto tour route only; we limit hunting to Tuesdays, Thursdays, and Saturdays during the period when the State seasons for that area are open simultaneously for ALL these species; and all hunting must cease at 1 p.m. (local time) on each hunt day. On the South Tract (the portion of the refuge located south of U.S. Highway 380), we only allow hunting during Special Hunts (Youth hunters [17 years of age and younger] and/or Physically Impaired) as per State seasons and regulations.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. We prohibit pit or permanent blinds and require daily removal of all waterfowl decoys and all temporary blinds/stands (*see* § 27.93 of this chapter).

4. We only allow unleashed hunting/retrieving dogs on the refuge when hunters are legally present in areas where we allow hunters, only if the dogs are under the immediate control of hunters at all times (*see* § 26.21(b) of this chapter), and only to pursue species legally in season at that time.

5. We do not require refuge or other special hunt permits other than those required by the State (*e.g.,* sandhill crane permits).

*B. Upland Game Hunting.* We allow hunting of pheasant, quail, cottontail, and jack rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70), all hunting must be in accordance with State seasons and regulations. On the Middle Tract (the portion of the refuge located between U.S. Highway 70 and U.S. Highway 380), we only allow pheasant hunting and restrict hunting to the designated public hunting area in the southern portion of the Tract that never approaches closer than 100 yards (90 m) from the public auto tour route; we limit hunting to Tuesdays, Thursdays, and Saturdays during the State season for the Middle Tract; and all hunting must cease at 1 p.m. (local time) on each hunt day. On the South Tract (the portion of the refuge located south of U.S. Highway 380) we only allow public hunting during Special Hunts (Youth

hunters [17 years of age and younger] and/or Physically Impaired) as per State seasons and regulations.

2. Conditions A2 and A4 apply.

3. We do not require refuge or other special hunt permits other than those required by the State.

*C. Big Game Hunting.* We allow hunting of mule deer, white-tailed deer, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We restrict all hunting to the North Tract (including Salt Creek Wilderness Area and the portion of the refuge located north of U.S. Highway 70) in accordance with State seasons and regulations, with the specification that we only allow hunt and take of feral hog (no bag limit) during deer hunts for that area and only with the weapon legal for deer on that day in that area.

2. Condition B3 applies.

3. We only allow use of portable blinds or stands, and require daily removal of all blinds and stands (*see* § 27.93 of this chapter).

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**Bosque Del Apache National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning and white-winged dove and light goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit for hunting of light goose. The permit is available through a lottery drawing, and we must receive applications for the permit by November 30 of each year along with a $6.00 nonrefundable application fee.

2. We allow hunting of light goose on Monday, Wednesday, and Friday during the second full week of January. Hunters must report to the refuge headquarters by 4:45 a.m. each hunt day. Legal hunting hours will extend from 6:45 a.m. to 10 a.m. local time.

3. We allow the use of hunting dogs for bird retrieval. You must keep dogs on a leash when not hunting (*see* § 26.21(b) of this chapter).

4. We prohibit hunters and dogs from retrieving dead or wounded birds in closed areas.

5. All State and Federal hunting and fishing regulations regarding methods of take, dates, bag limits, etc., apply to all hunting and fishing on the refuge, in addition to these refuge-specific regulations.

6. We prohibit canoeing, boating, or floating through the refuge on the Rio Grande.

7. We prohibit hunting any species on the Rio Grande within the refuge.

8. We prohibit falconry on the refuge.

*B. Upland Game Hunting.* We allow hunting of quail and cottontail rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotguns and bows and arrows.

2. Conditions A5 through A8 apply.

*C. Big Game Hunting.* We allow hunting of mule deer and oryx on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Refer to the refuge map for designated areas.

2. Hunting on the eastside of the Rio Grande is by foot or horseback only.

3. We allow oryx hunting from the east bank of the Rio Grande and east to the refuge boundary. We will allow hunters possessing a valid State special off-range permit to hunt oryx on the refuge during the concurrent State deer season. We also may establish special hunt dates each year for oryx. Contact the refuge manager for special dates.

4. Conditions A5 through A8 apply.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on all canals within the refuge boundaries (Interior Drain, Riverside Canal, and Low Flow Conveyance Channel), and unit 25AS either from the boardwalk or from shore.

2. We allow fishing from April 1 through September 30.

3. We allow fishing from 1 hour before legal sunrise until 1 hour after legal sunset.

4. We prohibit trotlines, bows and arrows, boats or other floatation devices, seining, dip netting, traps, using bait taken from the refuge, taking of turtle (*see* § 27.21 of this chapter), littering, and all other activities not expressly allowed.

5. Access to the canals is via the tour loop. We prohibit fishing in closed areas of the refuge, with the exception of the Low Flow Conveyance Channel.

6. We allow frogging for bullfrog on the refuge from June 1 through August 15 in areas that are open to fishing. We only allow frogging from 1 hour before legal sunrise to 1 hour after legal sunset. Interested persons must obtain a free Special Use Permit at the refuge visitor center.

7. All State and Federal fishing regulations regarding methods of take, dates, creel limits, etc., apply to all fishing on the refuge, in addition to these refuge-specific regulations.

8. We prohibit fishing for any species on the Rio Grande within the refuge.

9. Condition A6 applies.

**Las Vegas National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning dove and Canada goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit and pay a fee.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. Youth hunters age 17 and under must hunt under the supervision of an adult age 21 or older.

4. We prohibit hunters and dogs from entering closed areas to retrieve birds.

5. We only allow Canada goose hunting on designated day(s) of the week as identified on the permit.

6. Shooting hours for Canada goose are from ½ hour before legal sunrise to 1 p.m. local time.

7. The bag limit for Canada goose is two.

8. For Canada goose hunting, you may only possess approved nontoxic shells (*see* § 32.2(k)) while in the field in quantities of six or less.

* * * * *

33. Amend § 32.51 New York by:

a. Revising "Iroquois National Wildlife Refuge;'' and

b. Revising paragraphs A., C., and D. of "Montezuma National Wildlife Refuge'' to read as follows:

**§ 32.51 New York.**

* * * * *

**Iroquois National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, rail, coot, gallinule, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. For hunting of goose, duck, and coot (only allowed on Tuesdays, Thursdays, and Saturdays):

i. We require refuge waterfowl hunting permits. We allocate permits by random drawing at the Waterfowl Hunter Check Station on Route 77 on hunt days, except that we conduct a mail-in lottery for permits issued for opening day and the first two Saturdays of the regular waterfowl season. Permits allow up to three hunters to hunt. We charge a daily fee. A hunt stand is available for physically challenged hunters possessing a Golden Access Passport. We will allocate the hunt stand in a separate random draw for opening day and by first-come, first-served basis for other hunt days. The permit will allow one helper who may also hunt.

ii. You must possess and carry a valid New York State Waterfowl Education Certificate of Qualification.

iii. You must provide and use a minimum of six decoys.

iv. We only allow hunting from ½ hour before legal sunrise to 12 p.m. (noon). All hunters must check out no later than 1 p.m. by returning the Harvest Report portion of your permit to the Waterfowl Hunter Check Station.

v. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in the field in quantities of 20 or less.

vi. You must hunt within 100 feet (30 m) of your designated stand unless actively pursuing crippled birds.

2. For hunting of rail, gallinule, snipe, and woodcock:

i. We require refuge daily small-game hunt permits and reports. You may obtain these self-issued permits at several kiosks located around the refuge. The hunter must complete and sign Part "A" and possess and carry Part "B" while hunting, then complete and return Part "B" to one of the kiosks at the end of the hunt day.

ii. You may only possess approved nontoxic shot in the field (*see* § 32.2(k)).

iii. We only allow hunting east of Sour Springs Road.

3. We allow youths ages 12 to 17 to hunt goose and duck on the first Sunday of the regular waterfowl season subject to the following conditions:

i. Each youth hunter must preregister at the refuge office.

ii. Each youth hunter must participate in the prehunt orientation and education program.

iii. Each youth must hunt with a preapproved, nonhunting adult (for ages 12 and 13 the parent and/or guardian must be age 21 or older; for ages 14 and up the parent and/or guardian must be age 18 or older) who must be a licensed parent or adult participating in the program.

iv. Conditions 1iv, 1v, and 1vi above apply.

*B. Hunting of Upland Game.* We allow hunting of ruffed grouse, gray squirrel, cottontail rabbit, pheasant, coyote, fox, raccoon, skunk, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge daily small-game hunt permits and reports. You may obtain these self-issued permits at several kiosks located around the refuge. You must complete and sign Part A and possess and carry Part B while hunting, then complete and return Part B to one of the kiosks at the end of the hunt day.

2. We only allow hunting from legal sunrise to legal sunset. We prohibit night hunting.

3. We allow hunting only between October 1 and the last day of February.

4. You must only possess approved nontoxic shot (*see* § 32.2(k)) while in the field if hunting with a shotgun.

5. You must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material during any firearms deer season.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. White-tailed deer:

i. We require refuge daily deer hunt permits and reports. These self-issued permits are available at several kiosks located around the refuge. You must complete and sign Part A and possess and carry Part B while hunting, then complete and return Part B to one of the kiosks at the end of the hunt day.

ii. All hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material during any firearms deer season.

iii. If you use portable tree stands, blinds, and decoys, you must remove all equipment (*see* § 27.93 of this chapter) from the refuge at the end of the hunt day.

2. Turkey (only allowed during the spring season):

i. We require refuge spring turkey hunting permits. We select permittees, except youth permittees as designated below, from a mail-in, random drawing for available permits. We charge a nonrefundable application processing fee.

ii. Only youth hunters 12 to 17 years of age, accompanied by a properly licensed, preapproved nonhunting adult (for youths aged 12 and 13 the parent and/or guardian must be age 21 or older; for youths ages 14 and up, the parent and/or guardian must be age 18 or older), may hunt on the refuge on the first Sunday of the season. All youth hunters must register at the refuge headquarters and attend a mandatory orientation.

iii. You may use portable blinds and decoys, but you must remove all equipment (*see* § 27.93 of this chapter) at the conclusion of each hunt day.

iv. You may only scout during the 7 days immediately preceding the season. You must possess and carry your permit when scouting. We prohibit calling or possessing a call of any kind while scouting.

*D. Sport Fishing.* We allow fishing and frogging on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only fish or frog from legal sunrise to legal sunset.

2. We allow fishing or frogging in Oak Orchard Creek east of Route 63 and on other designated areas of the refuge year-round during the State season.

3. We only allow ice fishing on Ringneck Marsh from December 15 through the last day of February.

4. We allow frogging in areas open for public fishing. We prohibit guns or archery equipment to kill or capture frog.

5. We prohibit wading or the use of boats or other flotation devices, with the exception that you may use nonmotorized boats on Oak Orchard Creek east of Route 63.

6. We require that anglers remove boats, structures, or other equipment (*see* § 27.93 of this chapter) from the refuge after the completion of the day's fishing activities.

**Montezuma National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require daily refuge permits (you must possess and carry)/ reservations.

2. We only allow hunting on Tuesdays, Thursdays, and Saturdays during the established refuge season set within the State western zone season.

3. We take telephone reservations from 8 a.m. to 8:30 a.m. on Tuesdays, Thursdays, and Saturdays for the next hunt day (except for opening day).

4. We take opening day reservations between 8 a.m. and 8:30 a.m. on the day immediately before the season opener.

5. The reservation telephone number is 315–568–4136.

6. All telephone reservations are available on a first-come, first-served basis.

7. Persons with a reservation may bring one companion.

8. Hunters reserve the parking area of their choice when making their reservations.

9. All hunters with reservations and their companions must check-in at the Route 89 Hunter Check Station at least 1 hour before legal shooting time or forfeit their reservation.

10. Forfeited reservations become available on a first-come, first-served basis to standby hunters at the Route 89 Hunter Check Station.

11. We require $10.00 per reservation fee. Hunters with either Golden Age or Access Passports receive a 50 percent discount.

12. We require motorless boats to hunt and limit hunters to one boat per reservation.

13. We select hunting sites in a free-roam system.

14. You may only possess approved nontoxic shells (*see* § 32.2(k)) while in the field in quantities of 15 or less.

15. We prohibit shooting from the dike.

16. Hunting ends at 12 p.m. (noon), and all hunters must check out by 1 p.m.

17. We require successful completion of the New York State Waterfowl Identification Course, the Montezuma Nonresident Waterfowl Identification Course, or a suitable nonresident State Waterfowl Identification Course to hunt the refuge.

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*C. Big Game Hunting*. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting of white-tailed deer on designated portions of the refuge by archery, firearms (*see* § 27.42 of this chapter), or muzzleloaders during established refuge seasons set within the general State white-tailed deer season.

2. We prohibit Sunday hunting.

3. Each hunter must possess, carry, and return at day's end a valid daily hunt permit card.

4. Daily hunt permits are available at the Route 89 Hunter Check Station on a first-come, first-served basis, issued by refuge personnel or available on a self-service basis.

5. We make available 150 firearms hunt permit cards each day on a first-come, first-served basis.

6. Hunters must fill out Part A of the daily hunt permit card at check-in and leave it with refuge personnel or deposit it in the Part A box at the Route 89 Hunter Check Station.

7. The hunter must carry Part B of the daily hunt permit card while hunting the refuge.

8. The hunter must complete Part B and deposit it in the Part B box at the Route 89 Hunter Check Station by the end of the hunt day.

9. Successful opening day archery hunters must bring their deer to the Route 89 Hunter Check Station.

10. Successful firearms hunters must bring their deer to the Route 89 Hunter Check Station on the days we staff it.

11. Firearms hunters must wear in a conspicuous manner on the head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-blaze orange.

12. We only allow shotguns and muzzleloaders during the firearms (*see* § 27.42 of this chapter) season. We prohibit handguns.

13. Hunters must have all guns unloaded (*see* § 27.42 of this chapter) between legal sunset and legal sunrise.

14. Hunters must disassemble, lock, or case all bows after legal sunset and before legal sunrise.

15. We prohibit advance scouting.

16. We prohibit boats and canoes on refuge pools. We prohibit hunting on the open water portions of the refuge pools.

17. We prohibit ATVs (*see* § 27.31(f) of this chapter).

18. Hunters may only use portable tree stands and must remove them (*see* § 27.93 of this chapter) from the refuge each day.

19. We prohibit screw-in tree steps (*see* § 32.2(i)).

20. We allow firearms hunters to be on the refuge during the period that begins 1 hour before legal sunrise and ends 1 hour after legal sunset.

21. We allow archery hunters to be on the refuge during the period that begins 1 hour before legal sunrise (except for opening day) and ends 1 hour after legal sunset.

22. On opening day, we allow archery hunters on the refuge during the period that begins 2 hours before legal sunrise and ends 1 hour after legal sunset.

*D. Sport Fishing*. Anglers may only access the New York State Barge Canal System Waters at two sites on the refuge: the Seneca River Fishing Access Site and the May's Point Fishing Area. Anglers may either bank fish or boat fish in accordance with State regulations.

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34. Amend § 32.52 North Carolina by:

a. Revising "Alligator River National Wildlife Refuge;''

b. Revising paragraph A. of "Cedar Island National Wildlife Refuge;''

c. Revising paragraph A. of "Currituck National Wildlife Refuge;''

d. Revising paragraph C. of "Mackay Island National Wildlife Refuge;''

e. Revising "Mattamuskeet National Wildlife Refuge;''

f. Revising paragraph D. of "Pea Island National Wildlife Refuge;''

g. Revising "Pee Dee National Wildlife Refuge;''

h. Revising "Pocosin National Wildlife Refuge;'' and

i. Revising "Swanquarter National Wildlife Refuge'' to read as follows:

**§ 32.52 North Carolina.**

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**Alligator River National Wildlife Refuge**

*A. Hunting of Migratory Birds*. We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a valid refuge hunting permit.

2. We prohibit construction or use of a permanent blind.

3. We close the Farming Area to waterfowl hunting.

4. Each youth hunter must remain within sight and normal voice contact of an adult age 21 or older. An adult may directly supervise (up to two) youth hunters (age 15 and under), who must have successfully completed a State-approved hunter safety course and possess and carry proof of certification.

5. We allow retrieving dogs in designated areas. We prohibit the use of dogs in the Gum Swamp Unit.

*B. Upland Game Hunting*. We allow upland game hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A4 apply.

2. You may only possess approved nontoxic shot in the field (*see* § 32.2(k)).

3. We only allow dog training during the corresponding hunting season.

4. We require a Special Use Permit to hunt raccoon or opossum from ½ hour after legal sunset until ½ hour before legal sunrise.

5. We allow retrieving, pointing, and flushing dogs in designated areas. We prohibit the use of dogs in the Gum Swamp Unit.

*C. Big Game Hunting*. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A4 (an adult may only supervise one youth hunter), and B3 applies.

2. We allow lead shot (buckshot and slugs only).

3. We close the Hyde County portion of the refuge during State bear seasons.

4. We only allow pursuit/trailing dogs in designated areas as shown in the Hunting Regulations and Permit Map. We prohibit the use of dogs in the Gum Swamp, Parched Corn Bay/Long Shoal River, and North Stumpy Point Units.

5. Unarmed hunters may walk to retrieve stray dogs from closed areas and "no dog hunting'' areas.

*D. Sport Fishing*. We allow fishing and frogging in accordance with State regulations subject to the following conditions:

1. We only allow fishing from legal sunrise to legal sunset.

2. We only allow pole and line, rod and reel, or cast net.

3. We require a Special Use Permit for fishing or frogging between legal sunset and legal sunrise.

4. You must only take frog by use of frog gigs.

**Cedar Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of tundra swan, Canada and snow goose, brant, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on 400 acres (160 ha) of marsh located along the southern border of West Bay and the eastern border of West Thorofare Bay between the John Day Ditch and the Thorofare Ditch. The hunt area extends 300 feet (90 m) from the shoreline into the marsh.

2. We allow portable blinds, but you must remove them (*see* § 27.93 of this chapter) following each day's hunt.

3. Hunters/hunt parties must not hunt closer than 150 yards (135 m) apart.

4. You may use decoys but you must remove them (*see* § 27.93 of this chapter) daily upon completion of your hunting.

5. We only allow hunting during the State waterfowl seasons occurring in November, December, and January.

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**Currituck National Wildlife Refuge**

*A. Hunting of Migratory Birds.* We allow hunting of swan, goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a North Carolina Waterfowl Hunt Permit or a Refuge Hunt Permit. You must carry a permit while hunting on the refuge.

2. You must hunt from assigned blind location.

3. We allow hunting on Wednesdays and Saturdays during the State waterfowl season.

4. We allow hunting from ½ hour before legal sunrise to 1 p.m.

5. We allow access 1½ hours before legal shooting time, and all parties must be off the refuge by 2 p.m.

6. All hunters holding a North Carolina Waterfowl Hunt Permit must check-in at the Knotts Island Market by 5:15 a.m. on the morning of the hunt. We require no check-in for hunters holding Snow Goose Hunt Permits.

7. All guides must obtain and carry a refuge Special Use Permit to conduct guided hunts on the refuge.

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**Mackay Island National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a Refuge Deer Hunting Permit that hunters must sign and carry while hunting on the refuge.

2. We allow the use of shotguns, muzzleloading rifles/shotguns, and bows. We prohibit the use of all other rifles and pistols.

3. We allow access to hunting areas from 5 a.m. until 8 p.m.

4. We prohibit carrying a loaded firearm on or within 50 feet (15 m) of gravel roads.

5. We prohibit the marking of trees or vegetation (*see* § 27.51 of this chapter) with blazes, flagging, or other marking devices.

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**Mattamuskeet National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow the hunting of tundra swan, snow goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require refuge-issued permits that you must validate at the refuge headquarters, sign, possess, and carry while hunting.

2. Each hunt participant must pay a $12.50 daily user fee.

3. We restrict hunting to designated blinds assigned by refuge personnel.

4. Hunters may only shoot crippled waterfowl from outside the assigned blind.

5. There is a 30-shell limit per blind hunter per day.

6. You may use decoys, but you must remove them (*see* § 27.93 of this chapter) daily upon completion of your hunt.

7. All waterfowl hunters must check out at the assigned station prior to leaving the refuge.

8. Shooting hours are from ½ hour before legal sunrise until 12 p.m. (noon). Hunting hours on the first day of the youth hunt are from 1 p.m. until legal sunset.

9. We allow the use of retrieving dogs, but dogs must be under voice command at all times (*see* § 26.21(b) of this chapter).

10. You must unload guns (*see* § 27.42(b) of this chapter) during transport through the refuge.

11. We only allow the taking of Canada goose during the State September Canada goose season subject to the following conditions:

i. We allow hunting Monday through Saturday during the State season, and we require refuge-issued permits that you must obtain at the refuge office, sign, possess, and carry while hunting.

ii. We close the following areas to hunting of Canada goose: Impoundments MI–4, MI–5, and MI–6; in Rose Bay Canal, Outfall Canal, Lake Landing Canal and Waupoppin Canal; 150 feet (45 m) from the mouth of the canals where they enter Lake Mattamuskeet; and 150 yards (135 m) from State Route 94.

iii. We allow portable blinds, but you must remove them (*see* § 27.93 of this chapter) daily.

12. Each youth hunter (age 16 and under) must remain within sight and normal voice contact of an adult age 21 or older. Youth hunters must have completed a State-certified hunter safety course and possess and carry the form or certificate.

*B. Upland Game Hunting.* [Reserved].

*C. Big Game Hunting.* We allow the hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The hunter must possess and carry a signed, refuge-issued permit while hunting.

2. We close to hunting areas along the Entrance Road, MI–4 impoundment, signed areas along State Route 94, areas around the refuge headquarters, and refuge residence area.

3. Hunters may take one antlered deer and one antlerless deer per day, or two antlerless deer per day.

4. Hunters may take deer with shotgun, bow and arrow, or muzzleloading rifle/shotgun.

5. We allow hunters on the refuge from 1 hour before legal shooting time until 1 hour after legal shooting time.

6. Hunters can use boats to access hunt areas, but we prohibit hunting from a boat.

7. You must check all deer taken at the check station near refuge headquarters.

8. We prohibit erecting portable blinds and tree stands prior to the hunt, and you must remove them (*see* § 27.93 of this chapter) from the refuge after each day's hunt.

9. Hunters must wear a minimum of 500 square inches (3,250 $cm^2$) of hunter-orange material above the waist that is visible from all directions.

10. An adult may only supervise one youth hunter. The youth hunter must be within sight and normal voice contact of the adult.

*D. Sport Fishing.* We allow fishing for game and nongame fish and the catching of blue crabs on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We are open to sport fishing, bow fishing, and crabbing from March 1 through November 1 from ½ hour before legal sunrise to ½ hour after legal

sunset, except we allow bank fishing and crabbing year-round from:

i. State Route 94;

ii. The north bridge and south of the north bridge at Lake Landing;

iii. The Outfall Canal water control structure;

iv. The Central Canal bridge on Wildlife Drive; and

v. Along the west main and east main canal between Entrance Road metal bridge and Number One East Canal as posted.

2. We allow bank fishing and crabbing from the North Carolina Highway 94 causeway 24 hours per day, year-round.

3. We allow fishing boats and motors March 1 through November 1. We prohibit airboats, sailboats, Jet Skis, and windboards.

4. We prohibit bank fishing along the Entrance Road from State Route 94 to the Entrance Road metal bridge.

5. We prohibit herring dipping.

6. We allow crabbing subject to the following conditions:

i. We only allow five handlines and hand-activated traps per person. Owners must be in attendance.

ii. We prohibit crab pots.

iii. You may only possess 12 crabs per person per day.

**Pea Island National Wildlife Refuge**

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*D. Sport Fishing*. We allow fishing and crabbing in accordance with State regulations subject to the following conditions:

1. We require a nighttime fishing permit for surf fishing between ½ hour after legal sunset and ½ hour before legal sunrise.

2. We prohibit fishing and crabbing North Pond, South Pond, and New Field Pond Impoundments.

**Pee Dee National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of mourning dove on designated dates and areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require all hunters to possess and carry a signed Refuge General Hunt Permit and government-issued picture ID while in the field.

2. Legal shooting hours are 12 p.m. (noon) until legal sunset.

3. Validly licensed adults, age 21 or older, holding applicable permits must accompany and supervise, remaining in sight and voice contact at all times, any youth hunters (under age 16). Each adult may supervise no more than two youth hunters. Youth hunters must possess and carry evidence of successful completion of a State-approved hunter education course.

4. We prohibit possession of a loaded firearm within 100 feet (30 m) of any vehicle or road open to vehicle traffic. We define a loaded firearm as a firearm with ammunition in the magazine or chamber, or a percussion cap in place on a muzzleloader.

5. We prohibit the discharge of a weapon (*see* § 27.42 of this chapter) on or across a road open to vehicle traffic.

6. We prohibit entering or crossing a "No Hunting Zone'' or "Closed Area''. We prohibit the discharge of a weapon (*see* § 27.42 of this chapter) within, into, or across a "No Hunting Zone'' or "Closed Area''. We require consent from refuge personnel to enter a "No Hunting Zone'' or "Closed Area'' for the purpose of tracking and/or retrieving legally taken game animals.

7. We prohibit the discharge of a weapon (*see* § 27.42(a) of this chapter) for a purpose other than to take or attempt to take legal game animals during established hunting seasons.

8. We prohibit waterfowl hunting. By virtue of and pursuant to the Migratory Bird Treaty Act of July 3, 1918, we close the following area to the pursuing, hunting, taking, capturing, or killing of migratory birds or attempting to take, capture, or kill migratory birds: All the area consisting of the bed of the Pee Dee River, bank to bank, submerged or exposed including the water thereof, from the confluence of Pressley Creek and the Pee Dee River to approximately 5 miles (8 km) downstream to the confluence of Brown Creek and the Pee Dee River. Included also are the waters surrounding Buzzard Island and that part of the Pee Dee River on the northeast side of Leak Island beginning approximately ¼ mile (.4 km) downstream from the head of Leak Island (at the head of a small unnamed island), and continuing downstream to the main channel of the Pee Dee River and containing, in all, a total of 220 acres (88 ha).

*B. Upland Game Hunting*. We allow hunting of quail, rabbit, squirrel, raccoon, and opossum on designated dates and areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A3 through A7 apply.

2. We prohibit raccoon hunters from entering or remaining on the refuge from 1 hour before legal sunrise until 1 hour after legal sunset on established hunt dates.

3. We prohibit raccoon hunters from hunting on the night prior to the opening of a firearms deer hunt and on the nights during the deer hunt except the last night.

4. We require dogs on raccoon/opossum hunts. All dogs must wear a collar displaying the owner's name, address, and phone number.

*C. Big Game Hunting*. We allow hunting of white-tailed deer on designated dates and areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A3 through A7 apply (for A3, adults may supervise no more than one youth hunter).

2. We require each person participating in a quota deer hunt to possess and carry a refuge Quota Deer Hunt Permit for the hunt in which he or she will be participating. Quota Deer Hunt Permits are nontransferable.

3. During deer hunts we prohibit hunters from entering the refuge earlier than 4 a.m., and they must leave the refuge no later than 2 hours after legal sunset.

4. We prohibit adults from possessing or discharging a firearm during the youth deer hunt.

5. During refuge firearms deer hunts, all participants must wear at least 500 square inches (3,250 $cm^2$) of unbroken, fluorescent-orange material above the waist as an outer garment while hunting and while en route to and from hunting areas.

6. During State firearms deer seasons, all archery hunters must wear at a minimum a fluorescent-orange hat while hunting and while en route to and from hunting areas.

7. We prohibit man driving for deer. We define a "man drive'' as an organized hunting technique involving two or more individuals where hunters attempt to drive game animals from cover or habitat for the purpose of shooting, killing, or moving such animals toward other hunters.

8. We prohibit placing a tree stand on the refuge more than 3 days prior to the opening day of the deer hunt in which you will be participating. You must remove the tree stands (*see* § 27.93 of this chapter) by the last day of that hunt.

9. You must wear a safety belt or harness at all times when using any tree stand or climbing equipment.

10. You must check all deer killed on refuge quota deer hunts at the refuge check station on the date of kill prior to removing the animal from the refuge.

11. We prohibit the use of dogs for deer hunting.

12. We prohibit the use of plastic flagging.

13. We prohibit the use of all-terrain vehicles (ATVs) or off-highway vehicles (OHVs) (*see* § 27.31(f) of this chapter).

14. During refuge firearms deer hunts, we prohibit all other public use on the refuge.

*D. Sport Fishing.* We allow fishing on designated dates and areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit boats utilizing gasoline-powered motors.

2. You must unload and load boats by hand on all waters except those having designated launch ramps.

3. We prohibit possession or use of trotlines, set hooks, gigs, jug lines, limblines, snagging devices, nets, seines, fish traps, or other special devices.

4. We prohibit taking or attempting to take frog and turtle (*see* § 27.21 of this chapter).

5. We prohibit swimming.

**Pocosin Lakes National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, swan, dove, woodcock, rail, and snipe in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the Davenport and Deaver tracts (which include the area surrounding the Headquarters/Visitor Center and the Scuppernong River Interpretative Boardwalk), the Pungo Shop area, New Lake, refuge lands between Lake Phelps and Shore Drive, and that portion of the Pinner Tract east of SR 1105.

2. We allow you to retrieve game from closed areas listed above with consent from a refuge employee, but we prohibit possession of any type of weapon (*see* § 27.42 of this chapter) in a closed area.

3. We require all hunters to possess and carry a signed, self-service refuge general hunting permit while hunting on the refuge.

4. We open the refuge for daylight-use only, except that we allow hunters to enter and remain in open hunting areas from 1½ hours before legal shooting time until 1½ hours after legal shooting time.

5. We only allow the use of all terrain vehicles (ATVs) on designated ATV trails (*see* § 27.31 of this chapter) and only to transport hunters and their equipment to hunt and scout. We only allow ATV use on the ATV trails at the following times:

i. When we open the ATV trail and surrounding area to hunting;

ii. One week prior to the ATV trail and surrounding area opening to hunting; and

iii. On Sundays, when we open the ATV trail and surrounding area for hunting the following Monday.

6. You must unload and case or dismantle all weapons (*see* § 27.42(b) of this chapter) transported via a motorized vehicle or boat under power.

7. We only allow the use of biodegradable-type flagging. We prohibit affixing plastic flagging, dots, glow tacks, reflectors, or other materials to refuge vegetation (*see* § 27.51 of this chapter).

8. We prohibit migratory game bird hunting on the Pungo Unit.

9. You may only possess approved nontoxic shot (*see* § 32.2(k)) while migratory game bird hunting west of Evans Road.

10. We only allow the use of portable blinds and temporary blinds constructed of natural materials, but we prohibit the cutting of any live vegetation on the refuge (*see* § 27.51 of this chapter). You must remove portable blinds (*see* § 27.93 of this chapter) at the end of each day's hunt.

11. We allow the use of dogs to point and retrieve migratory game birds, but they must be under your immediate control at all times (*see* § 26.21(b) of this chapter).

12. While hunting, we require youth hunters age 16 or younger to possess and carry proof that they successfully passed a State-approved hunter education course. Youth hunters may only hunt under the direct supervision of a licensed hunter over age 21. One licensed hunter over age 21 may supervise up to two migratory game bird youth hunters at a time.

*B. Upland Game Hunting.* We allow the hunting of quail, squirrel, raccoon, opossum, rabbit, beaver, nutria, and fox in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7 apply.

2. We prohibit upland game hunting on the Pungo Unit.

3. We only allow the taking of beaver and nutria with firearms (*see* § 27.42 of this chapter) and only during those times when we open the area hunted to hunting of other game animals with firearms.

4. We prohibit the hunting of raccoon and opossum during, 5 days before, and 5 days after the State bear seasons. Outside of these periods, we allow the hunting of raccoon and opossum at night but only while possessing a special Refuge Nighttime Raccoon and Opossum Hunting Permit.

5. We only allow the use of shotguns and .22 caliber rim-fire rifles for hunting. We also allow disabled hunters to use crossbows while possessing the required State permit.

6. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting upland game west of Evans Road.

7. We allow the use of dogs for pointing and retrieving upland game and for chasing rabbit (but not fox). The dogs must be under your immediate control at all times (*see* § 26.21(b) of this chapter), and we prohibit possession of buckshot or slugs while hunting with dogs.

8. You must wear 500 square inches (3,250 $cm^2$) of fluorescent-orange material above the waist that is visible from all sides when hunting upland game.

9. While hunting, we require that youth hunters under age 16 must possess and carry proof that they successfully passed a State-approved hunter education course. Youth hunters may only hunt under the direct supervision of a licensed hunter age 21 or older. A licensed hunter age 21 or older may directly supervise up to two upland game youth hunters at a time.

*C. Big Game Hunting.* We allow the hunting of deer, turkey, and boar in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A7 apply.

2. You may only hunt spring turkey if you possess and carry a valid refuge turkey hunting permit. The permits are valid only for the dates and areas shown on the permit. We require an application and a fee for these permits and hold a drawing, when necessary, to select the permittees.

3. We only allow the use of shotguns, muzzleloaders, and bow and arrow for deer and wild boar hunting. We allow disabled hunters to use crossbows but only while possessing the required State permit.

4. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting turkeys west of Evans Road and on the Pungo Unit. You may use slugs, buckshot, and muzzleloader ammunition containing lead for deer and wild boar hunting in these areas.

5. We only allow deer hunting with shotguns and muzzleloaders on the Pungo Unit while possessing a special Pungo Deer Gun-Hunt Permit issued by the refuge. These permits are valid only for the designated 2-day period shown on the permit. We set the dates of these special 2-day hunts following the publication of the State deer seasons. We require an application and a fee for these permits and hold a drawing, when necessary, to select the permittees.

6. During the special Pungo Deer Gun-Hunts, we only allow permitted hunters on the Pungo Unit. We only allow permitted hunters on the Pungo Unit from 1 hour before legal shooting time until 1 hour after legal shooting time. You must take any deer harvested during a Pungo Deer Gun-Hunt to the deer check station located at the Pungo Shop for harvest reporting and data collection.

7. We allow deer hunting with bow and arrow on the Pungo Unit during all

State deer seasons prior to December 1; however, we prohibit hunting on the Pungo Unit on the designated Pungo Deer Gun-Hunts referred to above without a valid Pungo Deer Gun-Hunt Permit.

8. You must wear 500 square inches (3,250 $cm^2$) of fluorescent-orange material above the waist that is visible from all sides while hunting deer and wild boar in any area open to hunting these species with firearms.

9. We only allow the use of portable tree stands and require that you remove them (see § 27.93 of this chapter) at the end of each day's hunt, except that hunters with a valid Pungo Deer Gun-Hunt Permit may install a stand on the Pungo Unit the day before the start of their hunt and leave it until the end of the 2nd day of their 2-day hunt. You must tag stands left overnight on the refuge with the hunter's name, address, and telephone number.

10. While hunting, we require youth hunters (under age 16) to possess and carry proof that they successfully passed a State-approved hunter education course. Youth hunters may only hunt under the direct supervision of a licensed hunter age 21 and older. A licensed hunter age 21 and older may only supervise one big game youth hunter at a time.

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions.

1. We only allow fishing in Pungo Lake and New Lake from March 1 through October 31, except that we close Pungo Lake and the entire Pungo Unit to fishing during the special 2-day Pungo Deer Gun Hunts in late September and October.

2. We only allow fishing from the bank in the Pungo Unit; we prohibit use of boats in this area. We prohibit leaving a boat anywhere on the refuge overnight.

3. We only allow fishing from legal sunrise to legal sunset.

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**Swanquarter National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow the hunting of tundra swan, snow goose, brant, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on refuge marshlands that include Great Island, Marsh Island, and all of the refuge marshlands adjacent to Juniper Bay eastward to West Bluff Bay.

2. We prohibit hunting within the 27,000 acre (10,800 ha) Presidential Proclamation Area as posted.

3. We allow portable blinds. You must remove blinds (*see* § 27.93 of this chapter) following each day's hunt.

4. We prohibit hunters/hunt parties from hunting closer than 150 yards (135 m) apart.

5. You may use decoys, but you must remove them (*see* § 27.93 of this chapter) daily upon completion of your hunt.

6. We allow hunting during the State waterfowl season occurring in November, December, and January.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

35. Amend § 32.53 North Dakota by:

a. Revising "Arrowwood National Wildlife Refuge;''

b. Revising "Audubon National Wildlife Refuge;''

c. Revising paragraph C. of "Chase Lake National Wildlife Refuge;''

d. Adding "Devils Lake Wetland Management District;''

e. Revising "J. Clark Salyer National Wildlife Refuge;''

f. Revising paragraph B. of "Lake Alice National Wildlife Refuge;''

g. Revising "Lake Ilo National Wildlife Refuge;''

h. Revising "Lake Nettie National Wildlife Refuge;''

i. Revising "Long Lake National Wildlife Refuge;''

j. Revising "Slade National Wildlife Refuge;''

k. Revising "Stewart Lake National Wildlife Refuge;''

l. Revising paragraphs B., C., and D. of "Tewaukon National Wildlife Refuge;'' and

m. Revising "Upper Souris National Wildlife Refuge'' to read as follows:

**§ 32.53 North Dakota.**

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**Arrowwood National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, partridge, cottontail rabbit, and fox on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting beginning the day after the State general firearms deer season through the end of the regular upland bird season. Cottontail rabbit and fox seasons close March 31.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

3. All State regulations/limits apply. We require a State-issued hunting license and stamp.

4. Access is by foot only.

5. We allow dogs, but they must be under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

6. The entire refuge is open to upland hunting except the area surrounding the refuge headquarters area and wildlife observation area.

7. We prohibit open fires (*see* § 27.95 of this chapter) and camping on the refuge.

8. We close the area surrounding the refuge headquarters and wildlife observation area to all hunting and entry. The boundary of the closed area includes Section 25 and the west ¼ of section 30, T144N, R64W. Maps are available at refuge headquarters or from refuge employees.

*C. Big Game Hunting.* We allow hunting of deer on designated areas in accordance with State regulations subject to the following conditions:

1. We require a State license and State-issued unit permit, and we restrict hunters to the species and type on permit.

2. We prohibit entering the refuge before legal shooting hours on the opening day of the firearms deer season. Thereafter, hunters may enter, but not shoot, 1½ hours prior to legal hours and must be off the refuge 1 hour after legal shooting hours end.

3. All firearms deer hunters must wear blaze-orange clothing. Legal orange clothing is a head covering and outer garment above the waistline of solid daylight, fluorescent-orange color, totaling at least 400 square inches (2,600 cm2). Hunters may not enter the refuge after harvesting a deer unless unarmed and wearing blaze orange.

4. We only allow vehicles on refuge roads and established access trails (*see* § 27.31 of this chapter) to retrieve deer during the following times: 9:30 to10 a.m., 1:30 to 2 p.m., and ½ hour after legal sunset for 1 hour.

5. Hunters participating in the State Youth Deer Season should check with refuge employees for open area information and special regulations.

6. Bow hunters must wear blaze orange during the regular deer gun season.

7. We allow temporary tree stands, but hunters must remove them (*see* § 27.93 of this chapter) from the refuge daily. We prohibit use of nails, screws, or devices inserted into the tree to hang stands or provide steps to the stands (*see* § 32.2(i)).

8. We prohibit open fires (*see* § 27.95 of this chapter) and camping on the refuge.

9. We close the area surrounding the refuge headquarters and wildlife observation area to all hunting and

entry. The boundary of the closed area includes Section 25 and the west ¼ of section 30, T144N, R64W. Maps are available at refuge headquarters or from refuge employees.

*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We restrict boats (maximum of 25 hp) to Arrowwood and Jim Lakes only from May 1 through September 30 of each fishing year.

2. We allow bank fishing along the major road rights-of-way during the entire North Dakota State fishing season.

3. We allow bank fishing on interior portions of the refuge from May 1 through September 30 of each fishing year. We only allow walk-in access, except for designated areas.

4. Access to water control structures is walk-in only along established trails.

5. We allow fishing in refuge impoundment bypass channels during the regular State fishing season. We allow walk-in access along maintenance trails from June 1 through September 30 of each fishing year.

6. We only allow bow fishing for rough fish along road rights-of-way in accordance with State regulations from May 1 through September 30 of each fishing year. We prohibit crossbows.

7. We open Arrowwood Lake, Jim Lake, and the South ⅓ of Mud Lake to winter fishing in accordance with State regulations.

8. We allow fish houses and vehicles on the ice as conditions allow. Anglers must remove fish houses (*see* § 27.93 of this chapter) by March 15. Anglers may use portable houses after March 15, but you must remove them daily.

9. We prohibit snowmobiles and ATVs on the refuge (*see* § 27.31(f) of this chapter).

10. We prohibit water activities not related to fishing (sailing, skiing, tubing, etc.).

11. We prohibit open fires (*see* § 27.95 of this chapter) and camping on the refuge.

**Audubon National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, gray partridge, and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We annually open to upland bird hunting on the day following the close of the regular deer gun season. The hunting seasons continue until the State season closes. The refuge has designated open and closed areas for hunting.

2. We prohibit driving vehicles on refuge roads while hunting or to access hunting areas. Hunters must park at the refuge boundary and walk in.

3. Hunters may retrieve game up to 100 yards (90 m) inside the refuge boundary fence and closed areas of the refuge. Retrieval time must not exceed 10 minutes, and hunters may use dogs. We prohibit firearms while retrieving game.

4. We prohibit hunting on all refuge islands.

*C. Big Game Hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge gun, muzzleloader, and bow deer hunting seasons open and close according to State regulations. The refuge has designated opened and closed areas for deer hunting.

2. We close the refuge to the State special youth deer hunting season.

3. We prohibit driving vehicles on refuge roads while hunting or to access hunting areas. All hunters must park at the refuge boundary and walk in. Hunters may use designated refuge roads to retrieve downed deer.

4. Hunters must only use portable tree stands that they install and remove (*see* § 27.93 of this chapter) each day. We prohibit permanent tree stands.

5. We prohibit hunting on all refuge islands.

*D. Sport Fishing.* We allow ice fishing on the refuge in accordance with State regulations subject to the following conditions:

1. The refuge ice fishing season opens when ice is present and closes on March 31.

2. We restrict vehicle use to refuge roads and designated ice access points (*see* § 27.31 of this chapter).

**Chase Lake National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting of deer beginning with the start of the State deer gun season.

2. Hunters may only enter the refuge on foot.

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**Devils Lake Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district in accordance with State regulations except in the following waterfowl production areas (WPAs): Little Goose and Lambs Lake WPAs in Nelson County; Pleasant Lake WPA in Benson County; and Hart, Nelson, and Vold WPAs in Grand Forks County. We prohibit hunting on portions of the Kellys Slough WPA in Grand Forks County as posted.

*B. Upland Game Hunting.* We allow hunting of upland game throughout the district except as listed in A. above. We prohibit hunting on portions of the Kellys Slough WPA in Grand Forks County as posted. All hunting is in accordance with State regulations subject to the following condition: You may only possess approved nontoxic shot (*see* § 32.2(k)) while in the field.

*C. Big Game Hunting.* We allow hunting of big game throughout the district except as noted in A, above. We prohibit hunting on portions of the Kellys Slough WPA in Grand Forks County as posted. All hunting is in accordance with State regulations subject to the following conditions:

1. You must possess and carry a "Lake Alice Refuge Permit'' in order to hunt white-tailed deer with a firearm on the Tarvasted WPA in Ramsey County.

2. We prohibit the construction or use of permanent stands or platforms (*see* § 27.93 of this chapter).

*D. Sport Fishing.* We allow sport fishing throughout the district in accordance with State regulations except for Kellys Slough, Hart, Nelson, and Vold WPAs in Grand Forks County.

**J. Clark Salyer National Wildlife Refuge**

*A. Hunting Migratory Game Birds.* We allow hunting of goose, duck, and coot on nine designated Public Hunting Areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge daily from 5 a.m. to 10 p.m.

2. We allow waterfowl retrieval without a firearm within 100 yards (90 m) of the interior boundary of Public Hunting Areas and within 100 yards (90 m) of the exterior refuge boundary.

*B. Upland Game Hunting.* We allow hunting of grouse, partridge, turkey, pheasant, and fox on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge daily from 5 a.m. to 10 p.m.

2. We allow hunting for sharp-tailed grouse, partridge, and pheasant on nine designated Public Hunting Areas.

3. We allow hunting for sharp-tailed grouse, partridge, ruffed grouse, and turkey south of the Upham-Willow City Road.

4. We open to hunting annually for sharp-tailed grouse, partridge, and pheasant on the remainder of the refuge, except the closed area around the refuge

headquarters, on the day following the close of the firearm deer season and close as per the State seasons.

5. Fox hunting opens annually on the day following the close of the firearm deer season and closes March 31. We allow hunting from ½ hour before legal sunrise until ½ hour after legal sunset.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge daily from 5 a.m. to 10 p.m.

2. We open the entire refuge, except the closed area around the refuge headquarters, for hunting during the State's youth, muzzleloader, and archery seasons.

3. We open nine Public Hunting Areas on the refuge for deer hunting during the regular firearms season without a refuge permit.

4. You must possess and carry a refuge permit to hunt on the refuge outside the nine Public Hunting Areas during the regular firearms season.

5. Hunters must remove blinds and stands (*see* § 27.93 of this chapter) daily.

*D. Sport Fishing.* We allow fishing on 14 designated areas (listed below) of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge daily from 5 a.m. to 10 p.m.

2. We open all refuge waters to ice fishing between December 15 and the end of the State fishing season.

3. We only allow boat fishing in designated areas.

4. We close to boat fishing the last Friday of September.

5. We only allow nonmotorized boats or boats with electric motors.

6. We allow fishing at the following locations:

i. Nelson Bridge, from both banks downstream (northwest) 1/4 mile (.4 km) and upstream (south) to the refuge boundary;

ii. Souris River-Scenic Canoe Route, from both banks and boats, 100 feet upstream (30 m) (east) from Johnson Bridge and downstream (northwest) 13 miles (20.8 km) to the end of the Canoe Route at Dam 1, including Sandhills Slough;

iii. Dam 1, on the north bank downstream (west) 100 yards (90 m). We prohibit entry to or fishing from the dam;

iv. Dam 2, from both banks 50 feet (15 m) downstream from the water control structure;

v. Dam 320, from the bank starting 300 feet (90 m) east of the dam for 1/4 mile (.4 km) upstream (east);

vi. Old Freeman Bridge, from both banks or boat, downstream (west) 1 ½ mile (2.4 km) from Dam 320;

vii. Cutbank Culvert on Highway 14, from the highway right-of-way 50 feet (15 m) either side of the culvert;

viii. Highway 14 Bridge, from both banks 1/4 mile (.4 km) downstream (north) and 1/4 mile (.4 km) upstream (south) from the bridge;

ix. Russell-Kramer Road, from both banks or boat, upstream (south) 200 feet (60 km) from the bridge and downstream (north) from the bridge to the Soo Line railroad bridge;

x. Newburg Road, from the road right-of-way 100 feet (30 km) on either side of the bridge;

xi. Scheflo Bridge, from the road right-of way on either side of the bridge and upstream (south) on the east bank to the downstream (north) side of the water control structure;

xii. Highway 5, from the highway right-of way 100 feet (30 km) on either side of the bridge;

xiii. Westhope-Landa Road, from the road right-of-way 150 feet (45 km) on either side of the bridge, or from a boat downstream (north) 2 miles (3.2 km) from the road; and

xiv. Below Dam 357, from both banks or boat on all waters downstream (north) of the dam to the Canadian border.

**Lake Alice National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow upland game and furbearer hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Consult the refuge brochure for season dates.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

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**Lake Ilo National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge all year for fishing from legal sunrise to legal sunset. The refuge has designated open and closed areas for fishing.

2. We open the refuge to boating from May 1 through September 30.

3. We open the refuge to ice fishing from October 1 through March 31.

4. We restrict vehicle use to refuge roads, designated boat ramps, and ice access points (*see* § 27.31 of this chapter).

5. We prohibit fishing and public use on refuge islands and concrete dam spillways.

**Lake Nettie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open portions of the refuge to gun, muzzleloader, bow, and the special youth deer hunting seasons according to State regulations. The refuge has designated open and closed areas for deer hunting.

2. We close all refuge roads to vehicle use for hunting and retrieval of deer. Hunters must park vehicles at the refuge boundary and walk in.

3. Hunters may walk in to retrieve deer in areas marked with no hunting zone signs. We prohibit firearms while retrieving deer from these areas.

4. Hunters must only use portable tree stands that they install and remove (*see* § 27.93 of this chapter) each day. We prohibit permanent tree stands.

*D. Sport Fishing.* [Reserved]

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**Long Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, sharp-tailed grouse, and grey partridge on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

2. The upland game bird season opens annually on the day following the close of the firearm deer season and runs through the close of the State season.

3. We close to upland game hunting those areas marked with yellow closed to hunting signs.

4. We prohibit hunters and dogs from entering closed areas to retrieve game.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must only enter the refuge on foot.

2. We allow archery hunting. We restrict open archery areas to those areas of the refuge open to firearms during the firearm season.

3. We close to deer hunting during the firearm deer season those areas marked

with yellow closed to hunting signs. We also close this area to muzzleloader hunters during muzzleloader season.

4. We prohibit hunters entering closed areas to retrieve game.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We restrict bank fishing to public use areas on Unit 1 and Long Lake Creek.

2. We restrict boat fishing to Long Lake Creek.

3. We restrict boats to 25 hp maximum.

4. We restrict boats to the period from May 1 through September 30.

5. We restrict ice fishing to Unit 1 and Long Lake Creek.

6. We prohibit motorized vehicles on ice (*see* § 27.31 of this chapter).

7. We only allow fishing from legal sunrise to legal sunset.

8. Anglers must park vehicles in designated parking areas.

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**Slade National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer in accordance with State regulations subject to the following condition: Hunters must only enter the refuge on foot.

*D. Sport Fishing.* [Reserved]

**Stewart Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow ice or shore fishing in accordance with State regulations subject to the following condition: We restrict vehicle use to the refuge road (*see* § 27.31 of this chapter).

**Tewaukon National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow ring-necked pheasant hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The season opens on the first Monday following the close of the State deer gun season and continues through the close of the State pheasant season.

2. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*C. Big Game Hunting.* We allow deer bow hunting on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The season closes September 30 and reopens the Friday following the close of the State gun deer season and continues through the end of the State archery deer season.

2. We allow deer gun hunting by refuge permit holders on designated areas of the refuge in accordance with State regulations.

3. We allow youth deer hunting on designated areas of the refuge in accordance with State regulations.

*D. Sport Fishing.* We allow sport fishing on designated waters (Tewaukon and Sprague Lakes only) in accordance with State regulations.

**Upper Souris National Wildlife Refuge**

*A. Hunting of Migratory Birds.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of sharp-tailed grouse, Hungarian partridge, and pheasant on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may use dogs to hunt.

2. We require hunters and nonhunters accompanying legal hunters to wear the State-required, legal-orange clothing when hunting game birds during the deer gun season.

3. We open for hunting on Unit I during the North Dakota State hunting seasons. Unit I includes all refuge land north of the township road that runs east of Tolley, across Dam 41 (Carter Dam), and east to State Route 28.

4. We open for hunting on Unit II during the State hunting seasons, except we close from the first day of the regular State waterfowl season through the last day of State deer rifle season. Unit II includes refuge land between Lake Darling Dam and the township road that runs east of Tolley.

5. We close land south of Lake Darling Dam to all upland game bird hunting.

6. We prohibit hunting on the area surrounding the refuge headquarters buildings and residences. We post these areas with "Closed to Hunting'' signs.

7. We prohibit remaining on the refuge between the hours of 10 p.m. and 5 a.m.

8. We prohibit weapons (*see* § 27.42(b) of this chapter) in boats, canoes, float tubes, or any other floatable object.

9. We prohibit the use of snowmobiles, all-terrain vehicles (ATVs) or similar vehicles on the refuge (*see* § 27.31(f) of this chapter).

10. We prohibit the use of horses during all hunting seasons.

*C. Big Game Hunting.* We allow archery, gun, and muzzleloader hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B7 through B10 apply.

2. You must possess and carry a State deer bow permit to hunt deer on the refuge during the State deer bow season.

3. You must possess and carry a special State-issued refuge permit for State deer gun hunting in Unit IIIA2 to hunt deer on the refuge during the State deer gun season.

4. You must possess and carry a State muzzleloader deer permit to hunt deer on the refuge during the State muzzleloader season.

5. We only allow preseason scouting in open public use areas and areas marked "foot traffic only.''

6. We require hunters to walk in to hunt.

7. You must remove your harvested deer only by carrying, dragging, or using a hand-pulled cart or sled.

8. You may use portable tree stands but must remove them (*see* § 27.93 of this chapter) daily from the refuge.

9. We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

10. You may only use strap-on steps or removable climbing ladders if needed to access portable tree stands (*see* § 32.2(i)).

11. You may hunt all of the refuge with the exception of the following areas: the area surrounding the refuge headquarters buildings, Office/Visitor Center, residences, fenced equipment yard, and gun range. We post these areas with "No Trespassing'' or "Closed to Hunting'' signs.

12. We prohibit entry to the refuge before 12 p.m. (noon) on the first day of the bow, gun, or muzzleloader deer hunting seasons. However, bow hunters may hunt on the refuge any time the State bow season is open.

13. Youth deer hunters (14 years of age) may hunt on the refuge if they register at the refuge office prior to hunting during the State Youth Deer Season. An adult or guardian age 18 or older must accompany youth hunters.

14. You may not return to the refuge with a weapon after you have filled your deer tag; however, you may carry a shotgun while hunting upland game birds in open hunting units.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B7 and B9 apply.

2. We allow use of fishing boats, canoes, and float tubes in designated boat fishing areas (*see* below) on Lake Darling for fishing from May 1 through September 30.

3. You may bank fish in designated areas (*see* below) whenever there is open water.

4. We prohibit the use of bow, spear, or underwater spearing equipment to take fish.

5. We prohibit fishing or access to fishing areas along the Prairie-Marsh Scenic Drive.

6. We prohibit swimming, sailing, water skiing, pleasure boating, and overnight camping.

7. You may ice fish on all ice-covered waters of the Souris River and Lake Darling; however, we designate access sites where you can walk or drive onto the ice (*see* below).

8. We allow you to drive licensed cars and pickups on the ice from Lake Darling Dam north to Carter Dam (Dam 41) for ice fishing.

9. We allow walk-in access at designated sites (*see* below) on the Souris River north of Carter Dam (Dam 41) and south of Lake Darling Dam for ice fishing. We prohibit vehicles to drive onto the ice in these areas (*see* § 27.31 of this chapter).

10. We allow you to place fish houses on the ice of Lake Darling.

11. We prohibit use of campers or other structures not made of floatable materials as fish houses. We require that all fish houses must be able to float above the water surface until they are removed from the water. We require that anglers remove fish houses or parts thereof from the refuge ice, water, and land by no later than 10 p.m. March 15. We prohibit ice houses or parts thereof to be cut off and left or burned on the refuge.

12. We allow anglers to place portable fish houses on the Souris River north of Carter Dam (Dam 41) and south of Lake Darling Dam for ice fishing, and you must remove them (*see* § 27.93 of this chapter) daily from the refuge.

13. We designate the following fishing sites and lake and river access sites:

i. BAKER BRIDGE—We allow bank fishing on a loop of the Souris River located on the north side of County Road 8. The open area begins at the bridge and goes west to a point where the river meets the refuge boundary fence. You may walk onto the ice from this area for ice fishing.

ii. SILVER BRIDGE—We allow bank fishing from the road right-of-way around the bridge. You may walk onto the ice from this area for ice fishing.

iii. OUTLET FISHING AREA—Bank fishing begins 1/4 mile (.4 km) below Lake Darling Dam and extends south approximately 600 yards (540 m). We prohibit open water fishing on the Beaver Lodge Canoe Trail or on the Oxbow Nature Trail (southeast of the parking lot). You may walk onto the ice for ice fishing from the Outlet Fishing Area and from the Beaver Lodge Canoe Trail launch site for ice fishing.

iv. LANDINGS 1, 2, and 3 on LAKE DARLING—We open the lake to boat fishing from Lake Darling Dam north 3 miles (4.8 km) to the buoy line. We allow you to launch boats at Landings 1, 2, and 3 boat ramps. We only allow driving access onto the ice at Landings 1, 2, and 3 boat ramps for ice fishing. You may bank fish along the west shore from Lake Darling Dam north approximately 1 1/4 miles (2 km) to Landing 3. The Pullout Area on the west end of Lake Darling Dam is the only bank fishing area open on Lake Darling Dam. You may walk onto the ice from the bank fishing area and from Lake Darling Dam for ice fishing.

v. SPILLWAY FISHING AREA on LAKE DARLING—We prohibit entry to this area if signs "Area Beyond This Sign Closed'' are present. If the area is open, you may walk onto the ice for ice fishing. We prohibit driving vehicles onto the ice from this area (see § 27.31 of this chapter).

vi. GRANO CROSSING on LAKE DARLING—You may bank fish from the road right-of-way on both sides of the crossing and within the boundaries of the Grano Boat Ramp. You may fish from boats on the lake north from Grano Crossing to Greene Crossing. We allow launching of boats at the Grano Boat Ramp. We prohibit operating a boat above idle speed in the boat ramp bay area. You may walk onto the ice from Grano Crossing and the Grano Boat Ramp for ice fishing. We allow driving access onto the ice at two vehicle road approaches located on the west end of the Grano Crossing (*see* § 27.31 of this chapter).

vii. GREENE CROSSING on LAKE DARLING—You may bank fish from the road right-of-way on both sides of the crossing and the Greene Boat Ramp area. You may fish from boats on the lake south from Greene Crossing to Grano Crossing. We allow launching of boats at the Greene Boat Ramp. You may walk onto the ice from these areas for ice fishing. We allow driving access onto the ice at two vehicle road approaches located on the west end of the Greene Crossing and at the Greene Boat Ramp (*see* § 27.31 of this chapter).

viii. CARTER DAM (DAM 41)—You may bank fish on both sides of the road near the water control structure (east end of the dam) and culvert (west end of the spillway). You may walk onto the ice for ice fishing.

ix. HIGHWAY 5—You may bank fish on the north side of the road from the bridge west to a point where the road meets the river. You may walk onto the ice for ice fishing on the north and south sides of the highway where the ice meets the highway right-of-way.

x. SOURIS RIVER NORTH OF MOUSE RIVER PARK TO THE NORTH END OF THE REFUGE—We allow boat fishing and canoeing. There is a boat launching ramp at the Park. You may walk onto the ice from Mouse River Park for ice fishing.

xi. SWENSON BRIDGE—You may bank fish from the road right-of-way. You may walk onto the ice from this area for ice fishing.

36. Amend § 32.54 Ohio by revising paragraphs A., C., and D. of "Ottawa National Wildlife Refuge'' to read as follows:

**§ 32.54 Ohio.**

* * * * *

**Ottawa National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose and duck on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit. All hunters must check-in and out at the hunter check station.

2. We require that hunting stop at 12 p.m. (noon) each day.

3. We require that hunters hunt within 75 yards (67.5 m) of the assigned blind.

4. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) while in the field in quantities of 25 or less.

* * * * *

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. We require that hunters check out at the refuge check station no later than 6 p.m.

3. Hunters must check all deer harvested at the refuge check station.

4. We require that hunters wear a hat and outer jacket/vest that is blaze orange.

5. We require that hunters remain within their assigned unit.

6. We prohibit possession of more than one hunting weapon while in the field.

7. We prohibit the construction or use of permanent blinds or tree stands.

8. We require that hunters obtain permission from refuge officials before tracking a wounded deer out of their assigned hunting unit.

9. We prohibit shooting from any road.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in

accordance with State regulations subject to the following conditions:

1. We allow fishing from legal sunrise to legal sunset during designated dates.

2. We prohibit boats or flotation devices.

37. Amend § 32.55 Oklahoma by:

a. Revising "Deep Fork National Wildlife Refuge;''

b. Revising "Little River National Wildlife Refuge;''

c. Revising paragraphs A., B., and D. of "Salt Plains National Wildlife Refuge;''

d. Revising "Sequoyah National Wildlife Refuge;'' and

e. Revising paragraph A. of "Washita National Wildlife Refuge'' to read as follows:

**§ 32.55 Oklahoma.**

* * * * *

**Deep Fork National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge permit. We require no fee.

2. We prohibit taking of goose during the duck hunt.

3. Species and bag limits are in accordance with State regulations.

4. We allow duck hunting on Fridays, Saturdays, Sundays, and Mondays, from ½ hour before legal sunrise until 1 p.m. Refer to the refuge hunting brochure for opening and closing dates.

5. You may only use portable blinds. You must remove blinds, decoys, and all personal equipment (*see* § 27.93 of this chapter) daily.

6. We prohibit off-road vehicle use (*see* § 27.31 of this chapter).

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, turkey, and raccoon in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge permit. We require no fee.

2. We only allow shotguns and .22 caliber rimfire rifles for rabbit and squirrel. We only allow special archery hunts by refuge Special Use Permit.

3. Raccoon hunting only: hunt hours are legal sunset to legal sunrise only. State firearm restrictions apply.

4. We publish opening and closing dates in the Refuge Hunt Brochure.

5. We allow dogs for hunting squirrel, rabbit, and raccoon, but you must remove them from the refuge at the end of the hunt (*see* § 26.21(b) of this chapter).

6. We offer refuge-controlled turkey hunts. You may call the refuge office or the State for information concerning these hunts.

7. Turkey hunters must check-in and out at a refuge check station. Refuge staff provide a hunter briefing as part of the check-in.

8. We prohibit the construction or use of permanent blinds during turkey hunts.

9. We prohibit off-road vehicle use (*see* § 27.31 of this chapter).

*C. Big Game Hunting.* We allow hunting of white-tailed deer in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. We offer refuge-controlled deer hunts (archery, primitive, youth primitive). For information concerning these hunts, contact the refuge office or the State.

3. We will offer a limited archery season deer hunt following the controlled deer hunt. Contact the refuge office for more information.

4. We prohibit scouting when we are conducting controlled deer hunts.

5. You may use tree stands, but you must remove them (see § 27.93 of this chapter) immediately following the end of the hunt.

6. We prohibit off-road vehicle use (*see* § 27.31 of this chapter).

*D. Sport Fishing.* We allow fishing in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. A fishing brochure with a map is available from the refuge office. We identify parking areas and open and closed areas on the map.

2. You must launch boats on the refuge from access points designated in the refuge leaflet. We only allow small boats or canoes on the refuge.

3. We prohibit the use of firearms.

4. We allow year-round fishing on the Deep Fork River. We allow fishing from March 1 through October 31 on sloughs, farm ponds, and impoundments not connected to the river.

5. Game fish species and creel/possession limits are in accordance with State regulations.

6. We allow bowfishing on the refuge during daylight hours from May 15 through September 30.

7. We prohibit snagging and netting.

8. We only allow trotlines, juglines, limblines, and yo-yos in the Deep Fork River and prohibit them in any other areas on the refuge. Anglers must mark lines and attend and remove them (*see* § 27.93 of this chapter) in accordance with State regulations.

9. We allow noodling in accordance with State fishing regulations.

10. We prohibit the taking of turtle and mussel (*see* § 27.21 of this chapter).

**Little River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit off-road vehicle use (*see* § 27.31 of this chapter).

2. We prohibit building and use of permanent blinds.

3. You may hunt from ½ hour before legal sunrise until 12 p.m. (noon) each day.

4. You must possess and carry a signed refuge permit while hunting.

5. You may only hunt duck during designated refuge seasons.

6. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, turkey, beaver, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Turkey hunters using firearms (*see* § 27.42 of this chapter) must pay fees and obtain a controlled hunt permit through the State.

2. Conditions A1 and A4 apply.

3. You may only hunt upland game during designated refuge seasons.

4. Shotgun hunters may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

5. You may hunt beaver during any established refuge hunting season. Refuge permits and legal weapons apply for the current hunting season.

*C. Big Game Hunting.* We allow hunting of deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Deer hunters using firearms (*see* § 27.42 of this chapter) must pay fees and obtain a controlled hunt permit through the State.

2. Condition A1 applies.

3. You may hunt feral hog during any established refuge hunting season. Refuge permits and legal weapons apply for the current hunting season.

4. Deer archery hunters must possess and carry a signed refuge permit while hunting.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing from legal sunrise to legal sunset.

2. Condition A1 applies.

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**Salt Plains National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

2. We require hunters to check-in and out of the refuge.

3. Hunting ends at 12 p.m. (noon).

4. We prohibit hunting during the regular State rifle deer season on Saturdays, Sundays, and Mondays.

*B. Upland Game Hunting.* We allow hunting of quail and pheasant on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A4 apply.

* * * * *

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close designated areas of the Great Salt Plains Reservoir.

2. We allow fishing from April 1 through October 15.

3. We prohibit trotlines within 500 feet (150 m) of the shoreline of the Jet Recreation Area.

4. Posts used to secure or anchor trotlines must reach a minimum of 2 feet (30 cm) above the water surface, and you must mark them to make them clearly visible to boaters.

5. We prohibit the taking of any type of bait from refuge lands or waters.

6. We only allow fishing on Bonham Pond: by youths age 14 and under or by any person with a disability, only during daylight hours, and with a limit of one pole per person.

**Sequoyah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, dove, coot, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a free annual refuge permit for all hunting. The hunter must possess and carry the signed permit while hunting.

2. We only open the refuge to hunting on Saturdays, Sundays, Mondays, and Tuesdays. Hunters may only enter the open portion of Sally Jones Lake by boat after 5 a.m. and must leave by 1 hour after legal sunset. We generally designate open hunting areas as: Area A—Sandtown Bottom, Area B—Webber Bottom, and Area C—Girty Bottom. We prohibit hunting or shooting within 50 feet (15 meters) of designated roads or parking areas. All hunters must park in designated parking areas.

3. Season lengths and bag limits will be in accordance with State regulations with the exception that all hunting, except for the conservation light goose season, will close on January 31 of each year. If a conservation light goose season is in effect, it will follow State regulations with the exception of special refuge regulations and hunting days.

4. We only allow legal shotguns. You must unload and case shotguns (*see* § 27.42(b) of this chapter) while transporting them in a vehicle or boat.

5. We prohibit construction of pit blinds or permanent blinds. You must reduce blinds to a natural appearance or remove them (*see* § 27.93 of this chapter) at the end of the day. You must remove all empty shells, litter, decoys, boats, or other personal property (*see* §§ 27.93 and 27.94 of this chapter) at the end of the day. We prohibit camping in boats or otherwise spending the night on any area of the refuge.

6. We allow boats, and you must operate them under applicable State laws and comply with all licensing and marking regulations from their State of origin.

7. We allow the use of dogs for hunting, but the dogs must remain under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter). We prohibit entry by hunters or dogs to closed areas to retrieve or rally game.

8. We prohibit guiding or outfitting for commercial purposes.

9. We restrict the use of airboats within the refuge boundary to the navigation channel and the designated hunting areas from September 1 to March 1.

*B. Upland Game Hunting.* We allow hunting of squirrel, quail, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A7, A8, and A9 apply.

2. We only open the refuge to hunting on Saturdays, Sundays, Mondays, and Tuesdays. We generally designate open areas as: Area A—Sandtown Bottom, Area B—Webber Bottom, and Area C—Girty Bottom. We prohibit hunting or shooting within 50 feet (15 meters) of designated roads or parking areas. All hunters must park in designated parking areas.

3. Season lengths and bag limits will be in accordance with State regulations with the exception that all upland game hunting will close on January 31 of each year.

4. We only allow legal shotguns and approved nontoxic shot (*see* § 32.2(k)). You must plug shotguns so they are incapable of holding more than three shells. You must unload and case shotguns (*see* § 27.42(b) of this chapter) while transporting them by vehicle or boat.

5. We require upland game hunters to follow State blaze-orange regulations.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a refuge-controlled hunt permit, and comply with the designated refuge season, hunting methods, and location guidelines for that year.

2. Hunters must apply to the State-controlled deer hunt drawing administered by the Oklahoma Department of Wildlife Conservation for selection. We require those hunters to attend a prehunt briefing, and they must follow all applicable State regulations.

3. We require payment of State and Federal special deer hunting fees.

4. Condition A9 applies.

*D. Sport Fishing.* We allow fishing and frogging on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Fishing and frogging will follow State seasons, limits, and regulations with the exception that from September 1 to March 31 we prohibit fishing or frogging in the closed zone south of refuge headquarters, as designated by buoys and signs. We close the Horton Slough area south of the refuge headquarters to fishing and entry east to the confluence of Little Vian Creek.

2. We prohibit boating on the closed portion of Sally Jones Lake from September 1 to March 31.

3. You must remove trotlines (*see* § 27.93 of this chapter) from the closed zone before September 1.

4. Conditions A6 (boats used for fishing), A8, and A9 apply.

5. We prohibit the use of any firearms or bows with arrows while frogging.

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**Washita National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, and sandhill crane on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require permits and payment of a fee to hunt goose and sandhill crane.

2. Goose and sandhill crane hunters must hunt from designated pit blinds.

3. We allow youth hunters, ages 12 to 16, to hunt duck in a controlled youth hunt in conjunction with a waterfowl seminar.

* * * * *

38. Amend § 32.56 Oregon by:

a. Revising paragraph A. of "Bandon Marsh National Wildlife Refuge;''

b. Revising paragraph A., the introductory text of paragraph B., and paragraphs B1, B2, and D. of "Cold Springs National Wildlife Refuge;''

c. Revising the section heading "Hart Mountain National Wildlife Refuge'' to read "Hart Mountain National Antelope Refuge'' and revising paragraphs A., B., C., and D.;

d. Revising paragraphs A., B., and D. of "McKay Creek National Wildlife Refuge;''

e. Revising "McNary National Wildlife Refuge;'' and

f. Revising "Umatilla National Wildlife Refuge'' to read as follows:

**§ 32.56 Oregon.**

* * * * *

**Bandon Marsh National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and snipe on that portion of the refuge west of U.S. Highway 101 and outside the Bandon city limits, in accordance with State regulations subject to the following conditions;

1. You may only use portable blinds or blinds constructed of on-site dead vegetation (*see* § 27.51 of this chapter) or driftwood.

2. You must remove all blinds, decoys, shotshell hulls, and other personal equipment and refuse (*see* §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

3. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

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**Cold Springs National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, dove, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

2. We open the refuge from 5 a.m. until 1½ hours after legal sunset.

3. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) per day on the refuge in quantities of 25 or less.

4. We only allow vehicles on designated routes of travel and require hunters to park in designated parking areas (*see* § 27.31 of this chapter). We reserve parking lot F solely for Memorial Marsh Unit waterfowl hunters.

5. We require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart in the free-roam area along the reservoir shoreline.

6. We only allow portable blinds and temporary blinds constructed of natural materials.

7. We only allow nonmotorized boats and boats with electric motors within that portion of reservoir open to hunting.

8. On the Memorial Marsh Unit, we only allow hunting from numbered field blind sites, and hunters must only park their vehicles at the numbered post corresponding to the numbered field blind site they are using (*see* § 27.31 of this chapter). Selection of parking sites/numbered posts is on a first-come, first-served basis at parking lot F. We prohibit free-roam hunting or jump shooting, and you must remain within 100 feet (30 m) of the numbered field blind post unless retrieving birds or setting decoys. We allow a maximum of four persons per blind site.

*B. Upland Game Hunting.* We allow hunting of pheasant, chukar, Hungarian partridge, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, and Christmas Day.

2. We prohibit hunting of upland game birds until 12 p.m. (noon) of each hunt day.

* * * * *

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. In the Cold Springs Reservoir, we only allow fishing from March 1 through September 30.

2. On the south side of the reservoir, we only allow bank fishing.

3. We only allow use of nonmotorized boats and boats with electric motors.

4. From October 1 through the last day of February, we only allow bank fishing, and only in the area beginning at the west inlet canal, north across the face of the dam to the closed area sign.

5. We only allow fishing with hook and line.

6. The refuge is open from 5 a.m. to 1½ hours after legal sunset.

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**Hart Mountain National Antelope Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of chukar only on the western slopes of Hart Mountain and Poker Jim Ridge in accordance with State regulations.

*C. Big Game Hunting.* We allow hunting of deer, antelope, and bighorn sheep on the refuge in areas designated by permit issued from the State in accordance with State regulations subject to the following conditions:

1. We allow ground blinds, but we prohibit construction of them earlier than 1 week prior to the opening day of the legal season for which you have a valid permit.

2. You must remove blinds (*see* § 27.93 of this chapter) within 24 hours of harvesting an animal or at the end of the permittee's legal season.

3. We limit hunters to one blind each, and you must tag blinds with the owner's name and permit number.

4. We prohibit destruction of native vegetation (*see* § 27.51 of this chapter) or below-ground excavation.

5. We require hunters to check-in at the refuge headquarters prior to hunting on the refuge and check out at the refuge headquarters upon completion of the hunt.

6. We prohibit hunting within 3 miles (4.8 km) of the refuge headquarters.

*D. Sport Fishing.* We allow fishing on the refuge only in Rock Creek, Guano Creek, and Warner Pond in accordance with State regulations.

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**McKay Creek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

2. We open the refuge from 5 a.m. to 1½ hours after legal sunset.

3. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) on the refuge in quantities of 25 or less per day.

4. We only allow vehicles on designated routes of travel and require hunters to park in designated parking areas (*see* § 27.31 of this chapter).

5. We require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart.

6. We only allow portable blinds and temporary blinds constructed of natural materials.

7. We prohibit the use of boats.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. On the opening weekend of the hunting season, we require all hunters to possess and carry a signed refuge permit.

* * * * *

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following condition: We allow fishing from March 1 through September 30.

**McNary National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory birds on designated areas of the refuge in accordance with State regulations and special conditions listed for McNary National Wildlife Refuge in the State of Washington.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations and special conditions listed for McNary National Wildlife Refuge in the State of Washington.

*C. Big Game Hunting.* We allow deer hunting on designated areas of the refuge in accordance with State regulations.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations and special conditions listed for McNary National Wildlife Refuge in the State of Washington.

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**Umatilla National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and common snipe on designated areas of the Boardman and McCormack Units in accordance with State regulations subject to the following conditions:

1. We open the refuge from 5 a.m. to 1½ hours after legal sunset.

2. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) on the refuge in quantities of 25 or less.

3. We prohibit off-road vehicle travel and all use of ATVs (*see* § 27.31(f) of this chapter). We only allow vehicles on designated routes of travel and require hunters to park in designated parking areas (*see* § 27.31 of this chapter).

4. The McCormack Unit is a fee-hunt area only open to hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day during State waterfowl seasons.

5. Prior to entering the McCormack Fee Hunt Unit, we require you to stop at the check station to obtain a refuge permit (you must possess and carry), pay a recreation user fee, and obtain a blind assignment before hunting.

6. On the McCormack Unit, we only allow hunting from assigned blind sites and require hunters to remain within 100 feet (90 m) of marked blind sites unless retrieving birds.

7. On the Boardman Unit, we require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart. We only allow portable blinds and temporary blinds constructed of natural materials.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting of upland game birds until 12 p.m. (noon) of each hunt day.

2. On the McCormack Fee Hunt Unit, we only allow hunting on Wednesdays, Saturdays, Sundays, and Thanksgiving Day.

3. On the McCormack Unit, we require all hunters to possess and carry a signed refuge permit on the opening weekend of the hunting season.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following condition: Hunting is by special refuge permit (you must possess and carry) only.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge from 5 a.m. to 1½ hours after legal sunset.

2. We allow fishing on refuge impoundments and ponds from February 1 through September 30. We open other refuge waters (Columbia River and its backwaters) in accordance with State regulations.

* * * * *

39. Amend § 32.57 Pennsylvania by:

a. Revising "Erie National Wildlife Refuge''; and

b. Revising paragraph D. of "John Heinz National Wildlife Refuge at Tinicum'' to read as follows:

**§ 32.57 Pennsylvania.**

* * * * *

**Erie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning dove, rail, common snipe, goose, duck, coot, and crow on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the refuge from September 1 through the end of February.

2. We only allow nonmotorized boats for waterfowl hunting. Hunters must remove boats (see § 27.93 of this chapter) from the refuge at the end of each day.

3. Hunters must remove decoys from the refuge at the end of each day.

4. We allow dogs for hunting; however, they must be under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

5. We prohibit field possession of migratory game birds in areas of the refuge closed to migratory game bird hunting.

*B. Upland Game Hunting.* We allow hunting of grouse, squirrel, rabbit, woodchuck, pheasant, quail, raccoon, fox, coyote, skunk, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the refuge from September 1 through the end of February.

2. All fox, coyote, and raccoon hunters must possess and carry a refuge Special Use Permit while hunting on the refuge.

3. We prohibit pheasant hunting on the Sugar Lake Division of the refuge.

4. We allow dogs for hunting; however, they must be under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

*C. Big Game Hunting.* We allow hunting of deer, bear, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting on the refuge from September 1 through the end of February. We also allow spring turkey hunting in accordance with State regulations.

2. Hunters must remove blinds, platforms, scaffolds, tree stands, and decoys (*see* § 27.93 of this chapter) from the refuge at the end of each day.

3. We prohibit organized deer drives in hunt area B of the Sugar Lake Division. We define a "drive'' as three or more persons involved in the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animal more susceptible to harvest.

4. All bear hunters must have a refuge Special Use Permit in their possession while hunting on the refuge.

5. We require all hunters to notify the refuge within 48 hours of the harvest of a deer, bear, or turkey.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in

accordance with State regulations subject to the following conditions:

1. We allow bank/pier fishing on all fishing areas.

2. We allow fishing from ½ hour before legal sunrise until ½ hour after legal sunset.

3. We only allow boats without motors in Area 5 from the second Saturday in June through September 15. They must remain in an area from the dike to 3,000 feet (900 m) upstream.

4. Anglers must remove boats (*see* § 27.93 of this chapter) from the refuge at the end of each day.

5. We only allow ice fishing in Areas 5 and 7.

6. All persons must possess and carry a refuge Special Use Permit while taking minnow or turtle.

7. We prohibit the taking of frog.

**John Heinz National Wildlife Refuge at Tinicum**

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*D. Sport Fishing.* We allow sport fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on all refuge waters, except:

i. The East side of the Main Impoundment from the Dike Road south to the Trolley Bed trail; and

ii. The small pond located on the south side of Bartram Ave at the I–95 South on ramp.

2. We allow fishing on the refuge from legal sunrise to legal sunset.

3. Anglers may only operate boats, canoes, and floats in tidal waters. We prohibit them on the refuge impoundments and ponds.

4. We only allow fishing from the shoreline in refuge impoundments and ponds. We prohibit wading.

5. We prohibit bowfishing or spearfishing on the refuge.

6. We prohibit the take, collection, or capture of reptile or amphibian on the refuge.

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40. Amend § 32.60 South Carolina by:

a. Revising "ACE Basin National Wildlife Refuge;''

b. Revising "Carolina Sandhills National Wildlife Refuge;''

c. Revising paragraph C. of "Pinckney Island National Wildlife Refuge;''

d. Revising "Savannah National Wildlife Refuge;'' and

e. Adding "Waccamaw National Wildlife Refuge'' to read as follows:

**§ 32.60 South Carolina.**

* * * * *

**ACE Basin National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require each hunter to carry at all times while hunting a signed, current refuge hunting regulations brochure containing a refuge hunt permit. The hunt permit is invalid until signed by the hunter.

2. Each youth hunter (age 15 and under) must remain within sight and normal voice contact of an adult age 21 or older. Youth hunters must have successfully completed a State-approved hunter education course.

3. We only allow hunting until 12 p.m. (noon) each day during the State waterfowl season.

4. We prohibit hunting on Corps of Engineer dredge spoil sites located on refuge property on Jehossee Island.

5. We prohibit permanent blinds. You must remove portable blinds and decoys (see § 27.93 of this chapter) at the end of each day's hunt.

6. We only allow use of retrieving dogs while hunting.

7. We allow scouting all year during daylight hours.

8. Access to the hunt areas is by boat only. We prohibit boat launching on the refuge.

9. We do not require hunter check-in and check-out. There is no quota on the number of hunters.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A2 apply.

2. We only allow hunting on days designated annually by the refuge within the State season. We only allow hunting on designated refuge areas within the Edisto Unit and the Combahee Unit.

3. We only allow archery or muzzleloader hunting, and there is no quota on the number of hunters allowed to participate. During a special quota permit hunt for the mobility impaired, we allow use of centerfire rifles or shotguns.

4. Access into all refuge hunt areas for hunting and scouting is by foot or bicycle. We may open some refuge roads on hunt days.

5. We allow scouting all year from legal sunrise to legal sunset.

6. Hunters may enter the refuge no earlier than 5 a.m. on hunt days and must leave the refuge no later than 1 hour after legal sunset.

7. We do not require hunter check-in and check-out. However, you must check all deer taken during any hunt at the designated refuge check station before removal from the refuge. In addition, you must tag all antlerless deer with an antlerless tag provided by the refuge.

8. The refuge daily bag limit is two antlerless deer and one antlered buck that must have at least three antler points on one side. We define a "point'' as an antler projection of at least 1 inch (2.5 cm) or more in length.

9. You may take feral hog during refuge deer hunts. There is no size or bag limit on hog.

10. We only allow one portable tree stand per hunter and only during the actual days of each hunt.

11. We prohibit hunting on or within 100 feet (30 m) of all routes marked as roads or trails (see § 27.31 of this chapter) on the hunt brochure map.

12. All permanently fixed ground blinds are for the mobility-impaired hunt only.

14. We prohibit crossbows on the archery hunts. We only allow muzzleloading rifles using a single projectile on the muzzleloader hunts. We prohibit buckshot.

15. You may use flagging to mark the site of hunter entry from roads or trails and again at the stand site. You may use clothes pins with reflective tape between these sites to mark the route to the stand. Hunters must label all such markers with their full name and remove them (see § 27.93 of this chapter) at the end of the hunt.

16. We require hunters to wear an outer garment visible above the waist that contains a minimum of 500 square inches (3,250 cm2) of solid, florescent-orange material at all times during the muzzleloader and mobility-impaired hunts.

17. We prohibit the use of organized drives for taking or attempting to take game.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing in impounded waters contained within dikes and levees in the Beaufort County portion of the refuge annually from April 1 through August 31 during daylight hours. We close fishing during all remaining times within all refuge-impounded waters.

2. We prohibit boat use within refuge-impounded waters. We only allow bank fishing.

3. We only allow hook and line sport fishing utilizing rod and reel or pole.

4. We only open access into refuge areas to fishing by foot or bicycle.

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**Carolina Sandhills National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of mourning dove and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All hunters must possess and carry a signed refuge General Hunt Permit and a government-issued picture ID.

2. All hunters must complete a Small Game Check Sheet attached to the refuge General Hunt Permit. You must turn each check sheet in daily at one of the small game check sheet drop boxes.

3. We prohibit discharge of weapons (*see* § 27.42 of this chapter) within, into, or across a "No Hunting Zone'' or "Closed Area''. We prohibit entering or crossing a "No Hunting Zone'' or "Closed Area'' to access areas open to hunting. We require consent from refuge personnel to enter a "No Hunting Zone'' or "Closed Area'' for the purpose of tracking and/or retrieving legally taken game animals.

4. Each youth hunter (age 16 or younger) must remain within sight and normal voice contact and under supervision of an adult age 21 or older with a valid license and applicable permit. Each adult may supervise no more than two youth hunters. Each youth hunter must possess and carry evidence of successful completion of a State-approved hunter education course.

5. We prohibit loaded firearms (*see* § 27.42 of this chapter) within 100 feet (30 m) of maintained refuge roads or within 500 feet (150 m) of the paved visitor's drive. We prohibit discharge of any weapon on or across any part of the refuge road system. We define a "loaded firearm'' as a firearm with shells in the magazine or chamber, or, for muzzleloaders, a gun with the percussion caps put in place.

6. Hunters must possess shotguns with shot no larger than No. 5.

7. Legal shooting hours for September dove hunts are 12 p.m. (noon) to 6:30 p.m.

8. We prohibit discharge of weapons for any purpose other than to take or attempt to take legal game animals during established hunting seasons.

*B. Upland Game Hunting*. We allow hunting of quail, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A5 and A8 apply.

2. We require dogs for hunting raccoon and opossum. All dogs must wear a collar displaying the owner's name, address, and phone number.

3. Upland game hunters may possess shotguns with shot no larger than No. 4 or .22 caliber rimfire rifles or primitive muzzleloading rifles of .40 caliber or smaller. We prohibit possession of buckshot or slugs.

4. Upland game hunters using archery equipment must use small game tips on the arrows.

*C. Big Game Hunting*. We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. All hunters must possess and carry a signed refuge General Hunt Permit and a government-issued picture ID; however, in addition, turkey hunters must have a Refuge Quota Turkey Hunt Permit. Refuge Quota Turkey Hunt Permits are nontransferable.

2. You must promptly check all deer and hog killed on the refuge during modern gun hunts at the Refuge Check Station on the day of the kill prior to removal from the refuge. You must promptly check all antlerless deer killed on the refuge during the primitive weapons and archery hunts at the refuge office on the day of the kill prior to removal from the refuge. You must self-check all antlered bucks and hogs at the Refuge Check Station during the primitive weapons and archery hunts. In addition, you must have all antlerless deer tagged by refuge staff prior to removal from the refuge. You must promptly check and tag all turkey killed on the refuge during the Refuge Quota Turkey Hunt at the refuge office on the day of the kill prior to removal from the refuge.

3. Conditions A3 through A5 apply.

4. During big game deer hunts, we prohibit hunters from entering the refuge before 4 a.m., and they must leave the refuge no later than 2 hours after legal sunset. We will lock gates 2 hours after legal sunset on the last day of each hunt.

5. During refuge firearms deer hunts all participants must wear at least 500 square inches (3,250 $cm^2$) of unbroken, flourescent-orange material above the waistline as an outer garment while hunting and while en route to and from hunting areas.

6. During the primitive weapons hunt, you may use bow and arrow, muzzleloading shotguns (20 gauge or larger), or muzzleloading rifles (.40 caliber or larger). We prohibit revolving rifles or black-powder handguns.

7. During the modern gun hunts, you may use shotguns, rifles (centerfire and larger than .22 caliber), handguns (.357 caliber or larger and barrel length no less than 6 inches [15 cm]), or any weapon allowed during the primitive weapons hunt. We prohibit military, hard-jacketed bullets, and .22 caliber rimfire rifles during the modern gun hunts.

8. We prohibit man driving deer. We define a "man drive'' as an organized hunting technique involving two or more individuals attempting to drive game animals from cover or habitat for the purpose of shooting, killing, or moving such animals toward other hunters.

9. You must identify deer stands used on the refuge with the hunter's name, address, and phone number.

10. We prohibit the use of dogs for any big game hunting.

11. We prohibit the use of flagging or reflective tape, paint, tacks, or other trail markers. You may use painted clothes pins or clothes pins with reflective tape or tacks attached, but you must remove them (*see* § 27.93 of this chapter) at the end of each hunt.

12. Youth hunts are for hunters ages 10 through 15 only. We prohibit adults from discharging firearms during youth deer and turkey hunts.

13. The bag limit during each deer hunt is the State limit plus two antlerless deer and unlimited hogs.

14. We require you to field-dress or remove the deer whole prior to transportation in a vehicle or removing them from the refuge.

15. We prohibit the use of ATVs, except by mobility-impaired hunters with a Special Use Permit during big game hunts. Mobility-impaired hunters must have a State Disabled Hunting license, be confined to a wheelchair, need mechanical aids to walk, or have complete single-or double-leg amputation.

16. We prohibit turkey hunters from calling a turkey for another hunter unless both hunters have Refuge Quota Turkey Hunt Permits.

17. We prohibit turkey hunting in the area defined as east of Hwy. 145, south of Rt. 9, and north of Hwy. 1.

18. Turkey hunts end each day at 1 p.m., and you must unload, case, or dismantle all weapons (*see* § 27.42 of this chapter) after 1 p.m.

19. During turkey hunts we only allow one weapon per hunter.

20. The bag limit for the entire hunt is two bearded turkey.

21. We prohibit discharge of weapons (*see* § 27.42(a) of this chapter) for any purpose other than to take or attempt to take legal game animals during established hunting seasons.

*D. Sport Fishing*. We allow fishing on all areas of the refuge, except Martins Lake and those areas closed for management purposes, in accordance

with State regulations subject to the following conditions:

1. We allow fishing from 1 hour before legal sunrise to 1 hour after legal sunset.

2. We allow nonmotorized boats and boats with electric motors. We allow boats with permanently mounted gas motors as long as you lock the propeller out of the water. You must hand load and unload boats except at designated boat ramps. We prohibit skidding boats up or down dams or on water control structures. We provide boat ramps at Pool D, Pool L, Honkers Lake, and Mays Lake.

3. We allow bank fishing on all designated waters.

4. We prohibit bow fishing, fish baskets, nets, set hooks, trotlines, or snagging devices.

5. We prohibit snagging of fish by pulling or jerking any device equipped with one or more hooks through the water for the purpose of impaling fish.

6. We prohibit swimming or wading in any areas of the refuge.

**Pinckney Island National Wildlife Refuge.**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must have a signed refuge permit on your person at all times. We require payment of a fee for the quota gun hunt. You may obtain information about the quota hunt drawing at the refuge headquarters in Savannah, Georgia.

2. Hunters must check-in at the designated check station between 4 a.m. and 5 a.m. and park in the designated area prior to hunting. We require personal identification at check-in.

3. Any movement within the refuge must be by foot or bicycle. We limit entry and exit points for authorized motor vehicles to designated check stations or other specified areas (*see* § 27.31 of this chapter). We prohibit entry by boat, and we prohibit hunters to leave by boat to reach other parts of the island.

4. We require hunters to wear an outer garment that contains a minimum of 500 square inches (3,250 $cm^2$) of hunter-orange material above the waistline.

5. We prohibit participating in organized drives for deer.

6. Each hunter may place one stand on the refuge during the week (Monday through Friday only) preceding the hunt. You must remove all stands (*see* § 27.93 of this chapter) at the end of the hunt.

7. We prohibit camping on the refuge.

8. We only allow shotguns, 20 gauge or larger, with slugs.

9. If you are a hunter on the refuge, you must be at your stand from ½ hour before legal sunrise until 9 a.m. and from 2 hours before legal sunset until legal sunset.

10. We prohibit hunting closer than 100 yards (90 m) to U.S. Highway 278 or the check station area, or closer than 200 yards (180 m) to the residence area.

11. We prohibit flagging, blazing, or using other trail-marking devices to locate stands or for any other purpose.

12. Refuge personnel must check deer harvested during a scheduled hunt before hunters leave the refuge.

13. You may take five deer (no more than four antlerless).

14. We close the refuge to the public on hunt days.

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**Savannah National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck and coot on designated areas north of South Carolina Highway 170 of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge permit at all times while hunting on the refuge. Permits and general hunting information are available at the refuge headquarters in Savanna, Georgia.

2. We only allow temporary blinds. You must remove decoys and other personal property (see § 27.93 of this chapter) from the refuge daily.

3. We prohibit hunting within 100 yards (90 m) of South Carolina Highway 170.

*B. Upland Game Hunting.* We allow hunting of squirrel November 1 through November 30 on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge permit at all times while hunting on the refuge. Permits and hunt information are available at the refuge headquarters in Savannah, Georgia.

2. We only allow .22 caliber rimfire rifles or shotguns with #2 shot or smaller for squirrel hunting.

3. We prohibit handguns.

4. We prohibit the use of dogs.

5. You may take feral hog with weapons legal for this hunt (no bag limit).

6. We require a big game license.

7. We require hunters to wear an outer garment that contains a minimum of 500 square inches (3,250 $cm^2$) of hunter-orange material above the waistline (except during the archery-only deer hunt, the turkey hunt, and the waterfowl hunt).

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge permit at all times. We require payment of a fee for the wheelchair-dependent hunters' quota gun hunt for deer. Permits, quota hunt applications, and information about the quota hunt drawing are available at the refuge headquarters in Savannah, Georgia.

2. We allow archery hunting for deer and hog from October 1 through October 31 on designated areas.

3. We only authorize bows for deer/hog hunting during the archery hunt.

4. We allow gun hunting for deer and hog during the archery hunt.

5. We only allow shotguns with slugs, muzzleloaders, and bows for deer and hog hunting throughout the designated hunt area. However, we only allow centerfire rifles of .22 caliber or larger north of Interstate Highway 95. We prohibit handguns.

6. You may take five deer, no more than three antlerless and two antlered. There is no bag limit on feral hogs.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing in refuge impoundments and canals from March 1 through November 30 annually.

2. We allow fishing in Kingfisher Pond year-round.

3. We allow fishing from legal sunrise to legal sunset.

4. We allow fishing year-round in the canals adjacent to the wildlife drive.

5. Anglers may only use nonmotorized boats and boats with electric motors within impounded water.

**Waccamaw National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry at all times while hunting a signed, current refuge hunting regulations brochure containing a refuge hunt permit. The hunt permit is invalid until signed by the hunter.

2. Each youth hunter (age 15 and under) must remain within sight and normal voice contact and under supervision of an adult age 21 or older. Youth hunters must have successfully

completed a State-approved hunter education course.

3. We only allow waterfowl hunting until 12 p.m. (noon) each Saturday during the State waterfowl season. Hunters may enter the refuge no earlier that 5 a.m. on hunt days and must be off the refuge by 2 p.m.

4. We allow scouting Monday through Friday during the waterfowl season. We prohibit possession of a firearm by anyone scouting. You must be off the refuge by 2 p.m.

5. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting all species of migratory birds on the refuge.

6. We require permanent blinds. You must remove portable blinds and decoys (*see* § 27.93 of this chapter) at the end of each day's hunt.

7. We only allow use of retrieving dogs while hunting.

8. We do not require hunter check-in and check out. There is no quota on the number of hunters.

9. We prohibit discharge of weapons (*see* § 27.42(a) of this chapter) for any purpose other than to take or attempt to take legal game animals during established hunting seasons.

10. We prohibit hunting on any unit for wildlife other than that which is officially opened and posted or entering any areas posted as "Closed'' or "No Hunting Zones''.

*B. Upland Game Hunting.* We allow hunting of gray squirrel, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A9, and A10 apply.

2. We only allow hunting on days designated annually by the refuge within the State season. We only allow upland game hunting on designated Refuge areas within Refuge Unit 1.

3. You may only possess approved nontoxic shot (*see* § 32.2(k)) in shotguns. We allow .22 caliber rimfire rifles.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, feral hog, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A9, and A10 apply.

2. We only allow hunting on days designated annually by the refuge within the State season.

3. We close refuge hunting areas to the general public during big game hunts.

4. We allow archery, muzzleloading (black powder) and centerfire rifles, and shotguns.

5. We prohibit crossbows, blow guns, and drugged arrows. We only allow muzzleloading rifles using a single projectile on the muzzleloader hunts. We prohibit buckshot, .22 caliber rimfire, and full-metal jacketed military ammunition.

6. Access into all refuge hunt areas for hunting and scouting is by foot or boat. We may open some refuge roads on hunt days. We prohibit ATVs (*see* § 27.31(f) of this chapter) and air boats on the refuge.

7. We allow scouting all year during daylight hours except during the State waterfowl season. During the waterfowl season, the same regulations that apply to scouting for waterfowl (A4), apply to scouting for big game species.

8. Hunters may enter the refuge no earlier than 5 a.m. on hunt days and must leave the refuge no later than 1 hour after legal sunset.

9. We do not require hunter check-in and check out.

10. The refuge limit on deer is one antlered buck per refuge hunt. Hunters can harvest an additional two antlerless deer per hunt during coinciding State doe days.

11. You may take feral hogs during refuge deer hunts. There is no size or bag limit on hog. We may offer special hog hunts during and after deer season to further control this invasive species. You must dispatch all feral hogs before removing them from the refuge.

12. We prohibit hunting on or within 100 feet (30 m) of all routes marked as roads or trails (*see* § 27.31 of this chapter) on the hunt brochure map.

13. You must hunt deer and feral hog from an elevated deer stand. We prohibit shooting a hog from a boat.

14. We only allow one portable tree stand per hunter and only during the actual days of each hunt. You must remove deer stands (*see* § 27.93 of this chapter) from the refuge no later than 3 days after each refuge big game hunt.

15. We allow use of flagging to make the site of hunter entry from roads or trails and again at the stand site. We allow use of clothes pins with reflective tape between these sites to make the route to the stand. Hunters must label all such markers with their full name and remove them (*see* § 27.93 of this chapter) at the end of the hunt.

16. We require hunters to wear an outer garment visible above the waist that contains a minimum of 500 square inches (3,250 $cm^2$) of solid, flourescent-orange material at all times during big game hunts except for turkey.

17. We prohibit the use of organized drives, including the use of boats, as an aid in the taking or attempting to take big game species.

18. We prohibit distribution of bait or hunting over a baited area (*see* § 32.2(h)).

19. We limit turkey hunts to annual quota hunts. We will select hunters by a random drawing. Selected hunters must sign, possess, and carry a Refuge Turkey Hunt Permit at all times during the hunt.

20. We prohibit turkey hunters from calling a turkey for another hunter unless both hunters have Refuge Turkey Hunt Permits.

21. We prohibit turkey hunting in Refuge Units 2 and 3.

22. Turkey hunts end each day at 1 p.m., and you must unload and case or dismantle all weapons (*see* § 27.42 of this chapter) after 1 p.m.

23. During turkey hunts we only allow one weapon per hunter.

24. The bag limit for the entire hunt is one bearded turkey.

*D. Sport Fishing.* We allow fishing in accordance with State regulations.

41. Amend § 32.61 South Dakota by:

a. Adding "Devils Lake Wetland Management District;''

b. Adding "Huron Wetland Management District;''

c. Revising "Lacreek National Wildlife Refuge;''

d. Adding "Lake Andes Wetland Management District;''

e. Adding "Madison Wetland Management District;''

f. Revising "Sand Lake National Wildlife Refuge;''

g. Adding "Sand Lake Wetland Management District;''

h. Revising the listing "Wauby National Wildlife Refuge'' to read "Waubay National Wildlife Refuge'' and revising the content; and

i. Adding "Waubay Wetland Management District'' to read as follows:

**§ 32.61 South Dakota.**

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**Devils Lake Wetland Management District**

*A. Migratory Game Bird Hunting.* We close the following waterfowl production areas (WPA) to all forms of hunting in the district: Little Goose and Lambs Lake WPA in Nelson County; Pleasant Lake WPA in Benson County; and Hart, Nelson, and Vold WPAs in Grand Forks County. We allow hunting of migratory game birds throughout the district in accordance with State regulations except as noted above. We prohibit hunting on portions of the Kellys Slough WPA in Grand Forks County as posted.

*B. Upland Game Hunting.* We allow hunting of upland game throughout the

district except as noted in A. above. We prohibit hunting on portions of the Kellys Slough WPA in Grand Forks County as posted. All hunting is in accordance with State regulations subject to the following condition: You may only possess approved nontoxic shot while in field (*see* § 32.2(k)).

*C. Big Game Hunting.* We allow hunting of big game throughout the district except as noted in A. above. We prohibit hunting on portions of Kellys Slough WPA in Grand Forks County as posted. All hunting is in accordance with State regulations subject to the following conditions:

1. We require a "Lake Alice Refuge Permit'' in order to hunt white-tailed deer with a firearm on the Tarvasted WPA in Ramsey County.

2. We prohibit the construction or use of permanent stands or platforms.

*D. Sport Fishing.* We allow sport fishing throughout the district in accordance with State regulations except for Kellys Slough, Hart, Nelson, and Vold WPAs in Grand Forks County.

**Huron Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the wetland management district (WMD) in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the WMD in accordance with State regulations.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the WMD in accordance with State regulations subject to the following condition: The name and address of the owner or user, or the year and big game tag number of the owner or user of portable tree stands must be on the stand and legible from the ground.

*D. Sport Fishing.* We allow sport fishing on designated areas of the WMD in accordance with State regulations.

**Lacreek National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, common snipe, sandhill crane, American crow, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following condition: We only allow hunting of migratory game birds on the Little White River Recreation Area.

*B. Upland Game Hunting.* We allow hunting of cock ring-necked pheasant and sharptail grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit on all areas, except the Little White River Recreation Area.

2. We prohibit hunting with the aid of a motor vehicle. No person may discharge a firearm within ½ mile (.8 km) of any motor vehicle available for his/her transportation unless that motor vehicle is parked in a designated parking area.

*C. Big Game Hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require a State permit for muzzleloader deer hunting.

2. You must possess and carry a refuge permit for archery deer hunting.

3. Condition B2 applies.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing on Pools 3, 4, 7, 10, the Little White River Recreation Area, and Cedar Creek Trout Ponds 2 and 3.

2. We allow boats with motors on all areas open to fishing, except the Trout Ponds.

3. No person may violate the "no-wake zone'' that includes all waters within 500 feet (150 m) of the shoreline or emergent marsh vegetation on any refuge pool, except the Little White River Recreation Area.

4. We prohibit the use or possession of live minnows or bait fish on all waters of the refuge except the Little White River Recreation Area.

5. We restrict fishing to ½ hour before legal sunrise and to ½ hour after legal sunset on all refuge waters open to fishing, except the Little White River Recreation Area.

**Lake Andes Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the wetland management district (WMD) in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the WMD in accordance with State regulations.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the WMD in accordance with State regulations subject to the following condition: The name and address of the owner or user, or the year and big game tag number of the owner or user of portable tree stands must be on the stand and be legible from the ground.

*D. Sport Fishing.* We allow sport fishing on designated areas of the WMD in accordance with State regulations.

**Madison Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the wetland management district (WMD) in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the WMD in accordance with State regulations.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the WMD in accordance with State regulations subject to the following condition: The name and address of the owner or user, or the year and big game tag number of the owner or user of portable tree stands must be on the stand and be legible from the ground.

*D. Sport Fishing.* We allow sport fishing on designated areas of the WMD in accordance with State regulations.

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**Sand Lake National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to use the spaced perimeter blinds on a first-come, first-served basis located along those posted sections of road right-of-way closed to hunting.

2. We restrict vehicle parking to designated parking lots in the vicinity of the waterfowl blind areas (*see* § 27.31 of this chapter).

3. Unarmed hunters may retrieve downed waterfowl up to 100 yards (90 m) inside the refuge boundary.

*B. Upland Game Hunting.* We allow hunting of pheasant, sharp-tailed grouse, and partridge on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. The game bird season begins the Monday following closure of the refuge firearms deer season and continues through December 31.

2. Refuge access is "walk-in'' only. We prohibit motor vehicles, bicycles, snowmobiles, and all-terrain vehicles (*see* § 27.31(f) of this chapter).

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Only firearms deer hunters with a Sand Lake refuge permit (you must possess and carry) may hunt deer on the refuge.

2. Hunters with a valid State archery license may hunt on the refuge during the established refuge archery deer

season. Consult the refuge manager for current season dates.

3. All individuals afield during the refuge firearms deer season must wear a minimum of 400 square inches (2,600 $cm^2$) of solid fluorescent orange material on the head, chest, and back that must be visible at all times.

4. We allow portable, elevated hunting platforms not attached to trees and portable ground blinds, but they must bear the name and address of the owner or user or the year and big game tag number of the owner or user. The labeling must be readily visible and legible.

5. Beginning the Saturday after August 25 licensed archery deer hunters and firearms deer hunters holding refuge permits (you must possess and carry) may place tree stands, elevated platforms, and portable ground blinds on the refuge. Hunters must remove all such devices (*see* § 27.93 of this chapter) by February 15.

6. Deer hunters may enter the refuge 1 hour before legal shooting time and remain no longer than 1 hour after shooting time ends.

7. Refuge access is "walk-in'' only. We allow vehicles on designated refuge roads ONLY for retrieving harvested deer and ONLY during the following times: 9:30–10 a.m., 1:30–2 p.m., and from the end of legal shooting time to 1 hour after the end of shooting time (*see* § 27.31 of this chapter).

8. We restrict vehicle parking to designated parking lots in the vicinity of the waterfowl blind areas (*see* § 27.31 of this chapter).

9. We prohibit bicycles, snowmobiles, and all-terrain vehicles at all times (*see* § 27.31(f) of this chapter).

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Fishing hours are ½ hour before legal sunrise to ½ hour after legal sunset.

2. We prohibit motorized vehicles on the ice during winter (*see* § 27.31 of this chapter).

3. We allow ice fishing shanties, but anglers must remove them (*see* § 27.93 of this chapter) daily.

4. We prohibit open fires (*see* § 27.95 of this chapter).

**Sand Lake Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the wetland management district (WMD) in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the WMD in accordance with State regulations.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the WMD in accordance with State regulations subject to the following condition: The name and address of the owner or user, or the year and big game tag number of the owner or user of portable tree stands must be on the stand and be legible from the ground.

*D. Sport Fishing.* We allow sport fishing on designated areas of the WMD in accordance with State regulations.

**Waubay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow deer hunting on designated areas in accordance with State regulations subject to the following conditions:

1. We prohibit deer hunting on Headquarters Island.

2. We prohibit erecting tree stands prior to hunt start dates. Hunters must remove them (*see* § 27.93 of this chapter) by the end of the hunt.

3. Hunters may launch nonmotorized watercraft from designated access points to travel to islands.

4. We close archery seasons during refuge firearm seasons.

5. We prohibit deer drives during archery seasons. We define a drive as the act of chasing, pursuing, disturbing, or otherwise directing deer so as make the animals more susceptible to harvest by another hunter.

6. Refuge firearm hunters must wear a minimum of 400 square inches (2,600 $cm^2$) of solid flourescent-orange material on the head, chest, and back.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow ice fishing after refuge firearm deer seasons close. We prohibit open water fishing at any time.

2. Anglers must not be on the ice until 1 hour prior to legal sunrise and must be off the ice by 1 hour after legal sunset.

3. Anglers must remove ice shacks (*see* § 27.93 of this chapter) daily prior to closed fishing hours.

4. We restrict angler foot travel to posted access points, public roads, and lake ice.

**Waubay Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the wetland management district (WMD) in accordance with State regulations.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the WMD in accordance with State regulations.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the WMD in accordance with State regulations subject to the following condition: The name and address of the owner or user, or the year and big game tag number of the owner or user of portable tree stands must be on the stand and be legible from the ground.

*D. Sport Fishing.* We allow sport fishing on designated areas of the WMD in accordance with State regulations.

42. Amend § 32.62 Tennessee by:

a. Revising "Chickasaw National Wildlife Refuge;''

b. Revising "Cross Creeks National Wildlife Refuge;''

c. Revising "Hatchie National Wildlife Refuge;''

d. Revising "Lake Isom National Wildlife Refuge;''

e. Revising "Lower Hatchie National Wildlife Refuge;'' and

f. Revising "Tennessee National Wildlife Refuge'' to read as follows:

**§ 32.62 Tennessee.**

* * * * *

**Chickasaw National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, merganser, mourning dove, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge (*see* § 27.31(f) of this chapter).

3. You must possess and carry a valid refuge permit while hunting on the refuge.

4. Legal hunting hours for duck, goose, coot, and merganser are ½ hour before legal sunrise to 12 p.m. (noon)

5. Mourning dove, woodcock, and snipe seasons close during youth, gun, and muzzleloader deer seasons.

6. You may only use portable blinds, and you must remove all boats, blinds, and decoys (see § 27.93 of this chapter) from the refuge by 1 p.m. daily.

7. We allow hunters to access the refuge no more than 2 hours before legal sunrise and no more than 2 hours after legal sunset.

8. Each youth hunter (under age 16) must remain within sight and normal voice contact and under supervision of an adult age 21 or older. One adult hunter may supervise no more than two youth hunters.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail,

raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, and A7 through A8 apply.

2. We do not open for spring squirrel hunting on the refuge.

3. We do not open for squirrel, rabbit, and quail hunting during all firearms and muzzleloader deer seasons.

4. We allow hunting for raccoon and opossum from legal sunset to legal sunrise.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3 and A7 through A9 (adult may supervise no more than one youth hunter) apply.

2. You may only participate in the refuge turkey hunts with a special quota permit issued through a random drawing. You may obtain information for permit applications at the refuge headquarters.

3. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting turkey.

4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* § 27.93 of this chapter) from the refuge at the end of the day's hunt.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing with pole and line or rod and reel.

2. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks, while fishing on the refuge.

3. You may use a bow and arrow or a gig to take nongame fish on refuge waters.

4. We allow fishing from legal sunrise to legal sunset.

5. We prohibit taking of frog or turtle on the refuge (*see* § 27.21 of this chapter).

**Cross Creeks National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrel on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.

2. You must possess and carry a valid refuge permit while hunting on the refuge.

3. We set and publish season dates and bag limits annually in the refuge public use regulations available at the refuge office.

4. We prohibit hunting within 50 yards (45 m) of any building, public use road, or boat launching ramp.

5. We allow hunters access to the refuge from 1½ hours before legal sunrise to 1½ hours after legal sunset.

6. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge (*see* § 27.31(f) of this chapter).

7. We prohibit the use of horses or other animal conveyances on refuge hunts.

8. Each youth hunter (under age 16) must remain within sight and normal voice contact of an adult age 21 or older. One adult hunter may supervise no more than two youth hunters.

9. We do not open for squirrel hunting.

*C. Big Game Hunting.* We allow the hunting of white-tailed deer (archery only) and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B8 (one adult hunter may supervise no more than one youth hunter) apply.

2. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* § 27.93 of this chapter) from the refuge at the end of each day's hunt.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing on refuge pools and reservoirs from March 16 through November 14 from legal sunrise to legal sunset.

2. We prohibit bows and arrows, trotlines, limblines, jugs, and slat baskets in refuge pools and reservoirs.

3. We prohibit taking of frog and turtle on the refuge (*see* § 27.21 of this chapter).

4. We prohibit leaving boats unattended on the refuge.

**Hatchie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a valid refuge permits and report game taken as specified within the permit. The free refuge hunting and fishing regulation leaflet serves as the refuge permit when properly signed.

2. We prohibit hunting within 100 yards (90 m) of refuge buildings.

3. We allow hunters to access the refuge no more than 1 hour before legal sunrise and no more than 1 hour after legal sunset.

4. We only allow waterfowl hunting on Tuesdays, Thursdays, and Saturdays from ½ hour before legal sunrise until 12 p.m. (noon) throughout the State early wood duck and the regular duck season.

5. We only allow portable blinds and blinds made of native herbaceous vegetation, which must be removed from the refuge following each day's hunt.

6. Each youth hunter (under age 16) must remain within sight and normal voice contact of an adult age 21 or older. One adult hunter may supervise no more than two youth hunters.

7. You may take beaver, coyote, and armadillo incidental to any legal hunting activity.

*B. Upland Game Hunting.* We allow the hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3 and A6 and A7 apply.

2. You may hunt for raccoon and opossum from legal sunset to legal sunrise.

3. We prohibit upland game hunting the night before and during the refuge deer archery and gun-deer hunting seasons.

4. We do not open for spring squirrel hunting.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3, A6 (each adult may supervise one youth hunter) and A7 apply.

2. We set season dates and bag limits annually and publish them in the refuge public use regulations available at the refuge office.

3. You may only participate in the refuge firearms deer hunts with a special quota permit issued through random drawing. Information for permit applications is available at the refuge headquarters.

4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* § 27.93 of this chapter) from the refuge at the end of each day's hunt.

*D. Sport Fishing.* We allow fishing on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. Anglers must possess and carry a valid refuge permit. The free refuge hunting and fishing permit serves as the refuge permit when properly signed.
2. You must only use boats propelled by electric motors or hand power.
3. You must only use pole and line or rod and reel.
4. You must use refuge boat ramps for launching boats.
5. We do not open Oneal Lake to fishing except for authorized events.
6. You must immediately release all largemouth bass under 14 inches (30 cm) in length on Goose and Quail Hollow Lakes.
7. We only open Goose Lake for bank fishing.

**Lake Isom National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrel and raccoon on the refuge in accordance with State regulations subject to the following conditions:
1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.
2. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge (*see* § 27.31(f) of this chapter).
3. We set and publish season dates and bag limits annually in the refuge Public Use Regulations available at the refuge office.
4. You must possess and carry a valid refuge permit and report game taken as specified within the permit.
5. We allow hunters to access the refuge no more than 2 hours before legal sunrise and no more than 2 hours after legal sunset.
6. Hunting hours for raccoon are 7 p.m. to 12 p.m. (midnight).
7. Each youth hunter (under age 16) must remain within sight and normal voice contact of an adult age 21 or older. One adult hunter may supervise no more than two youth hunters.

*C. Big Game Hunting.* We allow archery only hunting for white-tailed deer on the refuge in accordance with State regulations subject to the following conditions:
1. Conditions B1 through B5, B7 (each adult may only supervise one youth hunter) apply.
2. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* § 27.93 of this chapter) from the refuge at the end of each day's hunt.

*D. Sport Fishing.* We allow fishing on the refuge in accordance with State regulations subject to the following conditions:
1. We open all waters of Lake Isom to fishing only from March 16 through November 14 from legal sunrise to legal sunset.
2. We only allow boats with electric or outboard motors of 10 hp or less.
3. We prohibit taking frog or turtle from refuge waters (*see* § 27.21 of this chapter).

**Lower Hatchie National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, goose, coot, merganser, mourning dove, woodcock, and snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:
1. The refuge is a day-use area only with the exception of legal hunting/fishing activities.
2. We prohibit the use of motorized off-road vehicles (*e.g.,* ATVs) on the refuge (*see* § 27.31(f) of this chapter).
3. You must possess and carry a valid refuge permit and report game taken as specified within the permit.
4. Legal hunting hours for duck, goose, coot, and merganser are ½ hour before legal sunrise to 12 p.m. (noon).
5. We do not open for mourning dove, woodcock, and snipe seasons during all firearms and muzzleloader deer seasons.
6. You may only use portable blinds, and you must remove all boats, blinds, and decoys (*see* § 27.93 of this chapter) from the refuge by 1 p.m. daily.
7. We allow hunters to access the refuge no more than 2 hours before legal sunrise and no more than 2 hours after legal sunset.
8. We do not open Sunk Lake Public Use Natural Area to migratory game bird hunting.
9. Each youth hunter (under age 16) must remain within sight and normal voice contact of an adult age 21 or older. One adult hunter may supervise no more than two youth hunters.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, quail, raccoon, and opossum on designated areas of the refuge and the northern unit of Sunk Lake Public Use Natural Area in accordance with State regulations subject to the following conditions:
1. Conditions A1 through A3, A7, and A9 apply.
2. We do not open for spring squirrel hunting on the refuge.
3. We do not open for squirrel, rabbit, and quail hunting during all firearms and muzzleloader deer seasons.
4. Hunting hours for raccoon and opossum are legal sunset to legal sunrise.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:
1. Conditions A1 through A3, A7, A8, and A10 (each adult may only supervise one youth hunter) apply.
2. You may only participate in the refuge turkey hunts with a special quota permit issued through random drawing. Information for permit applications is available at the refuge headquarters.
3. You may only possess approved nontoxic shot while hunting turkey (*see* § 32.2(k)).
4. We only allow the use of portable blinds and tree stands on the refuge. You must remove blinds, tree stands, and all other personal equipment (*see* § 27.93 of this chapter) from the refuge at the end of each day's hunt.
5. We only allow archery deer hunting on the northern unit of Sunk Lake Public Use Natural Area.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge and the Sunk Lake Public Use Natural Area in accordance with State regulations subject to the following conditions:
1. We only allow fishing from legal sunrise to legal sunset.
2. We only allow fishing with pole and line or rod and reel.
3. We prohibit possession of unauthorized fishing gear, including trotlines, limblines, juglines, yo-yos, nets, spears, and snag hooks, while fishing on the refuge.
4. You may use a bow and arrow or a gig to take nongame fish except paddlefish on refuge waters.
5. We prohibit taking frog or turtle on the refuge (*see* § 27.21 of this chapter).
6. We seasonally close the sanctuary area of the refuge and the southern unit of Sunk Lake Public Use Natural Area to the public November 15 through March 15.
7. We only allow the use of nonmotorized boats and boats with electric motors on Sunk Lake Public Use Natural Area.

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**Tennessee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrel and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:
1. The refuge is a day-use area only, with the exception of legal hunting/fishing activities.
2. We require a refuge hunt permit for all hunters age 16 and older. We charge a fee for all hunt permits. You must possess and carry a valid refuge hunt permit while hunting on the refuge.

3. We set and publish season dates and bag limits annually in the refuge Public Use Regulations available at the refuge office.

4. We prohibit hunting within 50 yards (45 m) of any building, public use road, or boat launching ramp.

5. We allow hunters access to the refuge from 1½ hours before legal sunrise to 1½ hours after legal sunset.

6. We allow hunting for raccoon from legal sunset to legal sunrise.

7. We prohibit the use of motorized off-road vehicles (*e.g.*, ATVs) on the refuge (*see* § 27.31(f) of this chapter).

8. We prohibit the use of horses and other animal conveyances on refuge hunts.

9. Each youth hunter (under age 16) must remain within sight and normal voice contact and under supervision of an adult age 21 or older. One adult may supervise no more than two youth hunters.

10. We do not open for spring squirrel hunting on the refuge.

11. You may take coyote and beaver incidental to legal hunting activities.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1 through B5, B7 through B9 (each adult may only supervise one youth hunter), and B11 apply.

2. You may only participate in the refuge quota deer hunts with a special quota permit issued through random drawing. Information for permit applications is available at the refuge headquarters.

*D. Sport Fishing.* We allow fishing on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing in Swamp Creek, Sulphur Well Bay, Bennetts Creek, and all interior impoundments from March 16 through November 14. The remainder of the refuge portion of Kentucky Lake will remain open year-round. We allow bank fishing year-round along Refuge Lane, from the New Johnsonville Pump Station, and from Busseltown Pump Station areas.

2. We limit boats to no wake speed on all refuge impoundments.

3. We prohibit leaving boats unattended on the refuge.

4. We allow fishing on interior refuge impoundments from legal sunrise to legal sunset.

5. We close the Grassy Lake heron rookery to all public entry as posted November 15 through August 31.

6. We prohibit taking frog or turtle on the refuge (*see* § 27.21 of this chapter).

43. Amend § 32.63 Texas by:

a. Revising paragraphs A. and D. of "Anahuac National Wildlife Refuge;"

b. Adding paragraphs C.12. and C.13. of "Aransas National Wldlife Refuge;"

c. Revising paragraph A. of "Big Boggy National Wildlife Refuge;"

d. Revising paragraphs A. and D. of "Brazoria National Wildlife Refuge;"

e. Revising paragraphs C. and D. of "Laguna Atascosa National Wildlife Refuge;"

f. Revising paragraphs A. and C. of "Lower Rio Grande Valley National Wildlife Refuge;"

g. Revising paragraphs A. and D. of "McFaddin National Wildlife Refuge;"

h. Revising paragraph A. of "San Bernard National Wildlife Refuge;"

i. Revising paragraphs A. and D. of "Texas Point National Wildlife Refuge;" and

j. Revising "Trinity River National Wildlife Refuge" to read as follows:

**§ 32.63 Texas.**

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**Anahuac National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunting permit while hunting on all hunt units of the refuge.

2. Hunters may enter the refuge hunt units no earlier than 4 a.m. Hunting starts at the designated legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 12:30 p.m. We close refuge hunt units on Thanksgiving, Christmas, and New Year's Day.

3. We allow hunting in portions of the East Unit on Saturdays, Sundays, and Tuesdays during the regular waterfowl season. We require payment of a $10.00 daily or $40.00 annual fee to hunt on the East Unit. All hunters must check-in and out through the check station when hunting the East Unit from a vehicle. We will allow a maximum of 100 hunters to access the East Unit by vehicle. We allow hunting in designated areas from East Bay Bayou, Jackson Ditch, and Onion Bayou via boat. We require hunters accessing the East Unit by boat from Jackson Ditch, East Bay Bayou, or Onion Bayou to pay the $40.00 annual fee. We prohibit access to the East Unit Reservoirs from Onion Bayou via boat. We prohibit use of motorized boats on the East Unit except on ponds accessed from Jackson Ditch.

4. We allow hunting on the East Unit Special Goose Hunt Areas by permit on a first-come, first-served basis the morning of the hunt. Hunters must have goose decoys to hunt the Special Goose Hunt Areas. We allow a minimum of two and a maximum of six persons per permit. All Special Goose Hunt Area hunters must accompany a valid permit holder. Individuals in each group must set up and stay in their permitted area and stay within 50 feet (15 m) of each other unless retrieving goose.

5. We randomly draw permits the morning of the hunt for the East Unit Special Duck Hunt Areas. Hunters must set up within 50 yards (45 m) of the post marker and must stay within 50 feet (15 m) of each other unless retrieving waterfowl. We allow a minimum of two and a maximum of six persons per permit.

6. We allow hunting in the Pace Tract daily during the September teal season and regular waterfowl season.

7. All hunters using the Oyster Bayou Boat Ramp must register at the main refuge entrance.

8. We allow hunting in portions of the Middleton Tract daily during the September teal season and on Saturdays, Sundays, and Wednesdays of the regular waterfowl season. We restrict motorized boats in inland waters of the Middleton Tract to motors of 25 hp or less or electric trolling motors.

9. Youth hunters, age 17 and younger, must be under the supervision of an adult age 18 or older.

10. We only allow shotguns for waterfowl hunting.

11. We prohibit the use of airboats, marsh buggies, ATVs (*see* § 27.31(f) of this chapter), and Jet Skis.

12. On inland waters of refuge hunt areas open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation of motorized boats on or through emergency wetland vegetation.

13. On inland waters of the refuge hunt areas open to motorized boats, we restrict the use of boats powered by air-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

14. We only allow vehicular travel on designated roads and in parking areas. We prohibit hunting from roads and blocking access to any road or trail entering or on the refuge (*see* § 27.31(h) of this chapter).

15. We prohibit pits and permanent blinds. We allow portable blinds or temporary native vegetation blinds. You must remove portable blinds (*see* § 27.93 of this chapter) from the refuge daily.

16. The minimum permitted distance between hunt parties is 200 yards (180 m).

17. Dogs accompanying hunters must be under the immediate control of handlers at all times (*see* § 26.21(b) of this chapter).

18. You must remove all decoys, boats, spent shells, marsh chairs, and other equipment (*see* § 27.93 of this chapter) from the refuge daily. We prohibit the use of plastic flagging, reflectors, or reflective tape.

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*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing and crabbing on shoreline areas on East Galveston Bay, along East Bay Bayou on the East Bay Bayou Tract, along West Line Road to the southern end of Shoveler Pond, and along the canal from the Oyster Bayou Boat Ramp to the southwest corner of Shoveler Pond.

2. We only allow fishing and crabbing with pole and line, rod and reel, or hand-held line.

3 . We allow cast-netting for bait for personal use along waterways in areas open to the public and along public roads.

4. We prohibit the use of trotlines, setlines, bows and arrows, gigs, or spears.

5. We prohibit boats and other flotation devices on inland waters. You may launch motorized boats into East Bay at the East Bay Boat Ramp on Westline Road and at the Oyster Bayou Boat Ramp (boat canal). You may launch nonmotorized boats along East Bay Bayou and along the shoreline on East Galveston Bay.

**Aransas National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

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12. We prohibit hunters possessing handguns during archery and rifle hunts. We allow the use of archery equipment and centerfire rifles in accordance with State law.

13. We only allow you to use biodegradable flagging to mark trails and your hunt stand location during the archery and rifle hunts on the refuge. We color code the flagging used each weekend during the rifle hunts. You must use the designated flagging color specified for particular hunt dates. We provide this information on the refuge hunt permit and in refuge regulations sent to permittees. You must remove flagging (*see* § 27.93 of this chapter) at the end of the hunt.

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**Big Boggy National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit pits and permanent blinds.

2. We only allow the use of airboats in tidal navigable waters unless otherwise posted.

3. We prohibit target practice on the refuge.

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**Brazoria National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit pits and permanent blinds.

2. You must possess and carry a refuge permit to hunt on certain portions of the hunting area.

3. We only allow the use of airboats in tidal navigable waters unless otherwise posted.

4. We prohibit target practice on the refuge.

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*D. Sport Fishing.* We allow fishing in accordance with State regulations subject to the following conditions:

1. We allow access for saltwater fishing by boat on Nick's, Salt, and Lost Lakes.

2. We allow access for shore fishing at Bastrop Bayou, Clay Banks and Salt Lake Public Fishing Areas, and Salt Lake Weir Dike.

3. We open Bastrop Bayou to fishing 24 hours a day; we prohibit camping.

4. We open all other fishing areas from legal sunrise to legal sunset.

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**Laguna Atascosa National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer, feral pig, and nilgai antelope on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to pay a fee and obtain a refuge hunt permit. We issue replacement permits for an additional nominal fee. All hunt fees are nonrefundable. We require the hunter to possess and carry a signed and dated refuge hunt permit.

2. We allow archery and firearm hunting on designated units of the refuge. We open Units 1, 2, 3, 5, 6, and 8 to archery hunting during dates designated in the refuge hunt pamphlet. We open Units 2, 3, 5, 6, and 8 to firearm hunting during dates designated in the refuge hunt pamphlet. We assign hunters to specific hunt units during firearm hunting. We prohibit hunting on the following areas: Adolph Thomae Jr. County Park in Unit 3, posted "No Hunting Zones'' within all hunt units, La Selva Verde Tract (Armstrong), Waller Tract, COHYCO, Inc. Tract, Bahia Grande Unit, and South Padre Island Unit.

3. We offer hunting during specific portions of the State hunting season. We determine specific deer hunt dates annually, usually in November and December. We publish this information in the refuge hunt brochure. We may provide special feral pig and nilgai antelope hunts to reduce populations at any time during the year.

4. We annually establish a specific bag limit for deer hunted on the refuge in the refuge hunt brochure. We have an unlimited bag limit on feral pig and nilgai antelope.

5. We require hunters to visibly wear 400 square inches (2,600 $cm^2$) of hunter orange, which includes wearing a minimum of 144 square inches (936 $cm^2$) visible on the chest, a minimum of 144 square inches (936 $cm^2$) visible on the back, and a hunter-orange hat or cap visible on the head. We allow hunter-orange camouflage patterns.

6. Each youth hunter (ages 12 through 17) must remain within sight and normal voice contact of an adult age 18 or older. Hunters must be at least age 12.

7. We only allow the use of shoulder-fired muzzleloaders, shotguns, and rifled firearms. We prohibit possession of a pistol or shotgun while hunting. Muzzleloader firearms must be .40 caliber or larger, and modern-rifled firearms must be center fired and .22 caliber or larger. We only allow shotguns of 12 gauge or larger; using rifled slugs or 00 buckshot. We prohibit loaded firearms (*see* § 27.42 of this chapter) in the passenger compartment of a motor vehicle (we define "loaded'' as having rounds in the chamber or magazine or on a muzzleloading firearm). We prohibit target practice or "sighting-in'' on the refuge.

8. We allow a 9-day scouting period, ending 1 week prior to the commencement of the refuge deer hunting season. A permitted hunter and a limit of two nonpermitted individuals may enter the hunt units during the scouting period. We allow access to the units during the scouting period from

legal sunrise to legal sunset. You must conspicuously display refuge-issued Hunter Vehicle Validation Tags/ Scouting Permits (available from the refuge office) face up on the vehicle dashboard.

9. We only allow hunters to enter the refuge 1 hour before legal shooting hours during the permitted hunt season. All hunters must check out daily at the refuge check station at the end of their hunt or no later than 1 hour after legal shooting hours.

10. We allow vehicle parking at Unit 1 and Unit 6 designated parking areas and along the roadsides of General Brandt Road (FM 106), Buena Vista Road, Lakeside Road, and County Road (*see* § 27.31 of this chapter).

11. We restrict vehicle access to service roads not closed by gates or signs (*see* § 27.31 of this chapter). You must only access hunt units by foot or bicycle.

12. We allow hunting from portable stands or by stalking and still hunting. There is a limit of one blind or stand per permitted hunter. You must attach hunter identification (name, address, permit number, and phone number), to the blind or stand. We prohibit attaching blinds and stands to trees or making blinds and stands from natural vegetation (*see* §§ 32.2(i) and § 27.51 of this chapter)). You must remove all blinds and stands (*see* § 27.93 of this chapter) at the end of the permitted hunt season.

13. We prohibit hunting with dogs.

14. Hunters must field-dress all harvested big game in the field and check the game at the refuge check station before removal from the refuge. You may quarter deer, feral pig, and nilgai antelope in the field as defined by State regulations. You may use a nonmotorized cart to assist with the transportation of harvested game animals.

15. We prohibit use of or hunting from any type of watercraft or floating device.

16. You must receive authorization from a refuge employee to enter closed refuge areas to retrieve harvested game.

*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing and crabbing from Adoph Thomae Jr. County Park on San Martin Lake of the Bahia Grande Unit, and on the South Padre Island Unit year-round.

2. We require payment of an entry fee and boat launch at Adolph Thomae Jr. County Park. We allow access to the park between 6 a.m. and 10 p.m. from June through October, and between 6 a.m. and 9 p.m. from November through May.

3. We only allow pole and line, rod and reel, hand line, dip net, or cast net for fishing. We prohibit the use of crab traps or pots for crabbing. Anglers must attend all fishing lines, crabbing equipment, or other fishing devices at all times.

4. We prohibit the taking and use of frog, salamander, and other amphibian as bait.

5. We allow the use of boats for sport fishing. You may launch boats at Adolph Thomae Jr. County Park. We only allow bank and wade fishing on the shoreline of San Martin Lake within the refuge boundary. We only allow access by foot behind posted refuge boundary signs.

6. We only allow camping at Adolph Thomae Jr. County Park.

**Lower Rio Grande Valley National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of mourning, white-winged, and white-tipped dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to pay a fee and obtain a refuge hunt permit. All hunt fees are nonrefundable. We require hunters to possess and carry a signed (by permittee and an authorized refuge staff member) refuge hunt permit.

2. We allow hunting on areas of the refuge during limited periods of the State-designated hunting season. We publish these dates in the refuge hunting sheet.

3. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

4. We require hunters to be at least age 12. Youth hunters, age 17 and younger must be under the supervision of an adult age 18 or older.

5. We determine the location and method of hunting each year and publish this information in the refuge hunting sheet.

6. We only allow parking in designated locations.

7. We allow the use of properly trained retrievers during these hunts.

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*C. Big Game Hunting.* We allow hunters to take white-tailed deer, feral hog, and nilgai antelope on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1 through A3 and A5 through A7 apply.

2. We annually establish bag limits for white-tailed deer based on survey data provided by the State. We establish no bag limits for feral hog or nilgai antelope.

3. We require hunters to visibly wear 400 square inches (2,600 $cm^2$) of hunter orange, which includes wearing a minimum of 144 square inches (936 $cm^2$) visible on the chest, a minimum of 144 square inches visible on the back, and a hunter-orange hat or cap visible on the head.

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**McFaddin National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed refuge hunting permit while hunting on all hunt units of the refuge.

2. Hunters must enter the refuge hunt units between 4 a.m. and ½ hour before the designated legal shooting time. Hunting starts at legal shooting time and ends at 12 p.m. (noon). Hunters must leave refuge hunt units by 12:30 p.m. We close refuge hunt units on Thanksgiving, Christmas, and New Year's Day.

3. You may access hunt areas by foot, nonmotorized watercraft, outboard motor boat, or airboat. Airboats may not exceed 10 hp with direct drive with a propeller length of 48 inches (120 cm) or less. Engines may not exceed 2 cylinders and 484 cc. We prohibit all other motorized vehicles. We prohibit marsh buggies, ATVs, and Jet Skis (*see* § 27.31(f) of this chapter).

4. On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

5. On inland waters of the refuge open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation of motorized boats on or through emergent wetland vegetation.

6. We allow hunting in the Central Hunt Units daily during the September teal season and on Saturdays, Sundays, and Tuesdays of the regular waterfowl season.

7. We only allow hunting in the Spaced Hunt Units on Saturdays, Sundays, and Tuesdays of the regular waterfowl season. We require payment of a $10.00 daily fee to hunt the Spaced Hunt Units. We allow a maximum of four hunters per area. Hunters must possess and carry Special Fee Area Permits while hunting.

8. We allow daily hunting in the Mud Bayou Hunt Unit during the September teal season and on Sundays, Wednesdays, and Fridays of the regular waterfowl season. We allow access by foot from the beach on Middleton Levee, or by boat from the Gulf Intracoastal Waterway via Mud Bayou.

9. Each youth hunter (age 17 and younger) must remain within sight and normal voice contact of an adult age 18 or older.

10. We only allow shotguns for waterfowl hunting.

11. We only allow vehicular travel on designated roads and in parking areas. We prohibit blocking access to any road or trail entering or on the refuge (*see* § 27.31(h) of this chapter).

12. We prohibit pits and permanent blinds. We allow portable blinds or temporary native vegetation blinds. You must remove portable blinds (*see* § 27.93 of this chapter) from the refuge daily.

13. The minimum permitted distance between hunt parties and between hunters and driveable roads and buildings is 200 yards (180 m). We prohibit hunting from roads or levees.

14. Dogs accompanying hunters must be under the immediate control of handlers at all times (*see* § 26.21(b) of this chapter).

15. You must remove all decoys, boats, spent shells, marsh chairs, and other equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge daily. We prohibit use of plastic flagging, reflectors, or reflective tape on the refuge.

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*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing and crabbing with pole and line, rod and reel, or handheld line.

2. We allow cast netting for bait for personal use along waterways in areas open to the public and along public roads.

3. We prohibit the use of trotlines, setlines, bows and arrows, gigs, or spears in inland waters.

4. We allow fishing and crabbing in 10-Mile Cut and Mud Bayou and in the following inland waters: Star Lake and Clam Lake. We also allow fishing and crabbing from the shoreline of the Gulf Intracoastal Waterway and along roadside ditches.

5. On inland waters of the refuge open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation of motorized boats on or through emergent wetland vegetation.

6. Condition A4 applies.

**San Bernard National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit pits and permanent blinds.

2. We require permits and payment of fees for the Sargent Permit Waterfowl Hunt, Big Pond Hunt Area, and Light Goose Conservation Order Season Permit Hunt Area. Hunters must abide by all terms and conditions set by the permits.

3. We only allow the use of airboats in tidal navigable waters unless otherwise posted.

4. We prohibit target practice on the refuge.

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**Texas Point National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must possess and carry a signed refuge hunting permit while hunting on the refuge.

2. Hunters must enter the refuge hunt unit between 4 a.m. and ½ hour before the designated legal shooting time. Hunting starts at legal shooting time and ends at 12 p.m. (noon). Hunters must be off refuge hunt units by 12:30 p.m. We close refuge hunt units on Thanksgiving, Christmas, and New Year's Day.

3. We allow hunting in portions of the refuge daily during the September teal season and on Saturdays, Mondays, and Wednesdays during the regular waterfowl season.

4. We allow access into hunt areas by foot, nonmotorized watercraft, outboard motor boat, or airboat. Airboats may not exceed 10 hp with direct drive with a propeller length of 48 inches (120 cm) or less, and engines may not exceed 2 cylinders and 484 cc. We prohibit other motorized vehicles. We prohibit marsh buggies, ATVs, and Jet Skis (*see* § 27.31(f) of this chapter).

5. On inland waters of the refuge open to motorized boats, we restrict the use of boats powered by air-cooled engines to those powered by a single engine of 25 horsepower or less and utilizing a propeller 9 inches (22.5 cm) in diameter or less.

6. On inland waters of the refuge open to motorized boats, we restrict the operation of motorized boats to lakes, ponds, ditches, and other waterways. We prohibit the operation or motorized boats on or through emergent wetland vegetation.

7. Each youth hunter (age 17 and younger) must remain within sight and normal voice contact of an adult age 18 or older.

8. We only allow shotguns for waterfowl hunting.

9. We only allow vehicle travel on designated roads and in designated parking areas (*see* § 27.31 of this chapter). We prohibit blocking access to any road or trail entering or on the refuge (*see* § 27.31(h) of this chapter).

10. We prohibit pits and permanent blinds. We allow portable blinds or temporary native vegetation blinds, but you must remove them (*see* § 27.93 of this chapter) from the refuge daily.

11. The minimum distance between hunt parties is 200 yards (180 m). We prohibit hunting from roads or levees.

12. Dogs must be under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

13. You must remove all decoys, boats, spent shells, marsh chairs, and other equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge daily. We prohibit use of plastic flagging, reflectors, or reflective tape on the refuge.

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*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing and crabbing in inland waters with pole and line, rod and reel, or handheld line.

2. We only allow cast netting for bait by individuals along waterways in areas open to the public and along public roads

3. We prohibit the use of trotlines, setlines, bows and arrows, gigs, or spears in inland waters.

4. Conditions A5 and A6 apply.

**Trinity River National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting on Champion Lake by drawing.

2. We require an application fee for participants to enter the drawing. After the State announces hunting dates, we will issue a refuge permit to those drawn. The hunter must possess and carry the permit at all times when hunting.

3. We only allow hunting on Champion Lake Saturdays and Sundays during the State duck season. Hunters may not enter the refuge until 5 a.m. and must be off the hunt area by 12 p.m. (noon).

4. We only allow portable blinds. Hunters must remove all blinds, decoys, shell casings, and other personal equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge following each day's hunt.

5. We limit motors to 10 hp or less.

6. We allow retrievers, but they must be under the immediate control of the hunter at all times.

7. Each youth hunter (age 17 and under) must remain within sight and normal voice contact and under supervision of an adult age 18 or older.

8. Hunt parties must keep a minimum distance of 150 yards (135 m) between them.

*B. Upland Game Hunting.* We allow hunting for squirrel and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require participants to pay an application fee to enter the hunt permit drawing. We issue a refuge permit to the individuals whose names are drawn. Successful participants must possess and carry these permits at all times. Permits are nontransferable.

2. We allow hunting during a designated 9-day season. Hunters may enter the refuge and park in an assigned parking area no earlier than 4:30 a.m. We allow hunting from ½ hour before legal sunrise to legal sunset. We will require hunters to return a data log card.

3. We prohibit hunting along refuge roads.

4. We prohibit the use of dogs, feeders, baiting, campsites, fires (*see* § 27.95 of this chapter), and all-terrain vehicles (*see* § 32.2(h)).

5. We restrict weapons to shotguns and rimfires.

6. Youth hunters age 17 and younger must be under the direct supervision of an adult age 18 or older.

7. The minimum distance we allow between hunt parties is 200 yards (180 m). We require hunters to visibly wear 400 square inches (2,600 $cm^2$) of hunter orange, which includes wearing a minimum of 144 square inches (936 $cm^2$) visible on the chest, a minimum of 144 square inches visible on the back, and a hunter-orange hat or cap visible on the head.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B1, B2, B4, B6, and B7 apply.

2. We only allow temporary blinds. We prohibit hunting or blind erection along refuge roads.

3. We restrict weapon type used depending on unit hunted. We publish this information on the refuge permit (you must possess and carry) and in the refuge hunt brochure.

*D. Sport Fishing.* We allow fishing on Champion Lake in accordance with State regulations subject to the following conditions:

1. We only allow fishing with pole and line, rod and reel, or hand-held line.

2. We prohibit the use of trotlines, setlines, bows and arrows, gigs, spears, fish traps, crab/crawfish traps or nets.

3. We prohibit the harvesting of frog or turtle (*see* § 27.21 of this chapter).

4. We allow fishing from legal sunrise to legal sunset.

5. We limit motors to a maximum of 10 hp. We prohibit fishing or enter within 200 yards (180 m) of an established bird rookery from March through the end of June. Check at refuge headquarters for rookery locations.

44. Amend § 32.64 Utah by:

a. Revising the introductory text of paragraph A., revising paragraph A.5., removing paragraphs A.7. and A.10. and redesignating paragraphs A.8. as A.7., A.9. as A.8, and adding paragraph A.9. of "Bear River Migratory Bird Refuge;'' and

b. Revising "Ouray National Wildlife Refuge'' to read as follows:

**§ 32.64 Utah.**

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**Bear River Migratory Bird Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and tundra swan on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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5. You may enter the refuge 2 hours before legal sunrise and must exit the refuge by 2 hours after legal sunset. We prohibit leaving decoys, boats, vehicles, and other personal property on the refuge overnight (*see* § 27.93 of this chapter).

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9. You may only possess 10 shells while hunting on or within 50 feet (15 m) from the center of Unit 1A or 2C dike.

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**Ouray National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of duck, coot, and goose within Leota Bottom in accordance with State regulations subject to the following conditions:

1. We prohibit hunting within 100 yards (90 m) of the Green River in Leota Bottom.

2. We close the Green River within the refuge boundaries to hunting.

3. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

4. We prohibit pits and permanent blinds.

5. You may use portable blinds or blinds constructed of native dead vegetation (*see* § 27.51 of this chapter).

6. You must remove all decoys, shell casings, portable and temporary blinds, and other personal equipment (*see* §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

7. We prohibit operation of a gas-powered boat or vehicle within Leota Bottom.

8. We prohibit possession or consumption of any alcoholic beverage while hunting (*see* § 32.2(j)).

9. During hunting season the refuge is open from 1½ hours before legal sunrise to 1½ hours after legal sunset. We gate and lock the main entrance on the west side of the Green River during closed hours.

10. We prohibit possession of a loaded firearm in your vehicle. You must unload, case, or dismantle all firearms (see § 27.42 of this chapter) when traveling through the refuge.

*B. Upland Game Hunting.* We allow hunting of pheasants within Leota, Johnson, Brennan, and portions of Wyasket Bottoms (the southern portion of Wyasket Bottom and all of Woods Bottom are leased Ute Tribal lands that require special permitting by the Ute Tribe) in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

2. We prohibit hunting the islands and sandbars within the Green River.

3. We prohibit hunting pheasants with a shotgun capable of holding more than three shells.

4. We prohibit hunting of turkey and quail.

*C. Big Game Hunting.* We allow hunting of mule deer within Leota, Johnson, Brennan, and the northern portion of Wyasket Bottom (the southern portion of Wyaket Bottom and all of Woods Bottom are leased Ute Tribal lands that require special permitting by the Ute Tribe) in accordance with State regulations subject to the following conditions:

1. You may hunt with the aid of a temporary tree stand that does not require drilling or nailing into the tree.

2. You must remove your tree stand (see § 27.93 of this chapter) no later than the last day of the hunting season for which you have a tag.

3. We prohibit hunting on the islands and sandbars within the Green River.

4. We prohibit hunting of pronghorn and elk.

*D. Sport Fishing.* We allow sport fishing within and on the banks of the Green River (the southernmost portion of the Green River within the Refuge Boundary requires a Ute Tribe fishing permit) in accordance with State regulations subject to the following conditions:

1. We prohibit fishing on the diked interior impoundments or canals.

2. You may only fish with the aid of a pole, hook, and line. We prohibit trot lines, bow and arrows, spears, spear guns, cross bows, and firearms.

3. You must release unharmed any of the four endangered fish if caught (razorback sucker, Colorado pike minnow, humpbacked chub, or bonytailed chub).

45. Amend § 32.65 Vermont by revising "Missisquoi National Wildlife Refuge'' to read as follows:

**§ 32.65 Vermont.**

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**Missisquoi National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, brant, merganser, coot, woodcock, and snipe in accordance with State regulations subject to the following conditions:

1. Waterfowl—For the hunting of goose, brant, duck, merganser, and coot we divide the refuge into six discrete waterfowl hunting units: the Delta Lakeshore Area, the Saxes Pothole/Creek and Shad Island Area, the Junior Waterfowl Hunting Area (including Long Marsh Bay, Patrick Marsh, and Charcoal Creek), the Long Marsh Channel and Metcalfe Island Area, and the Maquam Swamp Area. Conditions for each area are as follows:

i. Delta Lakeshore Area includes lakeshore areas from Shad Island to the south side of Martindale Point but does not include Saxes Pothole/Creek and Shad Island Pothole.

a. We prohibit blind staking, permanent blinds, or unattended decoys.

b. We prohibit jump shooting within 200 yards (180 m) of a party hunting from a boat or blind.

c. We do not require a refuge permit to hunt in this area.

d. This area is available to youth waterfowl hunters on Youth Waterfowl Hunting Weekend.

e. We prohibit entering closed areas of the refuge for any reason, except for the recovery of legally harvested animals, and in that case you may not carry a weapon (*see* § 27.42(a) of this chapter).

f. Unarmed hunters may scout open hunting areas before a particular season opens but in no case before September 1. We do not require a hunting permit for scouting.

ii. Maquam Shore Area encompasses a 30-acre area along the lakeshore of Maquam Bay and is bounded by private land on the west and a Vermont wildlife management area on the east.

a. Conditions A1i(a–f) apply.

iii. Saaxes Pothole/Creek and Shad Island Pothole encompasses Saxes Creek, Saxes Pothole, and Shad Island Pothole. This is a controlled hunting area. We stake and make available five zones (numbered 1–5) to five hunting parties in Saxe's Pothole, zone 6 is staked and available to one hunting party in Shad Island Pothole.

a. A hunting party consists of the hunter named on the permit and one guest hunter per zone per day. Nonhunters may accompany a hunting party.

b. Each hunting party must possess and carry a permit for the specific zone on the specific day they are hunting in this area. Permits are not transferable.

c. You may obtain permits for the period from the opening day of duck hunting season through the first Sunday of the duck hunting season, and for the second weekend of the duck hunting season through application to a preseason lottery. During the years when the State elects to have a split season, you may also obtain your permits for the second opening day through the following Sunday through application to the preseason lottery. On all other hunt days, you must acquire permits through self-registration at the Mac's Bend Landing no earlier than 2 hours before legal shooting time on the day of the hunt.

d. Hunters selected during the preseason lottery must pay a $10 fee. The refuge must receive the fee no earlier than 2 days before the opening of the season or forfeit the permit, which we will then make available to other hunters on a first-come, first-served basis. The fee is paid for any permit assigned before the day of the hunt. There is no fee for any permit obtained on the day of the hunt.

e. On those days that we draw permits by preseason lottery, hunters must sign in at the Mac's Bend Landing by 7 a.m. before going to the assigned zone. After 7 a.m. other hunters may sign in, self-register, and use unoccupied zones.

f. At the end of each daily hunt, you must sign out and deposit a report of hunt success at the Mac's Bend Landing. When you sign out, another party may sign in and use the vacated zone. You must sign out of a zone at Mac's Bend Landing prior to occupying a different hunting site in any of the controlled hunting areas.

g. You must hunt within 100 feet (30 m) of a numbered stake corresponding to your assigned zone. We prohibit jump shooting.

h. We allow use of retrievers.

i. You may only possess approved nontoxic shot shells (*see* § 32.2(k)) in quantities of 25 or less per day.

j. This area is open on a first-come, first-served basis to youth waterfowl hunters during the annual 2-day special Youth Waterfowl Hunting Weekend conducted in late September. We will hold no preseason drawing and assess no fee, however, youth hunters must self-register and submit a report of their hunt.

k. We prohibit entering closed areas of the refuge for any reason, except for the recovery of legally harvested animals, and in that case we prohibit carrying a weapon (*see* § 27.42(a) of this chapter).

l. Unarmed hunters may scout open hunting areas before a particular season opens but in no case before September 1. We do not require a hunting permit for scouting.

iv. Junior Waterfowl Hunting Area encompasses Long Marsh Bay, Patrick Marsh and that portion of Charcoal Creek south of Vermont Route 78. This is a controlled hunting area. We establish 11 blind sites for use by junior waterfowl hunters, blind sites 4–8 in Long Marsh Bay, blind sites C–F in Charcoal Creek, and blind sites A–B in Patrick Marsh.

a. Junior waterfowl hunters (ages 12–15, inclusive, at the time of the hunt) following successful completion of the annual training program (usually held the third or fourth Saturday in August) vie for blind site assignments during a lottery drawing at the conclusion of the training. The 11 blind sites are available exclusively to these junior waterfowl hunters and their mentors the first 4 Saturdays and Sundays of the duck season.

b. As an incentive to the adult volunteers who serve as mentors to junior waterfowl hunters, they will vie for blind site assignments during a lottery drawing at the conclusion of the annual junior waterfowl hunter training for the use of blind sites in the junior hunt area on the first Wednesday following the second weekend of the

season. This day is known as Mentor Day. We will collect no fee from mentors for this hunt day. We will make available blinds not assigned because of this lottery to other adult hunters via a preseason lottery.

c. Following the use of the blind sites in this area by junior hunters and junior hunter mentors, all blind sites are then available to all adult hunters by permit awarded via a preseason lottery for the second Wednesday following the second weekend of the duck season; and on weekends following the junior hunt by a first-come, first-served, self-registration, and permitting basis at the refuge headquarters.

d. Hunters, including junior hunters, with preregistered permits must sign in at refuge headquarters no later than 7 a.m. on the date of their scheduled hunt. After 7 a.m. other hunters may sign in, self-register, and use unoccupied blind sites. Only junior hunters may hunt on the first 4 Saturdays and Sundays of the season.

e. Each junior hunter must possess and carry a free permit for the assigned blind site and day. On Mentor Day, mentors must also possess and carry this free permit for the assigned blind site. Each adult hunting party must possess and carry a permit for the blind site and day they are hunting. Permits are not transferable.

f. The mentor must accompany the junior hunter who completed the training program with him or her. We include the mentor on the permit assigned to the junior hunter. A mentor may simultaneously oversee up to two junior hunters at one blind site.

g. Each adult hunter, except mentors on Mentor Day, must pay $10 for each permit issued because of the preseason lottery. Permits acquired by self-registration are free.

h. Only junior hunters may discharge a firearm in this area during the junior hunt periods.

i. We allow and recommend hunting from portable blinds and boat blinds constructed and place by the refuge for the junior waterfowl hunting program at some of the blind sites. Junior hunters, with the approval of the refuge manager, may construct stationary blinds and leave them in place for the duration of the season. Otherwise, we prohibit permanent blinds.

j. All hunting must take place within 100 feet (30 m) of the stake marking the blind area. We prohibit jump shooting.

k. This area is available to refuge-trained junior waterfowl hunters during the Youth Waterfowl Hunting Weekend in late September.

l. Shooting hours are from legal opening time until 11 a.m.

m. Hunters must deposit the Hunt Success Report portion of their permit at refuge headquarters at the end of the hunt.

n. A small flat-bottom boat, car-top boat, or canoe is necessary for access to Charcoal Creek and Patrick Marsh blind sites. Access is available at the Charcoal Creek crossing on Vermont Route 78 or from a pulloff on Route 78 about ¾ of a mile (1.2 km) east of the Charcoal Creek access.

o. You may only possess approved nontoxic shot shells (*see* § 32.2(k)) in quantities of 25 or less per day.

p. A hunting party consists of the hunter named on the permit and one guest hunter per blind site per day. Junior hunters may not invite a guest hunter unless it is another refuge-trained junior hunter. Nonhunters may accompany a hunting party.

q. You must use at least six decoys.

r. We prohibit entry to closed areas of the refuge for any reason, except for the recovery of legally harvested animals, and in that case you may not carry a weapon (*see* § 27.42(a) of this chapter).

s. Unarmed hunters may scout open hunting areas before a particular season opens but in no case before September 1. We do not require a hunting permit for scouting.

v. Long Marsh Channel and Metcalfe Island encompasses the Metcalfe Island Pothole and Long Marsh Channel. This is a controlled hunting area. We established three blind sites, designated 1–3, in Long Marsh Channel. We established three blind sites, designated 8–10, on Metcalfe Island.

a. We will limit hunting to Tuesdays, Thursdays, and Saturdays throughout the waterfowl hunting season for duck.

b. You may obtain permits for the first 5 days of the duck season through application to a preseason lottery. The procedure described in the Saxes Pothole/Creek and Shad Island controlled hunt area apply. Following the first 5 days, hunters may acquire permits on a first-come, first-served basis with self-service permitting and sign in at the Mac's Bend Landing, no more than 2 hours before legal shooting time.

c. Hunters selected during the preseason lottery must pay a $10 fee. The refuge must receive the fee no less than 2 days before the opening of the season or the permit will be forfeited and made available first to standby hunters identified at the time of the drawing, and second to other hunters on a first-come, first-served basis. The fee is paid for any permit assigned before the day of the hunt. There is no fee for any permit obtained on the day of the hunt.

d. On those days that we draw permits by preseason lottery, hunters must sign in at the Mac's Bend Landing by 7 a.m. before going to the assigned zone. After 7 a.m., other hunters may sign in, self-register, and use unoccupied zones.

e. Shooting hours will be from ½ hour before legal sunrise until 11 a.m.

f. At the end of each daily hunt, you must sign out and deposit a report of hunt success at the Mac's Bend Landing. When a party signs out, another party may sign in and use the vacated zone. Hunters must sign out of a zone at Mac's Bend Landing prior to occupying a different hunting site in any of the controlled hunting areas.

g. You must hunt within 100 feet (30 m) of a numbered stake corresponding to your assigned zone.

h. You must use a retriever.

i. You may only possess approved nontoxic shot shells (*see* § 32.2(k)) in quantities of 25 or less per day.

j. We prohibit blinds.

k. We prohibit jump shooting.

l. You must use at least six decoys.

m. You must use a boat to hunt at each of these blind sites.

n. This area is open on a first-come, first-served basis to youth waterfowl hunters during the annual 2-day special Youth Waterfowl Hunting Weekend conducted in late September. We will hold no preseason drawing and assess no fee, however, youth hunters must self-register and submit a report of their hunt.

o. We will close this area to waterfowl hunting during split seasons when goose are the only waterfowl that hunters may legally take.

p. We prohibit entry to closed areas of the refuge for any reason, except for the recovery of legally harvested animals, and in that case you may not carry a weapon (*see* § 27.42 of this chapter).

q. Unarmed hunters may scout open hunting areas before a particular season opens but in no case before September 1. We do not require a hunting permit for scouting.

vi. Marquam Swamp Area encompasses about 200 acres (80 ha) west of the Central Vermont Railroad and south of Coleman's inholding and is open to migratory bird hunting with the following special requirements:

a. Conditions A1ia and A1ic through A1if apply.

b. You must have a retriever.

c. We prohibit hunting within the area encompassing the headquarters nature trail. We identify this area with "No Hunting Zone'' signs.

2. Other migratory birds (including woodcock and common snipe):

i. The open area consists of the Delta Lakeshore Waterfowl Hunting Area

excluding the Saxe's Creek/Pothole and Shad Island Pothole controlled areas.

ii. You may hunt woodcock and snipe in the Maquam Swamp Area, but you must have a retriever.

iii. We do not require a permit to hunt woodcock and snipe in these areas.

iv. Conditions A1ie and A1if apply. 0

*B. Upland Game Hunting.* We allow hunting of cottontail rabbits, snowshoe hare, ruffed grouse, and gray squirrels on open areas of the refuge (designated in B2 below) in accordance with State regulations subject to the following conditions:

1. You must obtain a permit at refuge headquarters prior to hunting, and you must hold a valid State hunting license. We will collect a $10 fee for each permit issued. The permit applies for the calendar year of issue.

2. You may pursue upland game: east of the Missisquoi River and north of Goose Bay Pool (as indicated by public hunting area signs), on Shad Island, on all refuge lands west of Tabor Road, and on all refuge lands between Tabor Road and the Central Vermont Railroad bed to the east, except the marked area encompassing the headquarters nature trail and the land east of Charcoal Creek and north of the marked boundary near Coleman's inholding. We mark the headquarters trail area with "No Hunting Zone'' signs.

3. We only allow shotguns or muzzleloaders on open areas east of the Missisquoi River and on Shad Island.

4. You must use approved nontoxic shot (see § 32.2(k)) for the shotgun hunting of all upland game species except deer.

5. We prohibit hunting from the end of snowshoe hare and rabbit season through September 1.

6. We require you to submit an annual report of the results of your hunt by December 31. Failure to do so will result in denial of a permit the following year.

7. We prohibit entry into closed areas of the refuge for any reason, except for the recovery of legally harvested animals, and in that case you may not carry a weapon (*see* § 27.42(a) of this chapter).

8. Unarmed hunters may scout open hunting areas before a particular season opens but in no case before September 1. We do not require a hunting permit for scouting.

*C. Big Game Hunting.* We allow hunting of white-tailed deer in accordance with State regulations subject to the following conditions;

1. We prohibit hunting of bear, moose, or turkey.

2. You must obtain a permit at refuge headquarters prior to hunting, and you must hold a valid State hunting license. We will collect a $10 fee for each permit issued. The permit applies for the calendar year of issue. Permits issued to youth hunters (licensed hunters age 16 and under) for the Youth Deer Hunting Weekend are free.

3. You may pursue deer during State-designated archery and regular firearms seasons: east of the Missisquoi River and north of Goose Bay Pool (as indicated by public hunting area signs), on Shad Island, on all refuge lands west of Tabor Road, and on all refuge lands between Tabor Road and the Central Vermont Railroad bed to the east, except the marked safety zone encompassing the headquarters nature trail and the land east of Charcoal Creek and north of the marked boundary near Coleman's inholding.

4. We only allow shotguns, muzzleloaders, or archery equipment on open areas east and north of Vermont Route 78. We prohibit rifles in these areas at any time.

5. During the State-designated muzzleloader season and Youth Deer Hunting Weekend, you may hunt the entire area north of the line of public hunting area signs west of Mudgett Island, and all of Metcalfe Island, in addition to the open areas described in C3 above.

6. During the State regular firearms season, Youth Deer Hunting Weekend, and muzzleloader big game season, you must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

7. You may use portable tree stands in accordance with State regulations guiding their use on State Wildlife Management Areas. We require written approval from the refuge manager on your big game hunting permit prior to leaving a stand or blind unattended. We prohibit permanent stands and blinds (*see* § 27.93 of this chapter).

8. Conditions B6, B7, and B8 apply.

*D. Sport Fishing.* We allow fishing on areas described below in accordance with State regulations subject to the following conditions:

1. We allow sport fishing by boat in the west branch, east branch and main channel of the Missisquoi River, Dead Creek, and shallow water areas of the Missisquoi River delta from Goose Bay to Charcoal Creek (north of Vermont Route 78) with the following exceptions:

i. We close the following areas from ice out to July 15—Goose Bay, Saxes Creek and Pothole, Metcalfe Island Pothole, Long Marsh Channel, and Clark Marsh.

ii. We close the following areas from Labor Day to December 31—Long Marsh Bay and Long Marsh Channel.

2. We allow bank fishing along Charcoal Creek where it passes under Route 78, and along the shoreline of the Missisquoi River from refuge headquarters to Mac's Bend boat launch. Bank fishing is accessible only by foot along the Missisquoi River from Louie's Landing to Mac's Bend.

3. We prohibit fishing from any dike or from within any water management unit or any other area not specifically designated as being open under D1 and D2 above.

4. We allow ice fishing in open areas described in D1 above.

5. We allow bow fishing from a boat on refuge waters that are open to fishing as described in D1 above.

6. We prohibit taking fish with firearms within refuge boundaries.

7. We allow boat launching from Louie's Landing year-round. We allow boat launching from Mac's Bend boat launch area from September through November inclusive.

8. Anglers may collect minnows in accordance with State regulations from refuge open fishing areas for personal use. We prohibit collection of more than 2 quarts (1.9 l) per day from the refuge.

9. We authorize commercial bait dealers to take and transport minnows in excess of 2 quarts (1.9 l) per day only after acquiring a refuge Special Use Permit that will contain the following special conditions:

i. We require a $35 fee for the Special Use Permit.

ii. The permittee must possess and carry a Commercial Bait Dealer's Permit from the Vermont Commissioner of Fish.

iii. Excessive fish mortality and waste, as determined by the refuge manager, will result in revocation of the Special Use Permit and denial of future permit applications.

iv. The permittee must remove all traps and holding cages (*see* § 27.93 of this chapter) within 1 week of freeze up.

v. The Special Use Permit must be in the possession of the permittee or an employee of the permitee on site while on the refuge and is not transferable to another individual or party.

vi. The Special Use Permit does not grant or imply permission to obstruct any refuge road, parking area, boat launch, or waterway at any time.

vii. The permittee must keep all equipment used clean so as not to introduce aquatic nuisance species. The permittee must not clean or empty tanks and other equipment used into refuge waters.

viii. Failure to comply with conditions of the Special Use Permit

will result in its revocation and the denial of future permit applications.

46. Amend § 32.66 Virginia by:

a. Revising paragraphs C. and D. of "Back Bay National Wildlife Refuge;''

b. Revising "Chincoteague National Wildlife Refuge;''

c. Revising paragraph C. of "Eastern Shore of Virginia National Wildlife Refuge;''

d. Revising "Great Dismal Swamp National Wildlife Refuge;''

e. Revising paragraph C. of "James River National Wildlife Refuge;''

f. Revising paragraph C. of "Mackay Island National Wildlife Refuge;''

g. Revising "Mason Neck National Wildlife Refuge;''

h. Revising "Occoquan Bay National Wildlife Refuge;''

i. Revising paragraph A. of "Plum Tree Island National Wildlife Refuge;''

j. Revising paragraph C. of "Presquile National Wildlife Refuge;'' and

k. Revising paragraph C. of "Rappahannock River Valley National Wildlife Refuge;'' and

l. Revising paragraph C. of "Wallops Island National Wildlife Refuge'' to read as follows:

**§ 32.66 Virginia.**

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**Back Bay National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close the refuge to all other public uses beginning at legal sunrise on the first Saturday of October through legal sunset of the following Saturday.

2. We require a Special Use Hunting Permit. You must carry the signed permit your person while hunting. We issue permits on the day of the hunt at the Refuge Check Station.

3. We only allow shotguns 20 gauge or larger (loaded with buckshot or rifled slugs) and bow and arrow. We prohibit possession of loaded firearms (*see* § 27.42 of this chapter) or nocked arrows on refuge roads and Refuge Proclamation Waters.

4. We prohibit the use of dogs to hunt deer or feral hog.

5. You must be at least age 18 to hunt without an accompanying, qualified adult. Youths between ages 12 and 17 may only hunt when accompanied by a licensed nonhunting adult who is age 21 or older.

6. You must conspicuously wear a minimum of 400 square inches (2,600 cm2) of solid-colored, blaze-orange material on your head, chest, and back (the equivalent of a hat and vest for each hunter).

7. We reserve Hunting Zone 5 for use by nonambulatory hunters. We define a "nonambulatory'' hunter as "any person who presents a medical doctor's written statement that said person is permanently unable to walk.'' Zone 5 will be available to the general public only when nonambulatory hunters are not present.

8. We will decide reservations for hunt days and zones by a computerized lottery at the refuge headquarters in mid-September. You may obtain a hunt application by calling the Back Bay Refuge headquarters at (757) 721–2412 during August.

9. We restrict scouting to the week prior to the refuge hunt. We restrict access to hunting zones to travel by bicycle or on foot. Scouts must wear 400 square inches (2,600 cm2) of blaze orange. We prohibit weapons (*see* § 27.42(a) of this chapter) during scouting. Scouts must notify refuge staff daily prior to both entering and leaving a hunt zone.

10. You must register at the Refuge Entrance Fee Booth between 4 a.m. and 5 a.m. on the day of the hunt. After 5 a.m., we will allow standby hunters to fill vacant slots in a separate lottery. All hunters must check out at the Check Station no later than 6 p.m.

11. Transportation to Hunt Zone 7 (Long Island) is only by car-top boat (canoe, punt, row-boat, etc.) or from the canoe/kayak launch at refuge headquarters. Hunter-provided boats must meet Coast Guard safety requirements. We prohibit boats on trailers.

12. A Safety Zone runs from the Check Station to north of the headquarters parking lot. We prohibit hunting or discharging of firearms/bow and arrows within the Safety Zone. We prohibit retrieval of crippled game from a No Hunting Area or Safety Zone without the consent of the refuge employee on duty at the Check Station.

13. You must use safety belts at all times while you are in a tree stand.

14. We close the "Hacking Tower'' in Hunt Zone 3 to public access.

*D. Sport Fishing.* We allow fishing, noncommercial crabbing, and clamming on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We close all areas within the hunting zones, as well as the refuge oceanfront, to fishing, crabbing, and clamming during the annual refuge white-tailed deer and feral hog hunt, beginning at legal sunrise on the first Saturday in October through legal sunset of the following Saturday.

2. You must attend all fishing lines and crab pots at all times.

3. We prohibit on-site cleaning of fish.

4. We prohibit the taking of amphibian, reptile, marine mammal, aquatic invertebrate, or any other marine organism from refuge lands or waters.

5. We allow sportfishing, crabbing, and clamming access to Back Bay from the refuge headquarters parking lot only by foot, bicycle, and hand-launched, nontrailered boat.

6. We only allow surf fishing, crabbing, and clamming south of the refuge's beach access ramp.

7. For sportfishing in D Pool and at Horn Point:

i. We only allow fishing from the docks or banks. We prohibit boats, canoes, or kayaks on refuge pools and impoundments.

ii. We prohibit live minnows or other live bait fish for fishing in refuge pools and impoundments.

iii. We require barbless or flattened hooks for all fishing.

iv. Smallmouth bass, largemouth bass, and pickerel are catch-and-release only. The daily creel limit for D Pool for other species is a maximum combination of any 10 fish.

v. Parking for mobility-impaired visitors is available adjacent to the dock at D Pool. We require all other visitors to hike or bicycle.

**Chincoteague National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory duck, goose, swan, coot, and rail on Thursdays, Fridays, and Saturdays during the State seasons on designated areas of the refuge within Wildcat Marsh, Morris Island, Assawoman Island, and Metompkin Island Divisions in accordance with State regulations subject to the following conditions:

1. You must possess and carry while hunting on the refuge written authorization from the refuge. You may obtain hunting brochures containing an application for permission to hunt from the refuge administration building during normal business hours. The refuge administration office has available hunting brochures containing application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits.

2. Each youth hunter (under age 18) must remain within sight and normal voice contact and under direct supervision of an adult age 18 or older. The supervising adult must also possess and carry a State hunting license and a refuge permit.

3. You may only access hunting areas by boat.

4. You may only possess approved nontoxic shot (*see* § 32.2(k)) while hunting duck, goose, swan, coot, and rail.

5. You may erect portable blinds and deploy decoys, but you must remove the blinds and decoys (*see* § 27.93 of this chapter) daily.

6. You may use trained dogs to assist in the retrieval of harvested birds.

7. You must complete a harvest report card, provided by the refuge, after each hunt period. You must return the harvest report card to the refuge within 15 days of your permitted hunt.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer and sika in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. General hunt information:

i. You must possess and carry a refuge permit. We issue the permits based on a computer lottery system. You may obtain permit applications from the refuge administration office during normal business hours. Hunting brochures containing hunting application procedures, seasons, bag limits, methods of hunting, maps depicting areas open to hunting, and the terms and conditions under which we issue hunting permits are available from the refuge administration office.

ii. You must be age 12 or older to hunt on the refuge. An adult age 18 or older must accompany hunters under age 18. The supervising adult must also possess and carry a State hunting license and refuge permit.

iii. You must attend a hunt orientation. We conduct orientations beginning at 10 a.m. Sundays and Wednesdays throughout the hunt season. We allow scouting from 11 a.m. to 6 p.m. following each orientation.

iv. You must sign in at the hunter registration station prior to entering your hunt zone and sign out upon exiting your hunt zone. All hunters must sign out no later than 2 hours after the end of the hunt day.

v. You must check all harvested animals at the refuge's official check station.

vi. You must make a reasonable effort to recover wounded animals from the field and must notify the check station personnel immediately if you are not able to recover a wounded animal.

vii. We prohibit crossing water management areas unless you are retrieving a harvested animal.

viii. We prohibit use of a boat, all-terrain vehicle, bicycle, or saddled animal to access or travel within your hunt zone (*see* § 27.31(f) of this chapter).

ix. We allow the use of a portable tree stand.

2. Archery hunt information:

i. We allow hunting of white-tailed deer and sika with bow and arrow in designated areas of the refuge.

ii. You may not possess a nocked arrow within 50 feet (15 m) of the centerline of any road.

iii. During the sika archery season, you may take up to five sika daily, two of which may be antlered. In addition, you may take antlerless white-tailed deer in accordance with State regulations.

iv. We prohibit deer drives.

v. You must print your full name in a permanent manner near the fletching on each arrow shaft used for hunting.

3. Firearm hunt information:

i. We allow hunting of white-tailed deer and sika with firearms in designated areas of the refuge.

ii. You must wear a minimum of 400 square inches (2,600 cm2) of blaze-orange material consisting of a vest and hat or a jacket and hat. iii.

You may use any firearm allowed by State law in designated areas of the refuge. We restrict other areas of the refuge to shotgun and muzzleloading firearms only. We restrict shotgun ammunition to slugs, 00 buckshot, or 000 buckshot. You must unload and either case or disassemble firearms (*see* § 27.42(b) of this chapter) in vehicles.

iv. We prohibit possession of a loaded firearm within 50 feet (15 m) of the centerline of any road.

v. During the sika firearm season, you may take up to five sika daily, two of which may be antlered. In addition, hunters may take antlerless white-tailed deer in accordance with State regulations on the first day of designated white-tailed deer hunt periods. If you take an antlerless white-tailed deer on the first day of your hunt, you may take antlered white-tailed deer or any sika, not to exceed prescribed bag limits, on the second day of your hunt period. If you do not take an antlerless white-tailed deer on the first day of your hunt period, you may only take antlerless white-tailed deer or any sika, not to exceed prescribed bag limits, on the second day of your hunt period.

vi. You must have a 4-wheel drive vehicle to hunt in zones 10, 10a, and Tom's Cove Hook. All oversand vehicles must carry a shovel, jack, tow rope or chain, board or similar support for the jack, and a low pressure tire gauge.

vii. We reserve zone 2 for hunters confined to wheelchairs. Those hunters must remain on the paved trail or overlook platform on Woodland Trial. They may use any firearm allowed by State law while hunting from the overlook platform. We restrict other areas of the zone to shotgun and muzzleloading firearms only. Hunters confined to wheelchairs who require assistance retrieving and/or dressing harvested animals must have a nonhunting assistant available.

*D. Sport Fishing.* We allow sport fishing, crabbing, and clamming from the shoreline of the refuge in designated areas of Tom's Cove, Swan's Cove, and the Atlantic Ocean in accordance with State regulations subject to the following conditions:

1. You may not enter any water management areas.

2. You must attend minnow traps, crab traps, crab pots, and handlines at all times.

3. You must possess and carry a refuge permit to surf fish after hours while fishing.

**Eastern Shore of Virginia National Wildlife Refuge**

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*C. Big Game Hunting.* We allow archery and shotgun hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. There are 12 days of archery and 7 days of shotgun hunting that occur during the State hunting season.

2. You must hunt white-tailed deer in designated zones. You must possess and carry a refuge permit to hunt that serves as your pass to enter your hunt zone. The permit fee is $15.00 for each hunt.

3. You must be at least age 18 to hunt without an accompanying, qualified adult. Youth hunters between ages 12 and 17 may only hunt when accompanied by an adult age 21 or older who must possess and carry a valid hunting license. The minimum age for hunters is 12.

4. You must sign in before entering the hunt zone and sign out upon leaving the zone.

5. We allow portable tree stands, but you must remove them (*see* § 27.93 of this chapter) at the end of each day's hunt. You must use safety straps while in tree stands. We prohibit tree stands attached with nails, wire, screws, or bolts (*see* § 32.2(i)).

6. You must bring all deer harvested to the refuge check station before the end of hunt day for inspection by refuge personnel.

7. We prohibit the use of organized drives for taking or attempting to take game.

8. We prohibit nocked arrows in your vehicle or outside your hunt zone.

9. For the firearm hunt, we allow shotgun hunting in zones 1–4. We allow archery hunting in zone 5 during the firearm season.

10. We only allow shotguns, 20 gauge or larger, loaded with buckshot during the firearm season.

11. During the firearm hunt, you must wear a minimum of 400 square inches (2,600 $cm^2$) of a blaze-orange material consisting of a hat and vest or jacket. Blaze-orange camouflage is not acceptable.

12. You must unload and case or disassemble firearms (*see* § 27.42(b) of this chapter) in vehicles.

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**Great Dismal Swamp National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer and bear on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. We allow shotguns, 20 gauge or larger, loaded with buckshot and/or rifled slugs, and bows and arrows.

3. We prohibit dogs.

4. We require all hunters to wear 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material in a conspicuous manner during firearms big game season.

5. We require hunters to sign in and out each hunt day.

6. We prohibit possession of loaded firearms (*see* § 27.42 of this chapter) (ammunition in the chamber, magazine, or clip), or loaded bow on or within 50 feet (15 m) of a refuge road, including roads closed to vehicles.

7. We prohibit hunters to shoot onto or across refuge roads, including roads closed to vehicles.

*D. Sport Fishing.* We allow fishing in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow fishing in Lake Drummond and in the Feeder Ditch on the east side of Lake Drummond during daylight hours.

2. We prohibit bank fishing.

3. You must attend all fishing lines.

4. We require permits for vehicular access to the boat ramp on Interior Ditch Road on the west side of Lake Drummond.

**James River National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require firearm hunters to purchase a refuge hunt permit at the Refuge Hunter Check Station on the morning of each hunt on a first-come, first-served basis. The hunter must possess and carry the permit while on refuge property.

2. We require archery hunters to purchase a refuge hunt permit by mail by the designated application deadline. The hunter must possess and carry the permit while on refuge property.

3. We allow the use of shotguns (20 gauge or larger, loaded with buckshot only), muzzleloaders, and bows and arrows on designated refuge hunt days.

4. You may take two deer of either sex per day.

5. We prohibit dogs.

6. We only allow portable tree stands that you must remove (*see* § 27.93 of this chapter) at the end of each hunt day.

7. Firearm hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

8. Firearm hunters must remain within 25 feet (7.5 m) of their assigned stand unless tracking or retrieving a wounded deer.

9. Archery hunters must wear a solid-colored, hunter-orange hat or cap while moving to and from their stand.

10. You may only retrieve wounded deer from closed areas with prior consent from a refuge employee.

11. You must unload all weapons (*see* § 27.42(b) of this chapter) while on the refuge, except when you are at your assigned stand.

12. We prohibit discharge of firearms (*see* § 27.42(a) of this chapter) or archery equipment across or within refuge roads, including roads closed to vehicles.

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**Mackay Island National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Hunters must sign and carry a Refuge Deer Hunting Permit while hunting on the refuge.

2. We allow the use of shotguns, muzzleloading rifles/shotguns, and bows. We prohibit the use of all other rifles and pistols.

3. We allow access to hunting areas from 5 a.m. until 8 p.m.

4. We prohibit marking of trees or vegetation (*see* § 27.51 of this chapter) with blazes, flagging, or other marking devices.

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**Mason Neck National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State and County regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. We select hunters by lottery. Contact the refuge office for information on application dates.

3. We send applicants an information packet detailing specific dates, details, and requirements for the hunt, including, but not limited to: hunt dates, hunt areas, bag restrictions, weapon certification requirements and locations, orientation dates/times, scouting date(s), check station location, and maps.

4. Hunters must certify/qualify weapons and ammunition and attend an orientation session prior to issuance of a permit.

5. Hunters must wear a minimum of 400 square inches (2,600 $cm^2$) of solid, hunter-orange clothing and a hunter-orange hat.

6. We may close areas of the refuge to hunting. We will identify these areas on the maps in the information packet and review them during orientation.

*D. Sport Fishing.* [Reserved]

**Occoquan Bay National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State and County regulations subject to the following conditions:

1. You must possess and carry a refuge permit.

2. We select hunters by lottery. Contact the refuge office for information on application dates.

3. We send applicants an information packet detailing specific dates, details, and requirements for the hunt, including, but not limited to: hunt dates, hunt areas, bag restrictions, weapon certification requirements and locations, orientation dates/times, scouting date(s), check station location, and maps.

4. Hunters must certify/qualify weapons and ammunition and attend an orientation session prior to issuance of a permit.

5. Hunters must wear a minimum of 400 square inches (2,600 $cm^2$) of solid hunter-orange clothing and a hunter-orange hat.

6. We may close areas of the refuge to hunting. We will identify these areas on the maps in the information packet and review them during orientation.

*D. Sport Fishing.* [Reserved]

**Plum Tree Island National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of waterfowl, gallinule, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a signed Special Use Hunting Permit while hunting waterfowl on the refuge. We only open the Cow Island area of the refuge to waterfowl hunting. We close all other areas of the refuge to all public entry.

2. We limit hunting parties to three individuals hunting at one blind site.

3. You may hunt from the location of your choice: unimproved shore locations, camouflaged boats (float blinds) anchored to the shore, or temporary blinds erected on the interior of the island.

4. We prohibit permanent blinds/structures on the refuge.

5. We prohibit jump-shooting.

6. Except for peak use days, we restrict waterfowl hunting to three mornings per week: Tuesday, Thursday, and Saturday mornings until 12 p.m. (noon) local time. We prohibit hunting on Sundays, Mondays, Wednesdays, and Fridays.

7. You must retrieve and remove all decoys, temporary blinds, and equipment (*see* § 27.93 of this chapter) and leave Cow Island by 1 p.m.

8. We define peak use days as the waterfowl season opening days and some Federal holidays. We will define peak use dates for the current season after the State establishes its waterfowl hunting season(s).

9. You must secure reservations by telephone (call 804–829–9020 weekdays between 8 a.m. and 4:30 p.m.) no more than 4 workings days prior to your desired hunt date. We will issue the first five callers for those days a reservation number that they must possess and carry while hunting on their reserved date.

10. No more than two other hunters may accompany hunters with reservations, and they must hunt as a party from the same blind.

11. Youth Waterfowl Hunt Day: We will open Cow Island for the youth waterfowl hunt as per State regulations. Youth hunters must also possess and carry a signed refuge Special Use Hunting Permit.

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**Presquile National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to purchase a Refuge Hunt Permit at the Refuge Hunter Check Station on the morning of each hunt on a first-come, first-served basis. The hunter must possess and carry the permit while on refuge property.

2. We allow the use of shotguns (20 gauge or larger, loaded with buckshot and/or rifled slugs).

3. You may take two deer of either sex per day.

4. We prohibit dogs.

5. We only allow portable tree stands that you must remove (*see* § 27.93 of this chapter) at the end of each hunt day.

6. You must wear in a conspicuous manner on head, chest, and back, a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

7. You must remain within 25 feet (7.5 m) of your designated stand unless tracking or retrieving a wounded deer.

8. You must unload all firearms (*see* § 27.42(b) of this chapter) while on the refuge, except when at your assigned stand.

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**Rappahannock River Valley National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require hunters to purchase a refuge hunt permit at the Refuge Hunter Check Station on the morning of each hunt on a first-come, first-served basis. The hunter must possess and carry the permit while on refuge property.

2. We require archery hunters to purchase a refuge hunt permit by mail by the designated application deadline. The hunter must possess and carry the permit must while on refuge property.

3. We allow shotgun, muzzleloader, and archery hunting on designated refuge hunt days.

4. You may take two deer of either sex per day.

5. We prohibit dogs.

6. We only allow portable tree stands that you must remove (*see* § 27.93 of this chapter) at the end of each hunt day.

7. Firearm hunters must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2,600 $cm^2$) of solid-colored, hunter-orange clothing or material.

8. Archery hunters must wear a solid-colored, hunter-orange hat or cap while moving to and from their stand.

9. We prohibit the possession of loaded firearms (*see* § 27.42 of this chapter) or nocked arrows while on refuge roads.

10. We prohibit the discharge of a firearm or archery equipment across or within refuge roads, including roads closed to vehicles.

11. You may only retrieve wounded deer from closed areas with prior consent from a refuge employee.

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**Wallops Island National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer in designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit. We issue permits based on a computer lottery system. You may obtain permit applications from the refuge administration office during normal business hours. Hunting brochures containing application procedures, seasons, and maps depicting areas open to hunting are available from the refuge administration office. You must provide an unobstructed view of the refuge permit on the vehicle's dashboard while hunting on the refuge.

2. You must be age 12 or older to hunt on the refuge. An adult age 18 or older must accompany and directly supervise hunters under age 18. The supervising adult must also possess and carry a State hunting license and refuge permit.

3. You must sign in at the hunter registration station prior to entering your hunt zone and sign out upon exiting your hunt zone. You must sign out no later than two hours after the end of the hunt day.

4. You must wear a minimum of 400 square inches (2,600 $cm^2$) of blaze-orange material consisting of a vest and hat or a jacket and hat.

5. You may use of portable tree stands.

6. We prohibit dogs.

7. You must park your vehicle in designated areas (*see* § 27.31 of this chapter).

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47. Amend § 32.67 Washington by:

a. Revising "Columbia National Wildlife Refuge;''

b. Revising paragraph A. and removing paragraphs B.4., B.5., C.3., and C.4., and revising paragraph D. of "Hanford Reach National Monuments/ Saddle Mountain National Wildlife Refuge;''

c. Revising "Little Pend Oreille National Wildlife Refuge;''

d. Revising "McNary National Wildlife Refuge;''

e. Revising paragraph D. of "Nisqually National Wildlife Refuge;''

f. Revising "Ridgefield National Wildlife Refuge;''

g. Revising paragraphs A. and B. of "Toppenish National Wildlife Refuge;'' and

h. Revising "Umatilla National Wildlife Refuge'' to read as follows:

**§ 32.67 Washington.**

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**Columbia National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, and Wilson's snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting on Wednesdays, Saturdays, Sundays, and Federal holidays on Marsh Unit 1 and Farm Units 226–227.

2. Prior to entering the Farm Unit 226–227 hunt area, we require you to possess and carry a refuge permit, pay a recreation user fee, and obtain a blind assignment.

*B. Hunting of Upland Game Birds.* We allow hunting of ring-necked pheasant, California quail, gray partridge, and chukar on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow hunting of upland game birds during State upland game seasons that run concurrently with the State waterfowl season.

2. We allow hunting from 12 p.m. (noon) to legal sunset on Wednesdays, Saturdays, Sundays, and Federal holidays in Marsh Unit 1.

*C. Big Game Hunting.* We allow hunting of mule deer and white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow shotgun and archery hunting.

2. We only allow hunting during State deer seasons that run concurrently with the State waterfowl season.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On waters open to fishing, we only allow fishing from April 1 to September 30, with the exception of Falcon, Heron, Goldeneye, Corral, Blythe, Chukar, and Scaup Lakes that are open year-round.

2. We allow nonmotorized boats and boats with electric motors on Upper and Lower Hampton, Hutchinson, and Shiner Lakes.

3. We allow motorized boats and nonmotorized boats on all other refuge waters open to fishing.

4. We allow frogging during periods when we allow fishing on designated waters.

5. We allow catch-and-release fishing using artificial flies with a single barbless hook on Quail Lake.

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**Hanford Reach National Monument/ Saddle Mountain National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, mourning dove, and common snipe on the Wahluke Unit of the Monument/ Refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot while on the refuge (*see* § 32.2(k)).

2. We allow access from 2 hours before legal sunrise to 2 hours after legal sunset. We prohibit overnight camping and/or parking.

3. We prohibit permanent and pit blinds and the cutting of vegetation (*see* § 27.51 of this chapter). You must remove all blind materials, decoys, and other equipment (*see* § 27.93 of this chapter) at the end of each day's hunt.

4. We only allow nonmotorized boats and boats with electric motors on the WB–10 Pond (Wahluke Lake) and with walk-in access only.

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*D. Sport Fishing.* We allow fishing on the Wahluke Unit in accordance with State regulations subject to the following conditions:

1. We allow access from 2 hours before legal sunrise to 2 hours after legal sunset. We prohibit overnight camping and/or parking.

2. We allow nonmotorized boats and boats with electric motors on the WB–10 Ponds and with walk-in access only.

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**Little Pend Oreille National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds on designated areas of the refuge in accordance with State regulations subject to the following condition: We prohibit waterfowl hunting on any creek or stream.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following condition: We prohibit use of dogs except for hunting and retrieving upland game birds.

*C. Big Game Hunting.* We allow hunting of big game on designated areas of the refuge in accordance with State regulations subject to the following condition: We prohibit all use of dogs for hunting big game.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge in accordance with State regulations.

**McNary National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, dove, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow vehicles on designated routes of travel and require hunters to park in designated parking areas (*see* § 27.31 of this chapter). We prohibit off-road vehicle travel and all use of ATVs (*see* § 27.31(f) of this chapter).

2. We only allow portable blinds and temporary blinds constructed of natural materials.

3. We allow dove hunting in accordance with State regulations on the Wallula, Burbank Sloughs, Stateline, Juniper Canyon, Peninsula, and Two Rivers Units only.

4. The McNary Fee Hunt Unit is only open on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day from 5 a.m. to 1½ hours after legal sunset.

5. Prior to entering the McNary Fee Hunt Unit, we require you to possess and carry a refuge permit, pay a recreation user fee, and obtain a blind assignment before hunting.

6. On the McNary Fee Hunt Unit, we only allow hunting from assigned blind sites and require hunters to remain within 100 feet (30 m) of marked posts unless retrieving birds or setting decoys. We allow a maximum of four persons per blind site.

7. On the McNary Fee Hunt Unit, you may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less per day.

8. On the Wallula Unit, we prohibit hunting within ¼ mile (.4 km) of the Walla Walla Delta or Crescent Island from February 1 through September 30.

9. On the Peninsula Unit, we allow waterfowl hunting subject to the following conditions:

i. On the east shoreline of the Peninsula Unit, we only allow hunting from established numbered blinds sites, assigned on a first-come, first-served basis. We require hunters to remain within 100 feet (30 m) of marked posts unless retrieving birds or setting decoys.

ii. On the west shoreline of the Peninsula Unit, we require hunters to space themselves a minimum of 200 yards (180 m) apart.

10. We close the furthest downstream refuge island (Columbia River mile 341–343) in the Hanford Islands Division to hunting.

11. On the Peninsula and Two Rivers Units, we close Casey Pond to all hunting.

12. We close Strawberry Island in the Snake River to all hunting.

13. We close Badger and Foundation Islands in the Columbia River to all hunting.

*B. Upland Game Hunting*. We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On the McNary Fee Hunt Unit, we only allow hunting of upland game birds on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day. We prohibit hunting until 12 p.m. (noon) of each hunt day.

2. On the Peninsula Unit, we prohibit upland game hunting before 12 p.m. (noon) on goose hunt days.

3. We only allow turkey hunting on the Wallula Unit.

4. We close all islands of the Hanford Islands Division to hunting.

*C. Big Game Hunting*. We allow hunting of deer only on the Stateline, Juniper Canyon, and Wallula Units in accordance with State regulations subject to the following condition: On the Wallula Unit, we only allow shotgun and archery hunting.

*D. Sport Fishing*. We allow fishing on designated areas of the refuge in accordance with State regulations.

**Nisqually National Wildlife Refuge**

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*D. Sport Fishing*. We allow fishing and shellfishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow fishing from boats outside the Brown Farm Dike and outside the Research Natural Area.

2. We allow bank fishing in the designated McAllister Creek Bank Fishing Area from legal sunrise to legal sunset. The ¾-mile (1.2 km) area of bank fishing is located ½ mile (.8 km) downstream from I–5 and allowed only along the east side of the creek. Anglers may reach this area either by foot from the refuge parking lot or by boat.

3. We prohibit bank fishing along the Nisqually River.

4. We prohibit fishing in any waters inside the Brown Farm Dike.

5. We allow shellfishing on the tideflats. Access is by boat or by foot from the Luhr Beach Boat Launch. We prohibit tideflat access from the Brown Farm Dike.

6. We prohibit boat launching on the refuge.

**Ridgefield National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of duck, goose, and coot in a designated area of the River "S'' Unit of the refuge in accordance with State regulations subject to the following conditions:

1. We only allow waterfowl hunting by refuge permit (you must possess and carry). You may apply for advanced hunting permits between August 15 and September 15; otherwise, we issue hunting permits by lottery from the check station for standby hunters or on a first-come, first-served basis after 10 a.m. during each hunt day.

2. We only allow access to the hunt area 2 hours before legal shoot time and 2 hours after shoot time on hunt days. We prohibit entering the hunt area on nonhunt days.

3. We prohibit camping or parking overnight anywhere on the refuge.

4. You may only park in the parking lot designated for your hunting blind.

5. We only allow hunting on Tuesdays, Thursdays, and Saturdays, excluding Federal holidays, during the regular waterfowl hunt season designated by the State.

6. We require all hunters to check-in and check out at the hunter check station.

7. We prohibit goose hunting in Blind #1.

8. You must hunt within your designated hunt blind except when shooting to retrieve crippled birds. We allow a maximum of three people per blind.

9. You may only possess approved nontoxic shells (*see* § 32.2(k)) while in the field in quantities of 25 or less.

10. You may use decoys, but you must collect them at the end of each hunt day.

11. We prohibit temporary or portable blinds.

12. We allow retrieving dogs in the hunt area, but owners must keep them under their immediate control at all times (*see* § 26.21(b) of this chapter). Owners must leash dogs at all times except while in the hunting blind. We prohibit dog training or trials (*see* § 27.91 of this chapter).

13. On the last Saturday in October, we only allow youth hunters ages 10 to 17 to hunt. Each youth hunter must remain within sight and normal voice contact of an adult age 18 or older.

*B. Upland Game Hunting*. [Reserved]

*C. Big Game Hunting*. [Reserved]

*D. Sport Fishing*. We allow bank fishing on the interior waters in public areas of the Carty Unit and on Lake River on the north side of the bridge crossing Lake River at the River "S'' Unit in accordance with State fishing regulations subject to the following conditions:

1. We close all interior waters to fishing at the River "S'' Unit.

2. We prohibit motorized and nonmotorized boats or floatation devices on any of the interior waters of the refuge.

3. We only allow fishing from legal sunrise to legal sunset.

4. We only allow fishing with hook and line.

5. We prohibit frogging.

6. While fishing in Lake River, you must park and walk from the River "S'' Unit entrance parking lot.

**Toppenish National Wildlife Refuge**

*A. Migratory Game Bird Hunting*. We allow hunting of goose, duck, coot, dove, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge from 5 a.m. to 1½ hours after legal sunset.

2. We only allow vehicles on designated routes of travel and require hunters to park in designated parking areas (*see* § 27.31 of this chapter). We prohibit off-road vehicle travel and all use of ATVs (*see* § 27.31(f) of this chapter).

3. We only allow dove hunting on the Webb, Petty, Halvorson, Chambers, and Isiri Units.

4. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less per day.

5. On the Petty, Isiri, Chamber, and Cloe Units, we allow hunting 7 days a week subject to the following condition: We require hunting parties to space themselves a minimum of 200 yards (180 m) apart.

6. On the Halvorson and Webb Units, we only allow hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day. On these units, we allow hunting only from designated field pits, and we prohibit jump shooting.

7. On the Robbins Road Unit, we only allow hunting on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

8. On the Robbins Road and Pumphouse Units, we only allow hunting from numbered field blind sites, and hunters must only park their vehicles at the numbered post corresponding to the numbered field blind site they are using (*see* § 27.31 of this chapter). Selection of parking sites/numbered posts is on a first-come, first-served basis at the designated parking lot. We prohibit free-roam hunting or jump shooting, and you must remain within 100 feet (30 m) of the numbered field blind post unless retrieving birds or setting decoys. We allow a maximum of four persons per blind site.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On all refuge units, we prohibit hunting of upland game birds until 12 p.m. (noon) of each hunt day.

2. On the Halvorson and Webb Units, we only allow hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

3. On the Robbins Road Unit, we only allow hunting on Tuesdays, Thursdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

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**Umatilla National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, coot, dove, and common snipe on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge from 5 a.m. to 1½ hours after legal sunset.

2. We only allow vehicles on designated routes of travel and require hunters to park in designated parking areas (*see* § 27.31 of this chapter). We prohibit off-road vehicle travel and all use of ATVs (*see* § 27.31(f) of this chapter).

3. We only allow portable blinds and temporary blinds constructed of natural materials.

4. You may only possess approved nontoxic shotshells (*see* § 32.2(k)) in quantities of 25 or less per day.

5. On the Paterson Slough and Whitcomb Units, we only allow hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

6. In the refuge ponds within the Paterson Slough area, we only allow nonmotorized boats and boats with electric motors.

7. On the Ridge Unit, we only allow shoreline hunting and prohibit all hunting from boats.

8. We require waterfowl hunting parties to space themselves a minimum of 200 yards (180 m) apart.

*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting of upland game birds until 12 p.m. (noon) of each hunt day.

2. In the Paterson Slough and Whitcomb Units, we only allow hunting on Wednesdays, Saturdays, Sundays, Thanksgiving Day, Christmas Day, and New Year's Day.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge in accordance with State regulations subject to the following condition: You must possess and carry a refuge permit for hunting.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We open the refuge from 5 a.m. to 1½ hours after legal sunset.

2. We allow fishing on refuge impoundments and ponds from February 1 through September 30. We open other refuge waters (Columbia River and its backwaters) in accordance with State regulations.

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48. Amend § 32.68 West Virginia by:

a. Revising "Canaan Valley National Wildlife Refuge;'' and

b. Revising "Ohio River Islands National Wildlife Refuge'' to read as follows:

**§ 32.68 West Virginia.**

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**Canaan Valley National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of goose, duck, rail, coot, gallinule, mourning dove, snipe, and woodcock on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require each hunter to possess and carry a signed refuge hunting permit, State hunting license, and driver's license (or other photo identification card) at all times while hunting on the refuge. The refuge hunting permit is free, and you may obtain it at the refuge headquarters. We require each hunter to submit a survey form at the end of the hunting season. Hunters must submit survey forms to the refuge headquarters if they wish to receive a hunting permit the following year.

2. We allow hunting on most refuge lands with the following exceptions: the area surrounding the refuge headquarters, areas marked as safety zones, areas marked as no hunting zones, areas marked as closed to all public entry, or within 500 feet (150 m) of any dwelling.

3. We prohibit the use of permanent blinds.

4. The refuge closes 1 hour after legal sunset, including parking areas. We prohibit hunters from leaving decoys and other personal property on the refuge overnight.

5. We allow the use of dogs for hunting migratory game birds. We require all dogs to wear a collar displaying the owner's name, address, and telephone number.

6. We prohibit dog training except during legal hunting seasons.

7. We require hunters accessing the refuge through private property to possess and carry written permission of the landowner while hunting on the refuge.

*B. Upland Game Hunting.* We allow the hunting of ruffed grouse, squirrel, cottontail rabbit, snowshoe hare, red fox, gray fox, bobcat, woodchuck, coyote, opossum, striped skunk, and raccoon on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A1, A2, A6, and A7 apply.

2. The refuge closes 1 hour after legal sunset, including parking areas.

3. You may hunt raccoon at night, but you must obtain a Special Use Permit for raccoon hunting.

4. We only allow hunting in the No Rifle Zones with the following equipment: archery, shotgun, or muzzleloader.

5. You may use dogs for hunting upland game species. We prohibit more than six dogs per hunting party for raccoon hunting. You must account for all dogs at the conclusion of the hunt. You must search for lost dogs for at least 3 days, and we prohibit hunting during the search period. All dogs must wear a collar displaying the owner's name, address, and telephone number.

7. We prohibit the hunting of upland game species between March 1 and the youth squirrel season in September.

*C. Big Game Hunting.* We allow the hunting of white-tailed deer, black bear, and turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition A1, A2, A6, A7, and B4 apply.

2. You may only enter the refuge on foot. You may use hand-powered, two-wheeled carts for transporting big game.

3. You may only use handguns for hunting deer and black bear in the rifle zone.

4. When using shotguns for big game hunting, we only allow ammunition containing a single lead projectile. We prohibit the use of buckshot.

5. We prohibit the marking of any tree or other refuge feature with flagging, paint, or other substance.

6. We prohibit the cutting and trimming of coniferous trees (balsam fir, red spruce, and hemlock). We prohibit construction of blinds from these materials.

7. We prohibit permanent tree stands, but we allow use of temporary tree stands. You must clearly print your name and address in an easily read area on the stand while the stand is affixed to the tree. You must remove tree stands (*see* § 27.93 of this chapter) at the end of the deer season.

8. We require all hunters to wear at least 400 square inches (2,600 cm2) of blaze orange on the head, chest, and back at all times during the deer bucks only season, the antlerless deer season, the youth deer season, and the deer muzzleloader season.

9. We prohibit hunting for turkey with a rifle. You must use a shotgun or muzzleloader with a shot size of #4 or smaller.

10. We allow dogs for hunting black bear during the gun season. We prohibit more than six dogs per hunting party. You must account for all dogs at the conclusion of the hunt. You must search for lost dogs for at least 3 days, and we prohibit hunting during the search period. All dogs must wear a collar displaying the owner's name, address, and telephone number.

11. We prohibit black bear hunting during the Tucker County antlerless deer season. The gun bear season begins the Monday following the antlerless deer season.

12. The refuge closes 1 hour after legal sunset, including parking areas. We prohibit camping or overnight parking.

*D. Sport Fishing.* [Reserved]

**Ohio River Islands National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds (waterfowl, coots, rails, gallinules, snipe, woodcock, and dove) on designated areas of the refuge (Pennsylvania: Phillis Island, Georgetown Island; West Virginia: Captina Island, Captina Mainland, Fish Creek Island, Williamson Island, Witten Towhead, Wells Island, Grandview Island, Grape/Bat Island, Broadback Island, Buckley Island, Muskingum Island, Buffington Island, Letart Island; and Kentucky: Manchester 1 Island, Manchester 2 Island) in accordance with State regulations subject to the following conditions:

1. We require each hunter to possess and carry a refuge hunting permit, State hunting license, and valid driver's license (or other photo identification card) at all times while hunting on the refuge. The refuge hunting permit is free, and you may obtain it at the refuge headquarters. We request each hunter to submit a survey form at the end of the hunting season.

2. We prohibit the use of permanent blinds.

3. The refuge opens 1 hour before legal sunrise and closes 1 hour after legal sunset, including parking areas. We prohibit hunters leaving decoys and personal property, as well as, camping and overnight parking.

4. We only allow dogs to locate, point, and retrieve when hunting for migratory game birds. We require all dogs to wear a collar displaying the owner's name, address, and telephone number.

5. You may only possess approved nontoxic shot while in the field (*see* § 32.2(k)).

*B. Upland Game Hunting.* We allow hunting of rabbit and squirrel on designated areas of the refuge (Pennsylvania: Phillis Island, Georgetown Island; West Virginia: Captina Island, Captina Mainland, Fish Creek Island, Williamson Island, Witten Towhead, Wells Island, Grandview Island, Grape/Bat Island, Broadback Island, Buckley Island, Muskingum Island, Buffington Island, Letart Island; and Kentucky: Manchester 1 Island, Manchester 2 Island) in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A3 apply.

2. We prohibit the use of pursuit dogs for hunting rabbit or squirrel.

3. We prohibit the use of bows, rifles, or pistols for hunting rabbit or squirrel.

4. We only allow the use of shotguns with approved nontoxic shot (*see* § 32.2(k)) for the hunting of rabbit or squirrel.

*C. Big Game Hunting.* We allow archery hunting of white-tailed deer on designated areas of the refuge (Pennsylvania: Phillis Island, Georgetown Island; West Virginia: Captina Island, Captina Mainland, Fish Creek Island, Williamson Island, Witten Towhead, Wells Island, Grandview Island, Grape/Bat Island, Broadback Island, Buckley Island, Muskingum Island, Buffington Island, Letart Island; and Kentucky: Manchester 1 Island, Manchester 2 Island) in accordance with State regulations subject to the following conditions:

1. Conditions A1 and A3 apply.

2. We prohibit the use or possession of rifles, pistols, or shotguns for the hunting of white-tailed deer.

3. We prohibit organized deer drives by two or more individuals. We define a deer drive as the act of chasing, pursuing, disturbing, or otherwise directing deer so as to make the animals more susceptible to harvest.

4. We allow trail marking with nonpermanent methods such as flagging and reflectors. We prohibit the use of paint, and hunters must remove all trail-marking materials (*see* § 27.93 of this chapter) at the end of the deer season.

5. We prohibit the use of permanent tree stands or blinds. We allow the use of temporary tree stands. All tree stands must have the name and address of the owner clearly printed in an easily read area on the stand while the stand is affixed to the tree. Hunters must remove tree stands and blinds (*see* § 27.93 of this chapter) from the refuge at the end of each day.

6. We prohibit baiting for deer on refuge lands (*see* § 32.2(h)).

7. We require all hunters to wear at least 400 square inches (2,600 $cm^2$) of blaze orange on the head, chest, and back while walking to and from tree stands or blinds.

*D. Sport Fishing.* We allow sport fishing throughout the refuge in accordance with State regulations subject to the following conditions:

1. Condition A3 applies.

2. We require each angler to possess and carry a State fishing license and a valid driver's license (or other photo identification card) at all times while fishing on the refuge.

3. We restrict bank fishing to refuge open hours, from 1 hour before legal sunrise through 1 hour after legal sunset.

49. Amend § 32.69 Wisconsin by:

a. Revising paragraph C.1. of "Horicon National Wildlife Refuge;''

b. Revising "Leopold Wetland Management District;'' and

c. Revising paragraph B.4., adding paragraph B.5., and revising paragraph C.3. of "Necedah National Wildlife Refuge'' to read as follows:

**§ 32.69 Wisconsin.**

* * * * *

**Horicon National Wildlife Refuge**

* * * * *

*C. Big Game Hunting.* * * *

1. We only allow hunting during the early archery season and the regular State firearms seasons.

* * * * *

**Leopold Wetland Management District**

*A. Migratory Game Bird Hunting.* We allow hunting of migratory game birds throughout the district (except that we prohibit hunting on the Blue-wing Waterfowl Production Area (WPA) in Ozaukee County or the Wilcox WPA in Waushara County) in accordance with State regulations subject to the following conditions:

1. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times (*see* § 26.21(b) of this chapter).

2. You must remove boats, decoys, and blinds (*see* § 27.93 of this chapter) at the conclusion of each day's hunt.

*B. Upland Game Hunting.* We allow hunting of upland game birds throughout the district (except that we prohibit hunting on the Blue-wing Waterfowl Production Area (WPA) in Ozaukee County or the Wilcox WPA in Waushara County) in accordance with State regulations subject to the following condition: Condition A1 applies.

*C. Big Game Hunting.* We allow hunting of big game throughout the district (except that you may not hunt on the Blue-wing Waterfowl Production Area (WPA) in Ozaukee County or the Wilcox WPA in Waushara County) in accordance with State regulations subject to the following condition: You must remove blinds and stands (*see* § 27.93 of this chapter) at the conclusion of each day's hunt.

*D. Sport Fishing.* [Reserved]

**Necedah National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

4. You may only use dogs when hunting waterfowl and small game, except raccoon.

5. You may only hunt showshoe hare during the season for cottontail rabbit.

*C. Big Game Hunting.* * * *

* * * * *

3. You may use portable elevated devices, but you must lower them to the ground from ½ hour after shooting hours to ½ hour before shooting hours each day.

* * * * *

50. Amend § 32.70 Wyoming by revising "Seedskadee National Wildlife Refuge'' to read as follows:

**§ 32.70 Wyoming.**

* * * * *

**Seedskadee National Wildlife Refuge**

*A. Migratory Game Bird Hunting.* We allow hunting of dark goose, duck, coot, merganser, dove, snipe, and rail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting of migratory birds on the west side of the Green River between the south end of the Dunkle Unit and Highway 28. We post the boundary for this area with refuge signs stating "Area Closed to Migratory Bird Hunting.

2. We prohibit all hunting between Highway 28 and 0.8 miles (1.28 km) north of the refuge headquarters on the west side of the Green River. We post the boundary for this area with refuge signs stating "No Hunting Zone''.

3. We open the refuge to the general public from ½ hour before legal sunrise to ½ hour after legal sunset. Waterfowl hunters may enter the refuge 1 hour before legal shooting hours to set up decoys and blinds.

4. Hunters must confine or leash dogs except when participating in a legal hunt (*see* § 26.21(b) of this chapter).

5. You must only use portable blinds or blinds constructed from dead and downed wood. We prohibit digging pit blinds.

6. You must remove portable blinds, tree stands, decoys, and other personal equipment (*see* § 27.93 of this chapter) from the refuge following each day's hunt.

7. You must completely dismantle blinds constructed of dead and downed wood at the end of the waterfowl hunting season.

8. We only allow hunters to retrieve downed game from closed areas with consent from a refuge employee or State game warden.

9. You must unload and either case or dismantle all firearms (*see* § 27.42(b) of this chapter) when transporting them in a vehicle or boat under power.

*B. Upland Game Hunting.* We allow hunting of sage grouse, cottontail rabbit, jackrabbit, raccoon, fox, and skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2, A8, and A9 apply.

2. We open the refuge to the general public from ½ hour before legal sunrise to ½ hour after legal sunset.

3. Hunters must confine or leash dogs (*see* § 26.21(b) of this chapter) except when participating in a legal hunt for sage grouse, cottontail rabbit, or jackrabbit.

4. When using shotguns or muzzleloaders, you may only possess approved nontoxic shot (*see* § 32.2(k)) while in the field.

*C. Big Game Hunting.* We allow hunting of antelope, mule deer, and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2, A8, A9, and B2 apply.

*D. Sport Fishing.* We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. Condition B2 applies.

2. You must only launch or pick up trailered boats at the following boat ramps: Dodge Bottom, Hayfarm, Lombard, and Six-Mile.

3. We prohibit taking of mollusk, crustacean, reptile, and amphibian from the refuge.

51. Amend § 32.71 United States Unincorporated Pacific Insular Possessions by:

a. Revising "Johnston Atoll National Wildlife Refuge'' to read "Johnston Island National Wildlife Refuge'' and revising paragraph D.; and

b. Revising paragraph D. of "Midway Atoll National Wildlife Refuge'' to read as follows:

**§ 32.71 United States Unincorporated Pacific Insular Possessions.**

* * * * *

**Johnston Island National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* [Reserved]

**Midway Atoll National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* We allow fishing and harvesting of lobsters on designated areas of the refuge subject to the following conditions:

1. At all areas within the refuge, we allow fishing subject to the following conditions:

i. We allow fishing on a daily basis year-round.

ii. We do not require a refuge permit.

iii. We prohibit spear fishing.

iv. We prohibit net fishing, except as approved by the refuge manager.

v. We prohibit anglers to take from or ship off the refuge any fish or lobsters, except as approved by the refuge manager.

vi. At the conclusion of each fishing day, we require all boat captains and shore anglers to document all fish hooked or landed and all lobsters taken using forms supplied by the refuge.

vii. We prohibit fishing within any areas posted as closed, on either a temporary or permanent basis.

viii. You must retrieve all lines whenever a seal or turtle is sighted within 100 feet (30 m) of where you are fishing.

2. Inside the lagoon only we allow fishing subject to the following conditions:

i. We only allow catch-and-release fishing. We prohibit consumption of any fish taken within the lagoon due to the danger of ciguatera poisoning.

ii. We only allow fishing using pole and line, spinning tackle, and fly fishing.

iii. We only allow artificial lures and single, barbless hooks.

iv. We prohibit use of chum to attract fish.

v. We prohibit shoreline fishing from closed beach areas, the fuel farm shoreline, and the fuel pier.

vi. We prohibit recreational boat traffic within a designated 500-foot (150-m) buffer zone around Sand, Eastern, and Spit Islands.

3. Outside the lagoon only we allow fishing subject to the following conditions:

i. We only allow fishing for pelagic species (*e.g.,* wahoo, mahi mahi, tuna, marlin, etc.), primarily on a catch-and-release basis.

ii. You may keep one pelagic fish per person on the fishing boat, per day, for on-island consumption. The refuge manager may approve the taking of additional pelagic fish for on-island consumption.

iii. We prohibit taking or attempting to take bottomfish (*e.g.,* grouper, snapper) or any other marine species, except for lobster.

iv. We allow trolling at night and use of lighted lures.

4. We allow lobster fishing subject to the following conditions:

i. We only allow recreational lobstering on a daily basis, year-round, inside and outside the lagoon, from legal sunrise to legal sunset.

ii. We only allow taking of lobsters by skindiving. We prohibit taking of lobsters while using Self Contained Underwater Breathing Apparatus (SCUBA).

iii. The daily limit is one lobster per skindiver per day.

iv. For spiny lobsters, the minimum size is 3.25 inches (8.125 cm) carapace length. For slipper lobsters, the minimum size is 2.75 inches (6.875 cm) tail width, measured between the first and second segments.

v. We prohibit taking of lobsters that have eggs attached.

vi. We prohibit use of spears, hooks, traps, or nets for personal harvest. We allow use of "tickle sticks''.

52. Amend § 32.72 Guam by revising paragraph D. of "Guam National Wildlife Refuge'' to read as follows:

**§ 32.72 Guam.**

* * * * *

**Guam National Wildlife Refuge**

* * * * *

*D. Sport Fishing.* We allow fishing and collecting marine life from Achae Point north to Ritidian Channel (seaward of the concrete blocks of the refuge headquarters building) only in accordance with Government of Guam laws and regulations subject to the following conditions:

1. We allow anglers to be on the refuge from 8:30 a.m. until 4 p.m. daily, except on Federal holidays.

2. We prohibit possession of surround or gill nets.

3. We prohibit collection or possession of hima (giant clams, *Tridacna* and *Hippopus spp.*) or ayuyu (coconut crabs, *Birgus latro*).

4. We prohibit collection of fish or invertebrates while using Self Contained Underwater Breathing Apparatus (SCUBA).

5. We prohibit windsurfers or motorized personal watercraft.

6. We prohibit motorized vessels inshore of the reef crest.

7. We prohibit anchoring of vessels.

Dated: June 10, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04–13897 Filed 6–29–04; 8:45 am]

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Federal Register

Wednesday,
June 30, 2004

# Part III

# Securities and Exchange Commission

**17 CFR Parts 240 and 242**
**Regulation B; Proposed Rule**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 240 and 242

**[Release No. 34–49879; International Series Release No. 1278; File No. S7–26–04]**

**RIN 3235–AJ28**

## Regulation B

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is publishing Regulation B for public comment. Regulation B proposes a number of new exemptions for banks from the definition of the term ''broker'' under Section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act''), as amended by the Gramm-Leach-Bliley Act (''GLBA''). The proposal would broaden a number of exemptions already available to banks, savings associations, and savings banks that effect transactions in securities. It also would define certain terms used in the GLBA. The proposal would exempt credit unions that engage in limited securities activities that are conducted under the terms applicable to certain of the bank exceptions from the definitions of ''broker'' and ''dealer.'' The Commission also requests comment on a proposed conforming amendment to an Exchange Act rule that grants a limited exemption from the broker-dealer registration requirement for foreign broker-dealers. The proposal is intended, among other things, to facilitate banks' compliance with the GLBA.

**DATES:** Comments should be received on or before August 2, 2004.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–26–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov/*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number S7–26–04. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Catherine McGuire, Chief Counsel; Lourdes Gonzalez, Assistant Chief Counsel—Sales Practices; Richard C. Strasser, Attorney Fellow; Linda Stamp Sundberg, Attorney Fellow; Joseph Corcoran, Special Counsel; Brice Prince, Special Counsel; or Norman Reed, Special Counsel, at (202) 942–0073, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

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## I. Introduction and Background

### *A. Statutory Background—The Gramm-Leach-Bliley Act*

The GLBA amended several federal statutes governing the activities and supervision of banks, bank holding companies, and their affiliates.[1] Among other things, it lowered barriers between the banking and securities industries erected by the Banking Act of 1933 (''Glass-Steagall Act''). [2] It also altered the way in which the supervisory responsibilities over the banking, securities, and insurance industries are allocated among financial regulators. Among other things, the GLBA repealed the complete separation of investment and commercial banking imposed by the Glass-Steagall Act, which was enacted as a response to the perceived abuses and conflicts of interest in the securities industry during the 1920s. The GLBA also revised the provisions of the Exchange Act that had completely excluded banks from broker-dealer registration requirements.[3]

Charters for U.S. banks, unlike those for most for-profit corporations, restrict bank activities to the ''business of banking.'' [4] For many years, U.S. banking regulators took a narrow view of what constituted the ''business of banking,'' which did not include securities activities.[5] Beginning in the 1980s, commercial businesses began directly to access the capital markets and banks faced more competitors in extending credit to commercial customers.[6] Prior to passage of the GLBA, many of the regulatory barriers preventing full-scale integration of commercial bank and securities firms were relaxed. For example, in 1982, the Federal Deposit Insurance Corporation (''FDIC'') determined that state banks that were not members of the Federal Reserve system were not subject to the Glass-Steagall Act's affiliation restrictions.[7] In 1987, the Board of Governors of the Federal Reserve System (''Federal Reserve''), through a series of administrative actions, began to lower the barrier between banks and securities firms by allowing bank holding companies to derive a percentage of their revenue from underwriting and dealing in securities that were, prior to the Federal Reserve's actions, impermissible for banks to underwrite and deal in.[8] Over time, the

[1] Pub. L. 106–102, 113 Stat. 1338 (1999).

[2] Pub. L. 73–66, ch. 89, 48 Stat. 162 (1933) (as codified in various sections of 12 U.S.C.).

[3] Congress originally adopted these complete exclusions in 1934, stipulating that under the Glass-Steagall Act, banks were not generally permitted to engage in the securities business. The House Committee on Commerce explained the rationale behind the original complete bank exclusion from the definitions of ''broker'' and ''dealer'' and Congress' rationale for its subsequent repeal:

The [Committee on Commerce] strongly believes that functional regulation—regulation of the same functions, or activities, by the same expert regulator, regardless of the nature of the entity engaging in those activities—has become essential to a coherent financial regulatory scheme, as activities and affiliations expand and change with the financial marketplace.

Subtitle A of title II amends the Exchange Act to eliminate the blanket exemptions for banks from the definitions of ''broker'' and ''dealer.'' These exceptions, which have been part of the Exchange Act since its inception, were * * * based on the assumption that the Glass-Steagall Act, which had become law just one year before the Exchange Act, had prohibited all but extremely limited specified bank securities activities. Specifically, at the time of its enactment, the Glass-Steagall Act included exceptions that permitted banks to underwrite and deal in obligations of the United States * * * and their subdivisions. Amendments to the Glass-Steagall Act made in 1935 permitted banks to provide limited securities brokerage services as an accommodation to their customers, by permitting banks to engage in stock purchases and sales in an ''agency'' capacity, at the request of customers.

Section 20 of the Glass-Steagall Act forbids affiliation of any Federal Reserve member bank with any business entity ''principally engaged'' in investment banking activities. For more than fifty years following the enactment of the Glass-Steagall Act, bank holding companies could not underwrite securities.

As noted above, however, the limitations on bank securities activities have eroded as a result of administrative actions by the Federal banking regulators. The rationale for the exemptions in the Federal securities laws that apply to banks is, thus, no longer sound, given the extensive and increasing securities activities in which banks are engaging.

H.R. 106–74, pt. 3, at 113 (1999).

[4] The ''business of banking'' provision refers to section 24 (seventh) of the National Bank Act. 12 U.S.C. 24 (seventh). Banks are chartered and regulated under a dual banking system—federal and state bank charters are available as are federal and state thrift charters. Unlike broker-dealers, banks may choose whether to be chartered at the state or federal level. Persons that register as broker-dealers, however, must be licensed at both the federal and state levels.

[5] As one observer has noted: ''In 1975, U.S. banks were largely barred from entering the securities or insurance businesses. The Glass-Steagall Act prohibited banks from underwriting or dealing in securities, except for certain narrowly defined categories of 'bank-eligible' securities such as U.S. government bonds and general obligation bonds issued by state and local governments.'' Arthur E. Wilmarth, *The Transformation of the U.S. Financial Services Industry, 1975–2000: Competition, Consolidation, and Increased Risks*, 2002 U. Ill. L. Rev. 215 at 225–6 (2002) [hereinafter ''Wilmarth Article'']. [6] The development of asset-backed securities, high-yield securities, and commercial paper has enhanced the ability of banks' traditional commercial borrowers to access capital markets directly and forego bank financing. In addition, non-bank competitors have entered the commercial and consumer lending markets, further putting pressure on banks' profits. At the same time, investors in search of higher yields have shifted assets from banks to money market funds and other securities. To replace the loss of revenue from traditional lending, large banks have shifted their focus to fee-based activities, including securities activities. As one industry observer has noted:

[C]onsolidation is dividing the banking industry into two distinct sets of institutions. The ten largest banks now hold almost half of the banking industry's assets, and the fifty largest institutions control three-quarters of such assets. These large institutions have shifted away from the traditional, relationship-based business of lending to long-term customers. Instead, big banks are pursuing a transaction-based strategy that emphasizes investment banking, derivatives, syndicated loans, securitized consumer loans, and other activities tied to the capital markets.

Wilmarth Article, *supra* note 5, at 251.

[7] In 1982, the FDIC adopted a policy statement on the applicability of the Glass-Steagall Act to securities activities of insured state non-member banks. *See* 47 FR 38984, (Sept. 3, 1982). In 1984, the FDIC adopted a rule regulating the securities activities of affiliates and subsidiaries of insured state non-member banks under the FDI Act. 49 FR 46709 (Nov. 28, 1984) (regulations codified at 12 CFR 337.4) (1986). Representatives of mutual fund companies and investment bankers unsuccessfully challenged the FDIC's Policy Statement (*Investment Company Institute* v. *United States*, D.D.C. Civil Action No. 82–2532, filed September 8, 1982, dismissed without prejudice) and later its regulations (*Investment Company Institute*, v. *FDIC*, 815 F.2d 1540 (D.C.1987) (regulations were upheld)).

[8] In 1987, the Federal Reserve began to permit Section 20 subsidiaries to underwrite or deal in commercial paper and other bank-ineligible securities provided that those activities accounted for less than five percent of the bank's annual gross revenues. *See* Citicorp Order, Approving

Continued

Federal Reserve increased the percentages of revenue that banks could derive from underwriting and dealing in such securities, repealed most of the conflict of interest firewalls between banks and securities firms, and approved the creation of the first U.S. universal bank—Citigroup.[9] During the past two decades, the Office of the Comptroller of the Currency (''OCC''), the Office of Thrift Supervision (''OTS''), and the FDIC also expanded the types of bank securities activities that, in the view of these agencies, were within the permissible ''business of banking.''[10]

By enacting the GLBA, Congress repealed most of the remaining vestiges of the ownership restrictions that prevented banks, securities, and insurance firms from combining, thereby allowing them to adopt the universal banking model through the creation of financial conglomerates known as ''financial holding companies.'' [11] Congress recognized, however, that combined ownership would likely create conflicts that would need to be addressed through other safeguards.[12]

The Commission has consistently supported Congress' efforts to eliminate the few remaining legal barriers among the various types of financial service providers.[13] Because eliminating the legal distinctions or separations between commercial and investment banking increased the opportunity for conflicts of interest in the purchase and sale of securities, however, the Commission supported a system of functional regulation to ensure that investors receive the same high level of consumer protection no matter where they effect their securities transactions.[14] The Commission testified that complete functional regulation would mean that a bank—just like any other securities business—would have to obtain a broker-dealer license and adhere to consumer protections adopted under the federal securities laws to engage as a broker in securities transactions with investors or shift those activities to a registered broker-dealer that is obligated to provide those protections.[15]

In enacting the GLBA, Congress adopted functional regulation for bank securities activities, with limited exceptions from Commission oversight. In particular, the GLBA eliminated the complete bank exceptions from the definitions of ''broker'' and ''dealer'' in the Exchange Act and replaced them with narrower transaction-based bank exceptions. Although it granted a number of exceptions for banks' securities activities, Congress expressed concerns that banks were engaging in securities activities for investors who are not protected by the federal securities laws.[16]

With respect to the definition of ''broker,'' the Exchange Act, as amended by the GLBA, provides that a bank is not considered a broker to the extent it meets the requirements of eleven specific exceptions.[17] Each of these exceptions permits a bank to act as an agent with respect to specified securities products or in transactions that meet specific statutory conditions.

In particular, Section 3(a)(4) of the Exchange Act provides conditional exceptions from the definition of broker for banks that engage in third-party brokerage arrangements; [18] trust and fiduciary activities; [19] permissible securities transactions; [20] certain stock purchase plans; [21] sweep accounts; [22] affiliate transactions; [23] private securities offerings; [24] safekeeping and custody activities; [25] identified banking

Applications to Engage in Limited Underwriting and Dealing in Certain Securities. 73 Fed. Res. Bull. 473 (1987) and Chase Manhattan Corp., Order Approving Application to Underwrite and Deal in Commercial Paper to a Limited Extent. 73 Fed. Res. Bull. 369 (1987).

In 1989, the Federal Reserve provided additional guidance on Section 20 subsidiaries, raising the revenue limit on underwriting and dealing in bank-ineligible securities from five percent to ten percent of the subsidiary's total revenues. Order Approving Modifications to Section 20 Orders, 75 Fed. Res. Bull. 751 (1989). Subsequently, the Federal Reserve raised the revenue limits from non-eligible securities to twenty-five percent, eliminated most of the firewalls between banks and securities firms, and added private placement services and riskless principal transactions to the list of approved non-banking activities. *See* Regulation Y, 12 CFR 225.

[9] Conditional approval of applications by Travelers Group Inc., (Sept. 23, 1998). 84 Fed. Res. Bull. 985 (1998). *http://www.federalreserve.gov/boarddocs/press/bhc/1998/19980923*

[10] *See* Julie L. Williams and Mark P. Jacobsen, The Business of Banking: Looking to the Future, 50 Bus. Law. 783 at 814 (May 1995) and Julie L. Williams and James F.E. Gillespie, *The Business of Banking: Looking to the Future—Part II*, 52 Bus. Law. 1279 (Aug. 1997) (''While the nature of the national bank charter is the grant of a banking franchise, it explicitly does not limit national banks to banking activities.'').

[11] For a general discussion, *see, e.g.*, Wilmarth Article, *supra* note 5 at 219–220.

[12] In eliminating the ownership separations, Congress understood the need to adopt other safeguards to mitigate the conflicts of interest that combined ownership could create. One of the bill's authors highlighted functional regulation as a key requirement of the GLBA:

The second major feature of the bill is that we promote and strengthen functional regulation. Under the bill, the general rule is that if you are a bank and you are in the securities business, you are regulated by the Securities and Exchange Commission. If you are a bank and you are in the insurance business, you are regulated by the state insurance commissioner in the area where you are engaged in the insurance business. If you are a bank and you are engaged in banking, you are regulated by bank regulators. By opting for functional regulation, we preserve consumer protection, we lower costs.

Statement of Senator Phil Gramm, 145 Cong. Rec. S13783–01.

[13] For a list of Commission testimony and related correspondence, *see* Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001) at n. 8.

[14] *Id.* The General Accounting Office recognized that investors have received unequal levels of investor protection (including disclosures) and disparate access to remedies depending on the market professional selling them securities. *See* U.S. General Accounting Office, Report to Congressional Requesters: *Bank Mutual Fund Sales Practices and Regulatory Issues* GAO/GGD–95–210, at p. 52 (Sept. 1995); U.S. General Accounting Office, Report to Congressional Requesters: *Banks' Securities Activities—Oversight Differs Depending on Activity and Regulator*, GAO/GGD–95–214, at p. 25 (Sept. 1995).

[15] Testimony of SEC Chairman Arthur Levitt Before the Committee on Commerce Concerning H.R. 10, ''The Financial Services Act of 1999'' (May 5, 1999).

[16] *See* H.R. Rep. No. 106–74, pt. 3, at 114 (1999). In adopting the GLBA, Congress also intended to level the playing field between banks and broker-dealers. As the House Committee on Commerce noted in the legislative history to the GLBA, the complete exception for banks from broker-dealer registration created a competitive disparity by permitting banks to engage in securities activities without being subject to the same regulatory requirements as registered broker-dealers. *See id.* In drafting the bank exceptions from broker-dealer registration, the Committee stated that, ''registration may not be required because the conditions imposed on the excepted activities are tailored to protect investors and to ensure competitive fairness among different types of financial services providers.'' *Id.* at 162.

[17] Exchange Act Section 3(a)(4) [15 U.S.C. 78c(a)(4)].

[18] Exchange Act Section 3(a)(4)(B)(i). This exception permits banks to enter into third-party brokerage, or ''networking'' arrangements with brokers under nine specific conditions.

[19] Exchange Act Section 3(a)(4)(B)(ii). This exception permits banks to effect transactions as trustees or fiduciaries for securities customers under two specific conditions.

[20] Exchange Act Section 3(a)(4)(B)(iii). This exception permits banks to buy and sell commercial paper, bankers' acceptances, commercial bills, exempted securities, certain Canadian government obligations, and Brady bonds.

[21] Exchange Act Section 3(a)(4)(B)(iv). This exception permits banks, as part of their transfer agency activities, to effect transactions for certain issuer plans.

[22] Exchange Act Section 3(a)(4)(B)(v). This exception permits banks to sweep funds into no-load money market funds.

[23] Exchange Act Section 3(a)(4)(B)(vi). This exception permits banks to effect transactions for affiliates, other than broker-dealers.

[24] Exchange Act Section 3(a)(4)(B)(vii). This exception permits certain banks to effect transactions in privately placed securities.

[25] Exchange Act Section 3(a)(4)(B)(viii). This exception permits banks to engage in certain enumerated safekeeping or custody activities, including stock lending as custodian.

products;[26] municipal securities;[27] and *de minimis* transactions.[28] As part of the Exchange Act, these provisions are subject to Commission interpretation.[29] A bank that effects transactions in securities as agent outside the scope of these exceptions is required to register as a broker in accordance with Section 15(a) of the Exchange Act.[30]

*B. Regulatory and Procedural Background—The Interim Final Rules, Public Comment, and the Temporary Exemptions*

In 2001, the Commission adopted interim final rules (''the Interim Rules'') largely in response to interpretive questions and industry concerns about the way in which the Commission would interpret the GLBA.[31] The Interim Rules were designed to provide banks with guidance regarding the GLBA by defining certain key terms used in the new statutory exceptions. The Interim Rules also provided banks with additional targeted exemptions from the definitions of ''broker'' and ''dealer'' for certain types of ongoing securities transactions or activities. The Commission adopted the Interim Rules in interim final form to provide the banking industry with immediate guidance and exemptive relief while also soliciting public comment. In response, the Commission received over 200 letters commenting on the Interim Rules.[32]

The Commission temporarily suspended the implementation of the exceptions in light of concerns that banks needed more time to adjust their operations to comply with the Interim Rules.[33] The Commission staff has used this period during the temporary suspension to continue discussions with banking industry representatives, staff from the Banking Agencies, and other interested parties to refine further the guidance and exemptions provided in the Interim Rules.[34]

## II. Discussion of Proposed Regulation B

After reviewing the comments on the Interim Rules and discussing the practical application of those Rules with representatives from the banking industry, banking regulators, and other interested parties, the Commission is proposing to revise and restructure the Interim Rules and to codify them in a new regulation, Regulation B. The proposed new rule series is Exchange Act Rule 710 through Rule 781 (17 CFR 242.710 through 781).

Proposed Regulation B includes rules designed to define and clarify a number of the statutory exceptions from the definition of ''broker.'' In addition, proposed Regulation B would grant new exemptions from the ''broker'' definition to banks and certain other financial institutions. These proposed exemptions would supplement the statutory exceptions to preserve bank securities activities where consistent with the statutory purpose of investor protection. For example, proposed Regulation B would provide a broad exemption for certain bank cash management services. This proposed exemption would allow banks to buy and sell money market securities for qualified investors and certain other bank customers who keep funds at banks.

Moreover, in response to banks' concerns about calculating their compensation as fiduciaries on an account-by-account basis, the proposal would provide a ''line-of-business'' compensation test that would permit banks to bypass the account-by-account test in the trust and fiduciary activities exception. In addition, the proposal would broaden an exemption for small banks and thrifts, which could greatly expand the number of smaller financial institutions that are excluded from broker-dealer registration requirements.

The proposal also would provide a number of specialized exemptions to accommodate banks' current business practices, balanced with conditions that are designed to protect investors. These proposed specialized exemptions include exemptions for banks that effect transactions for certain custody customers or pension plans, and those that effect transactions in Regulation S securities with non-U.S. persons.

The proposed titles and numbering of the rules in proposed Regulation B, including the proposed new rules, appear below, with parenthetical explanations added to the titles:

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[26] Exchange Act Section 3(a)(4)(B)(ix). This exception permits banks to buy and sell certain ''identified banking products,'' as defined in Section 206 of the GLBA [codified at 15 U.S.C. 78c(a)(4)(B)(ix)].

[27] Exchange Act Section 3(a)(4)(B)(x). This exception permits banks to effect transactions in municipal securities.

[28] Exchange Act Section 3(a)(4)(B)(xi). This exception permits banks to effect up to 500 transactions in securities in any calendar year in addition to transactions referred to in the other exceptions.

[29] In contrast, the Glass-Steagall Act is interpreted by the federal banking agencies.

[30] Exchange Act Section 15(a) generally prohibits broker-dealers that are not registered with the Commission from effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security.

[31] Exchange Act Release No. 44291, *supra* note 13.

[32] Nearly all of these letters came from the banking industry or its representatives. The federal banking agencies (the Federal Reserve, OCC, and FDIC) (collectively referred to as the ''Banking Agencies'') also submitted comments. *See* letter and appendix dated June 29, 2001 from Alan Greenspan, Chairman, Federal Reserve, John D. Hawke, Comptroller of the Currency, and Donna Tanoue, Chairman, FDIC (''Banking Agencies letter'').

Included in the comment letters were 111 comment letters in a form letter format. Many of the banking organizations that submitted these form comment letters sent multiple copies of a common form letter, including 54 letters from one banking organization. The following banks and persons submitted 116 form letters (''Bank Form Letters''): Amarillo National Bank (54 letters); American Bank Holding Co.; American Church Trust Co.; Austin Trust Co.; Bank Midwest; Bank of West (two letters); Bonham State Bank; Jeff Scribner, Senior Vice President, Financial Services Division Manager, Citizens National Bank; Steven M. Dow, Vice President and Trust Officer, Community Bank &Trust; Extraco Banks; First Command Bank; First National Bank; First National Bank of Abilene (seven letters); First National Bank; First National Bank of Mineola; First State Bank of Texas; First State Bank & Trust Co. (two letters); Richard Perryman, CPA, Vice President and Trust Officer, Guaranty Bank; Hibernia National Bank (two letters); Hibernia Trust (two letters); Murray Pate, Kanaly Trust Company; Legacy Trust Co.; Longview Bank & Trust; Lubbock National Bank; David Malleck; Charles Hall Jr., CEO, MaximBank; McAllen National Bank (four letters); Linda Park; Kimberly Miller, Senior Vice President and Trust Officer, PNB Financial; Luptis Rosales, VP & Trust Officer of unnamed bank; Secured Trust Bank; Sentinel Trust Co.; Southside Bank (two letters); Carol Preston, Senior Vice President and Trust Officer, Southwest Bank; Texas Bank; Texas Capital Bank; Wayne Spencer, President, Texas Community Bank and Trust; Texas Gulf Bank; Texas State Bank (nine letters); Debbie Truman; Willard B. III Wagner. Three additional form letters were submitted without identifying information.

[33] *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR 27760 (adopting Interim Rules, including Exchange Act Rule 15a–7, which gave banks a temporary exemption from the definitions of ''broker'' and ''dealer'' until October 1, 2001, and provided an additional conditional exemption until January 1, 2002); Exchange Act Release No. 44570 (July 18, 2001) (providing banks, savings associations, and savings banks with an additional conditional exemption from the definitions of ''broker'' and ''dealer'' under the Exchange Act until May 12, 2002); Exchange Act Release No. 45897 (May 8, 2002) (order extending the exemption from the definition of ''broker'' until May 12, 2003, and from the definition of ''dealer'' until November 12, 2002); Exchange Act Release No. 46751 (Oct. 30, 2002) (extending the exemption from the definition of ''dealer'' until February 10, 2003); Exchange Act Release No. 47366 (Feb. 13, 2003) (extending the exemption from the definition of ''dealer'' until September 30, 2003); Exchange Act Release No. 47649 (April 8, 2003) (extending the exemption from the definition of ''broker'' until November 12, 2004).

[34] During this period, to facilitate a prompt and efficient resolution of remaining questions and concerns about the Interim Rules, the Commission bifurcated the rulemaking process to address the ''broker'' and ''dealer'' issues separately. For an explanation of this bifurcation, *see* Exchange Act Release No. 46745 (Oct. 30, 2002) 67 FR 67496 (Nov. 5, 2002) (''Dealer Proposing Release''). The dealer provisions, along with the Commission's implementing rules, became effective September 30, 2003. *See* Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686, 8687 (Feb. 24, 2003) (''Dealer Release'').

**Regulation B: Securities Activities of Banks and Other Financial Institutions**

### Subpart A—Networking Exception: Defined Terms

242.710: Defined terms relating to the networking exception from the definition of ''broker'' (proposed amendment to provisions in Exchange Act Rule 3b–17).

### Subpart B—Trust and Fiduciary Activities Exception: Exemptions and Defined Terms

242.720: Exemption from the ''chiefly compensated'' condition for banks with existing personal trust accounts (proposed new rule).

242.721: Exemption for banks from determining whether they are ''chiefly compensated'' on a line of business (proposed expansion and redesignation of Exchange Act Rule 3a4–2).

242.722: Exemption for banks from determining whether they are ''chiefly compensated'' on an account-by-account basis (proposed new rule).

242.723: Exemption from the definition of ''broker'' for banks effecting transactions as an indenture trustee in a no-load money market fund (proposed expansion and redesignation of Exchange Act Rule 3a4–3).

242.724: Defined terms relating to the trust and fiduciary activities exception from the definition of ''broker'' (proposed amendment to terms in current Exchange Act Rule 3b–17, which would be repealed).

### Subpart C—[Reserved]

### Subpart D—Sweep Accounts Exception: Defined Terms

242.740: Defined terms relating to the sweep accounts exception from the definition of ''broker'' (proposed amendment to terms in current Exchange Act Rule 3b–17).

### Subpart E—Affiliate Transactions Exception: Defined Terms

242.750: Defined terms relating to the affiliate transactions exception from the definition of ''broker'' (proposed amendment to terms in current Exchange Act Rule 3b–17).

### Subpart F—Safekeeping and Custody Activities Exception: Exemptions

242.760: Exemption from the definition of ''broker'' for banks effecting transactions in securities in a custody account (proposed expansion and redesignation of Exchange Act Rule 3a4–5).

242.761: Exemption from the definition of ''broker'' for small banks effecting securities transactions in a custody account (proposed expansion and redesignation of Exchange Act Rule 3a4–4).

### Subpart G—Special Purpose Exemptions

242.770: Exemption from the definition of ''broker'' for banks effecting transactions in securities in certain employee benefit plans (proposed new rule).

242.771: Exemption from the definitions of ''broker'' and ''dealer'' for banks effecting transactions in securities issued pursuant to Regulation S (proposed new rule).

242.772: [Reserved][34a]

242.773: Exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks (proposed amendment to and redesignation of Exchange Act Rule 15a–9).

242.774: Exemption from the definitions of ''broker'' and ''dealer'' for credit unions (proposed new rule).

242.775: Exemption from the definition of ''broker'' for the way banks effect excepted or exempted transactions in investment company securities (proposed expansion and redesignation of Exchange Act Rule 3a4–6).

### Subpart H—Temporary Exemptions

242.780: Exemption for banks from liability under Section 29 of the Securities Exchange Act of 1934 (proposed amendment to and redesignation of Exchange Act Rule 15a–8).

242.781: Exemption from the definition of ''broker'' for banks for a limited period of time (proposed amendment to and redesignation of Exchange Act Rule 15a–7).

## III. Discussion of Comments on the ''Broker'' Rules and Proposed Amendments

### *A. Networking Exception*

The third-party brokerage (''networking'') exception in Exchange Act Section 3(a)(4)(B)(i)[35] allows banks to partner with broker-dealers in offering their customers a wide range of financial services, including securities brokerage. Specifically, the exception provides that a bank will not be considered a broker if, under certain conditions, the bank enters into a contractual or other written arrangement with a registered broker-dealer under which the broker-dealer offers brokerage services to bank customers (''networking arrangement''). If the bank's networking activities meet the conditions of the exception, it may, without itself being registered as a broker-dealer, receive compensation related to brokerage transactions the broker-dealer effects as a result of the networking arrangement. The exception also allows unregistered bank employees[36] to engage in limited securities-related activities and to receive incentive compensation in the form of a ''nominal one-time cash fee of a fixed dollar amount'' for referring bank customers to the broker-dealer.[37]

To clarify the way in which bank employees may be compensated consistent with the networking exception, the Interim Rules defined certain terms used in the exception, such as ''nominal one-time cash fee of a fixed dollar amount'' and ''referral.''[38] These definitions establish objective standards for determining whether a referral fee would be nominal and the manner in which the fee must be structured.[39] For example, the fee may

[34a] If the Commission adopts proposed Regulation B, it will redesignate Exchange Act Rule 15a–11 as Exchange Act Rule 772 without changing the language of the current rule.

[35] 15 U.S.C. 78c(a)(4)(B)(i).

[36] ''Unregistered'' bank employees are bank employees who are not also employed as registered representatives of a registered broker-dealer that supervises their securities activities.

[37] The statutory conditions under which banks may rely on the networking exception stem from a line of no-action letters in which the Commission staff indicated enforcement action would not be recommended against thrifts that entered into highly circumscribed networking arrangements. H.R. Rep. No. 106–74, pt. 3, at 163 (1999). The first of these letters was issued in response to a request from Chubb Securities Corp. *See* Letter re: *Chubb Securities Corp.* (Nov. 24, 1993) (''Chubb letter''). Because they are not banks, thrifts could not rely on the then-existing general exemption from the definition of ''broker'' enjoyed by banks, and these letters provided thrifts with a means to compete with banks in making securities brokerage services available to their customers. For the relief the Commission is proposing to extend to thrifts, *see* Section III.F.4 *infra.* Although the networking exception in Exchange Act Section 3(a)(4)(B)(i) allows banks to continue many of the networking activities in which they engaged before the GLBA was enacted, it also limits the scope of those activities.

Various aspects of bank networking activities are also subject to limitations and requirements in self-regulatory organization (''SRO'') rules, including NASD Rule 2350 (''Broker/Dealer Conduct on the Premises of Financial Institutions'') and NASD Rule 3040 (''Private Securities Transactions of an Associated Person''). *See also* Federal Reserve, FDIC, OCC, and OTS, *Interagency Statement on Retail Sales of Nondeposit Investment Products* (Feb. 15, 1994) (''Interagency Statement'').

[38] *See* Exchange Act Rule 3b–17 (g)(1) and (h).

[39] Exchange Act Rule 3b–17(g) states:

(g)(1) The term *nominal one-time cash fee of a fixed dollar amount* means a payment in either of the following forms that meets the requirements of subparagraph (2):

not exceed one hour of wages of the employee making the referral. The definition also anticipates that banks may pay referral fees in cash as well as through a points-based compensation system so long as the number of points the referring employee receives for a securities referral does not exceed the number of points the employee receives for non-securities related activities. These definitions also specify that payment of a referral fee may not be related to certain factors such as the value or successful completion of a securities transaction, or the financial stature of the customer being referred.

1. Comments on Definition of ''Nominal One-Time Cash Fee of a Fixed Dollar Amount''

We received numerous comments regarding the Interim Rules' definition of ''nominal one-time cash fee of a fixed dollar amount.''[40] The commenters generally opposed the definition, arguing, among other things, that it was unnecessary, unworkable, or overly restrictive. Some commenters contended that defining the term ''nominal'' unnecessarily limits referral fees. They maintained that the term should be left undefined or interpreted to allow market-rate referral fees up to a set amount, such as $25, $100, or $250.[41] Other commenters opined that Congress did not intend for the limitations on incentive compensation included in the networking exception to affect year-end bank bonus programs even if those programs were in part based on the number of referrals made.[42] Commenters also asserted that the definition imposed limits on networking compensation beyond those contained in the Exchange Act.[43] Some commenters contended that the definition would unduly limit the fees banks could pay based on points for activities involving non-securities products and services.[44] Several commenters stated that tying referral fees to hourly wages is impractical or unworkable because it does not permit a single, flat fee that would be high enough to provide a meaningful incentive for tellers and platform personnel to make referrals to the broker-dealers.[45] Others indicated that

(i) A payment that does not exceed one hour of the gross cash wages of the unregistered bank employee making a referral; or

(ii) Points in a system or program that covers a range of bank products and non-securities related services where the points count toward a bonus that is cash or non-cash if the points (and their value) awarded for referrals involving securities are not greater than the points (and their value) awarded for activities not involving securities.

(2) Regardless of the form of payment, the payment may not be related to:

(i) The size, value, or completion of any securities transaction;

(ii) The amount of securities-related assets gathered;

(iii) The size or value of any customer's bank or securities account; or

(iv) The customer's financial status.

Exchange Act Section 3b–17(h) states: ''The term *referral* means a bank employee arranging a first securities-related contact between a registered broker-dealer and a bank customer, but does not include any activity (including any part of the account opening process) related to effecting transactions in securities beyond arranging that first contact.''

[40] *See, e.g.*, letter dated June 4, 2001 from James D. McLaughlin, Director, Regulatory and Trust Affairs, American Bankers Association (''ABA'') and Beth L. Climo, Executive Director, American Bankers Securities Association (''ABASA'') and the letter dated July 17, 2001 from Edward L. Yingling, Deputy Executive Vice President and Executive Director, ABA, and Beth L. Climo, Executive Director, ABASA (''ABA/ABASA letters''); letter dated July 17, 2001 from John Duncan, the Banking Law Committee of the Business Law Section of the American Bar Association (''ABA Banking Law Committee letter''); letter dated July 17, 2001 from Robert M. Kurucza, General Counsel, Bank Securities Association (''BSA letter''); letter dated July 17, 2001 from Charlotte M. Bahin, Director of Regulatory Affairs, Senior Regulatory Counsel, America's Community Bankers (''ACB letter''); the Banking Agencies letter; letter dated July 17, 2001 from John H. Huffstutler, Associate General Counsel, Bank of America Corporation (''Bank of America letter''); letter dated July 17, 2001 from J. Michael Shepherd, Executive Vice President and General Counsel, Bank of New York (''BONY letter''); letter dated July 16, 2001 from John M. Kramer, Deputy General Counsel, Bank One Corporation (''Bank One letter''); letter dated July 16, 2001 from Roger D. Wiegley, Chair, Committee on Banking Law, The Association of The Bar of the City of New York (''Bar of NY letter''); letter dated July 13, 2001 from Jim Goudge, President and CEO, Broadway National Bank (''Broadway letter''); letter dated July 12, 2001 from Terry Jones Cox, Vice President, HR/Compliance, Central National Bank (''Central letter''); letter dated August 22, 2001 from Andrew Trainor, President and CEO of Community Banks of Southern Colorado (''Community Banks of Southern Colorado letter''); letter dated July 17, 2001 from Gerald M. Noonan, President, the Connecticut Bankers Association (''Connecticut Bankers letter''); letter dated July 16, 2001 from William C. Mutterperl, Executive Vice President, General Counsel and Secretary, FleetBoston Financial Corporation (''Fleet letter''); the Frost letter; letter dated August 30, 2001 from Edward J. Eason, Vice President, Granite Bank (''Granite bank letter''); letter dated July 16, 2001 from Paul V. Reagan, Senior Vice President and U.S. General Counsel, Bank of Montreal Group on behalf of Harris Trust and Savings Bank (''Harris Trust letter''); letter dated July 17, 2001 from Robert I Gulledge, Chairman, Independent Community Bankers of America (''ICBA letter''); letter dated July 17, 2001 from Lawrence R. Uhlick, Executive Director and General Counsel, Institute of International Bankers (''IIB letter''); letter dated July 16, 2001 from Michael E. Bleier, General Counsel, Mellon Financial Corporation (''Mellon letter''); letter dated July 16, 2001 from David A. Daberko, Chairman and Chief Executive Officer, National City Corporation (''National City letter''); letter dated July 17, 2001 from Guy Messick, General Counsel to the National Association of Credit Union Service Organizations (''NACUSO letter''); letter dated August 1, 2001 from Jeffrey P. Neubert, President and Chief Executive Officer, New York Clearing House (''NYCH letter''); letter dated July 16, 2001 from Deborah R. Bortner, President, the North American Securities Administrators Association (''NASAA letter''); letter dated July 17, 2001 from James S. Keller, Chief Regulatory Counsel, PNC Financial Services Group (''PNC letter''); letter dated July 17, 2001 from Samuel E. Upchurch, Jr., Executive Vice President, General Counsel and Secretary, Regions Financial Corporation (''Regions letter''); letter dated July 17, 2001 from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable (''Roundtable letter''); letter dated July 17, 2001 from Barry P. Harris, Chair, Bank Retail Broker-Dealer Committee, Securities Industry Association (''SIA letter''); letter dated July 17, 2001 from A. Michelle Roberts, Executive Director, The Trust Financial Services Division of the Texas Bankers Association (''Texas Bankers Trust Division letter''); letter dated July 17, 2001 from Lawrence A. Knecht, Senior Vice President and Legal Counsel, UMB Bank (''UMB Bank letter''); letter dated July 17, 2001 from Norimichi Kanari, President and CEO, Union Bank of California (''Union Bank letter''); letter dated July 12, 2001 from W. Steve Meacham, Senior Vice President and Senior Trust Officer, letter dated August 31, 2001 from David S. Hickman, Chairman and CEO, United Bank & Trust (''United Bank letter''); letter dated July 12, 2001 from W. Steve Meacham, Senior Vice President and Senior Trust Officer, First Victoria National Bank (''Victoria letter''); and letter dated July 13, 2001 from Bruce Moland, Vice President and Assistant General Counsel, Wells Fargo & Company (''Wells Fargo letter''). The Bank Form Letters criticized the Interim Rules'' limitations on the value of referral fees and expressed the view that those limitations are unfair, but did not comment specifically on the definition of ''nominal one-time cash fee of a fixed dollar amount.''

[41] *See, e.g.*, Central letter; ABA Banking Law Committee letter; and Wells Fargo letter. Similarly, in a September 23, 2003 meeting, banking agency staff told the Commission staff that some banks pay fees of as much as $100 for referrals of high net-worth customers and that members of the banking agencies staff believe such fees should be considered nominal, although currently referral fees typically range from $5 to $50, with $50 representing the top of the range at large banks in coastal metropolitan areas. One commenter asserted that because the Commission has considered $250 a ''*de minimis*'' amount in the context of Municipal Securities Rulemaking Board Rule G–37, the term ''nominal'' should be interpreted to allow referral fees of the same amount in this context. *See* Wells Fargo letter. MSRB Rule G–37 relates to political contributions that might improperly influence municipal officials in awarding underwriting business. The fact that some may look to wholly unrelated contexts to argue that a particular amount should be considered ''nominal'' in this context underscores the importance of giving quantitative meaning to the term in the proposed amended definition of ''nominal one-time cash fee of a fixed dollar amount.''

[42] *See,e.g.*, Bank of America letter; Harris Trust letter; and Mellon letter.

[43] *See, e.g.*, Bank of America letter; Fleet letter; Harris Trust letter; IIB letter; Mellon letter; PNC letter; Regions letter; and Wells Fargo letter.

[44] *See, e.g.*, Bank of America letter; Harris Trust letter; and Mellon letter.

[45] *See, e.g.*, SIA letter; Bank One letter; Regions letter; Harris Trust letter; PNC letter; and Wells Fargo letter (criticizing the definition's methodology for determining nominal value as impractical and unworkable); and Bank of America letter; Fleet letter; Harris Trust letter; IIB letter; letter dated July 16, 2001 from Carol L. Klimas, Executive Vice President and Chief Fiduciary Officer, KeyBank National Association (''KeyBank letter''); Mellon letter; and Roundtable letter (arguing that requiring banks regularly to adjust payment of referral fees based on salary levels

Continued

the definition should not list categories of factors on which referral fees could not be made contingent.[46]

The Commission continues to believe that the term ''nominal'' as used in the GLBA should be defined as that term is commonly understood. Nominal means inconsequential or trifling.[47] In the context of compensation, and in common legal usage, a ''nominal'' fee is a small one of no concern to the payor and little value to the payee.[48]

Some published data suggests that banks' referral fees have increased in recent years and sometimes exceed levels that a reasonable person would deem to be ''nominal.''[49] Thus, leaving ''nominal'' undefined could lead some to read the term as meaning ''market rate.'' The Commission believes that such an interpretation could lead to unregistered bank employees being given an incentive not just to make referrals, but actually to sell securities brokerage services to bank customers. The Commission and courts have long interpreted the broker-dealer registration provisions in the federal securities laws to require persons with this kind of incentive to register as broker-dealers or be registered representatives of broker-dealers.[50]

Accordingly, in response to many of these comments, we propose only to amend the definition of ''nominal one-time cash fee of a fixed dollar amount'' to clarify further the application of the statutory limitations to banks' existing practices, to give meaning to the investor protections embodied in this provision of the Exchange Act.[51]

2. Proposed Amendments to Definition of ''Nominal One-Time Cash Fee of a Fixed Dollar Amount''

We propose to amend the definition of ''nominal one-time cash fee of a fixed dollar amount'' to mean that a referral payment must have a value that does not exceed the greater of three alternative measures: the employee's base hourly rate of pay, a dollar amount equal to $15 in 1999 plus an adjustment for inflation, or $25.[52] The fee could be paid to a bank employee no more than one time per customer referred by that employee. If the referral is not paid entirely in cash, the value of the non-cash payment must be ''readily ascertainable'' (*i.e.*, its value or potential value must have been known by the bank and the employee at the time of the referral). Also, any non-cash portion of the payment would have to have a value such that the value of the entire payment is nominal, and the non-cash portion would have to be paid under an incentive program that covers a broad range of products and that is designed primarily to reward activities unrelated to securities. Finally, the fee would have to be the same for any securities referral made by that particular employee, with a flat value that does not vary based on factors such as the financial status of a customer the employee refers, the identity of the broker-dealer to which the customer is referred, the number of referrals the employee makes, or whether the customer expresses an interest in a particular type of securities product.

a. Meaning of ''Nominal''

We propose to amend the definition of ''nominal'' to replace the standard of ''one hour of gross cash wages'' used in the Interim Rules with ''base hourly rate of pay'' to clarify that this alternative measure could be used with respect to salaried as well as unsalaried employees. As amended, the Commission believes this option would permit highly compensated bank employees to receive scaled referral fees without giving them an inappropriate promotional interest in the brokerage services a broker-dealer offers under a networking arrangement. We request comment on this proposed alternative and, in particular, on whether it might lead to some highly compensated bank employees being given a salesman's stake in the securities activities of the bank's customers.

Second, the proposed amended definition of ''nominal one-time cash fee of a fixed dollar amount'' would include a new, specific dollar-amount measure of nominal value that should simplify compliance with the networking exception in Exchange Act Section 3(a)(4)(B)(i). In particular, we are proposing a dollar amount of $15 with annual adjustments to account for inflation, based on 1999 dollars.[53] In

would create an unnecessary administrative burden). *See also* Bank Form Letters, which suggested that the Interim Rules' limitations on referral fees would result in banks being charged with calculating and tracking referral fee compensation.

[46] *See* ABA/ABASA letters; Banking Agencies letter; Bank of America letter; NYCH letter; and SIA letter.

[47] *See, e.g., Webster's New Collegiate Dictionary* at 786 (2002) (indicating that one common meaning of ''nominal'' is ''existing or being something in name or form only,'' and that ''nominal'' is synonymous with the terms ''trifling'' and ''insignificant'').

[48] *Black's Law Dictionary* (7th ed. 1999) defines ''nominal consideration'' as, ''Consideration that is so insignificant as to bear no relationship to the value of what is being exchanged (*e.g.*, $10 for a piece of real estate.'').

[49] The Consumer Bankers Association's *2000 Consumer Investments Study* indicates that in 1998, the latest year for which figures were available when the GLBA was being drafted, 79 percent of referral fees were $10 or less (approximately $12 or less in 2004 dollars). However, according to the same study, in 1999 the percentage of fees over $10 jumped from 21 percent to 31 percent. This recent trend of sharp increases in referral fees is evidenced by other data as well. For example, according to an October 17, 1996 *American Banker* story, in an effort to compete with larger banks, Placer Savings Bank, a Northern California thrift, began paying its employees investment referral fees for the first time in August 1995. The fee initially was $5 per referral (approximately $6 in 2004 dollars), and then, in September 1996, it was increased to $10 (approximately $12 in 2004 dollars).

At some banks, it appears that referral fees may already exceed nominal levels. The Consumer Bankers Association's *2001 Consumer Investments Study* indicates that in 2001, the percentage of banks paying cash referral fees of $10 or less was 45 percent. However, this figure fell by 4 percent in only one year, from 49 percent in 2000, and the percentage of banks paying fees between $11 and $25 rose by 2 percent in this period, from 31 percent in 2000 to 33 percent in 2001. The report also indicates that no bank included in the study paid fees of more than $25 in 2000, but that in 2001, a small proportion of banks (2 percent) had begun paying fees of more than $25. The available data on referral fee amounts suggests that just before the GLBA was enacted in 1999, the great majority of referral fees were $10 or less (approximately $12 or less in 2004 dollars), but that without a definition of nominal value, the average amount of a referral fee has been increasing, and in some cases clearly has exceeded a nominal value. The Commission staff recently learned from staff of the federal banking agencies that some large banks pay referrals fees of as much as $100 for particularly valuable referrals. Unless they are paid to highly compensated bank employees, fees of such amounts clearly are not nominal.

[50] *See* Exchange Act Section 15(a)(1). *See also SEC* v. *Hansen,* Fed. Sec. L. Rep. ¶ 91,426 (S.D.N.Y. 1984) (receipt of commissions instead of salary was factor in identifying broker activity); *SEC* v. *Margolin,* Fed. Sec. L. Rep. ¶ 97,025 (S.D.N.Y. 1992) (same). The Commission similarly has noted the importance of transaction-based compensation in identifying broker activity. *See* Exchange Act Release No. 22172 (June 27, 1985) (adopting release for Exchange Act Rule 3a4–1; ''[T]he receipt of transaction-based compensation often indicates that [a] person is engaged in the business of effecting transactions in securities. Compensation based on transactions in securities can induce high pressure sales tactics and other problems of investor protection which require application of broker-dealer regulation under the Act.''); Litigation Release No. 15654 (Feb. 26, 1998) (receipt of transaction-based compensation was factor in finding violation of broker-dealer registration requirement and violation of order barring individual from associating with broker).

[51] As indicated above, SRO rules and banking agency guidance may also limit networking activities. *See supra* note 37.

[52] *See* proposed Exchange Act Rule 710(b).

[53] We propose that the definition specify 1999 as the reference year because that is the year in which the GLBA was enacted. The definition also would provide that the $15 amount could be adjusted for inflation on an annual basis by order of the Commission. $15 in 1999 dollars after adjustment for inflation equals approximately $17 in 2004 dollars.

The $15 inflation-adjusted amount is consistent with the range of referral fees in thrift networking arrangements that were the subject of no-action relief that the Commission staff has granted. See, *e.g.*, letter re: *Coast Federal Bank, Federal Savings Bank* (May 13, 1993) ($7 in 1993 dollars is equivalent to approximately $8 in 1999 dollars). *See also* letter re: *First Piedmont Federal Savings and*

addition, the definition would specify $25 (without an adjustment for inflation) as an alternative measure of nominal value.[54]

The proposed inflation-adjusted $15 and non-adjusted $25 alternative measures of nominal value should address concerns some commenters raised that administering an hourly, wage-based standard might be burdensome or unworkable. As proposed, the amended definition of ''nominal one-time cash fee of a fixed dollar amount'' should permit many banks to continue paying referral fees with values comparable to fees they pay under their existing referral incentive programs, but others may be required to reduce the amount paid for referrals of customers meeting certain financial criteria.[55]

As discussed above, some commenters criticized the definition of ''nominal one-time cash fee of a fixed dollar amount'' in the Interim Rules[56] for listing conditions on referral fees that are inconsistent with the networking exception.[57] As amended, the definition would not list impermissible referral fee conditions. Instead, such conditions would be addressed by the meaning given to the phrase ''fixed dollar amount'' in the definition, and the proposed new definition of ''contingent on whether the referral results in a transaction,'' as described below.

We request comment on the proposed dollar-amount and hourly compensation standards for measuring nominal value in the proposed amended definition of ''nominal one-time cash fee of a fixed dollar amount.'' In particular, are the $15-inflation adjusted and $25 amounts the most appropriate levels?

The Commission also solicits comments on the merits of providing another alternative standard for determining whether a referral fee is nominal that would be based on the incentive a bank would pay its employee for the sale or renewal of a certificate of deposit (''CD''). To avoid such a standard leading to referral fees with non-nominal values equivalent to what a bank might pay for the sale of a large, long-term CD, the measure would refer to a CD with a term and value equal to the term and value of the CDs banks most frequently issue. The Commission solicits comments on whether such a standard would provide a useful means for measuring a nominal value in this context. In particular, we request comment on what compensation, if any, banks pay for the sale or renewal of a CD. Does the compensation for the sale or renewal of a CD vary based on economic factors such as the bank's level of interest in gathering deposits? Does the incentive vary depending on whether the transaction is a new purchase or a renewal? Does the incentive vary depending on the value of the CD or based on the term of the CD? For example, would the average incentive that a bank pays for the sale of a one-year, $5,000 CD be nominal? The Commission also solicits comments on other possible objective measures banks could use to gauge whether the referral fees they pay are nominal.

b. Meaning of ''One-Time''

Exchange Act Section 3(a)(4)(B)(i)(VI)[58] permits unregistered bank employees to receive a ''one-time'' fee for the referral of a customer. Commenters expressed the view that banks should be able to pay fees more often than contemplated by the statute.[59] This could include, for example, making a payment at the time of a referral and then a second one later if the employee makes a particular number of referrals in a period of time covering the referral for which the employee was already paid. Such an approach would be inconsistent with the plain language of the networking exception, which limits banks to paying unregistered employees only ''one-time'' referral fees.

We therefore propose to include in the amended definition of ''one-time nominal cash fee of a fixed dollar amount'' an interpretation of the term ''one-time'' to clarify that a referral fee may be paid to a bank employee no more than one time per customer referred by that employee. This proposed amendment should help clarify the issue, raised by some commenters, of the circumstances under which compensation paid in the form of bonuses falls within the networking exception's prohibition on the payment of brokerage-related incentive compensation to unregistered bank employees.[60]

Some commenters argued that only bonus plans used as a conduit to pay

*Loan Association* (July 22, 1991) (the fee specified was $15 (approximately $18 in 1999 dollars)). This amount also is consistent with the $5 to $15 fee range most banks were understood to pay their employees for securities brokerage referrals when the GLBA was drafted in 1998. FDIC, *Nondeposit Investment Products and Recordkeeping Requirements—Questions and Answers* at 10 (July 16, 1998) (citing results of a 1996 survey on bank retail investment services conducted by American Brokerage Consultants, Inc., which ''indicated that most banks pay referral fees in a range between $5 and $15.'').

Estimates of inflation-adjusted dollar amounts in this footnote and elsewhere in this release were calculated with the online inflation calculator available on the U.S. Department of Labor Bureau of Labor Statistics' website, which uses the average Consumer Price Index for a given calendar year, available at *http://data.bls.gov/cgi–bin/cpicalc.pl.*

[54] Twenty-five dollars approximates the value of the larger fees some banks have begun to pay their employees for brokerage referrals in the past few years, although it appears that at such levels the fees may be contingent on factors inconsistent with the conditions of the networking exception. *See infra* note 55.

[55] We anticipate that the most significant changes that may be required at some banks could involve steps such as discontinuing certain types of brokerage-related conditions on referral fees.

Information on existing incentive programs provided through the ABASA, the Bank Insurance Securities Association (''BISA''), and the Independent Community Bankers Association (''ICBA'') suggests that the proposed amendments would accommodate levels of referral fees consistent with the existing referral incentive programs of most banks that provided information to the Commission staff, to the extent such programs do not create inappropriate sales incentives for unregistered bank employees. A representative of the ICBA told the Commission staff that $8 is the average referral fee paid by community banks. Information from BISA on fees for brokerage referrals paid by ten banks that provided a dollar amount in response to a survey indicates a range from zero to $30: one bank pays $5; one bank pays $7 per qualified referral, which is paid into a branch-wide pool of funds that the branch will receive if it meets certain goals that include investment and insurance production; three banks pay $10; one bank pays a range between zero and $14.84, depending on whether employees meet or exceed a threshold number of qualified referrals; one bank pays $20; one bank pays $10 for a discount brokerage referral and $20 for a full-service brokerage referral; one bank pays either $18.75 or $25, depending on whether an employee has already made referrals that have resulted in twelve meetings with a registered representative; and one bank pays points with a value of $25, $25 in cash, or a cash award of between $25 and $30 for referrals exceeding quarterly target levels. One sample plan from ABASA provides for payments in points having a value of $10 for referrals that result in a kept appointment with a registered representative. Another, apparently used by multiple banks, provides for referral fees of either $25 or $35 in cash, depending on whether a bank utilizing the incentive plan selects a minimum investable assets amount of $10,000 or $25,000 for ''qualified'' customers—*i.e.*, those to whom the referring bank employee has spoken personally, meet the $10,000 or $25,000 minimum investable assets level, and keep an appointment with a registered representative of the broker-dealer within 60 days.

[56] *See* 17 CFR 240.3b–17(g)(2).

[57] *See, e.g.*, Harris Trust letter and QMellon letter (arguing that the Interim Rules should not identify impermissible conditions on referral fees that are not explicitly identified in the statute).

[58] 15 U.S.C. 78c(a)(4)(B)(i)(VI).

[59] *See, e.g.*, NYCH letter.

[60] The proposed provision would not require a bank to determine whether a customer had ever been referred by any of the bank's unregistered employees to pay the referring employee a referral fee. A bank could not, however, pay additional fees to the same unregistered employee based on additional referrals of the same customer, including additional referrals for different types of brokerage products. In other words, a bank could not pay a particular employee more than one referral fee based on multiple referrals of the same customer, and an unregistered bank employee who referred a customer more than once could receive only one fee related to that customer.

brokerage-related compensation to unregistered employees under the exception are prohibited.[61] We do not agree. Any bonus or other incentive compensation that is payable based in part, directly or indirectly, on a referral for which the employee has already received a referral fee, would violate the exception's requirement that brokerage-related incentive compensation paid to unregistered employees under the exception be limited to ''one-time'' referral fees. However, consistent with the meaning we propose to give ''cash fee'' (described below) in the definition of ''nominal one-time cash fee of a fixed dollar amount,'' a referral fee could be paid partially in cash at the time of the referral and partially in points to be paid to the employee as a bonus at a later time, if the total value of the cash and points in which the fee is paid has a nominal value under the definition.

Other types of bonuses that do not give unregistered bank employees a promotional interest in securities brokerage would not be prohibited by the exception's ''one-time'' requirement. As we explained in adopting the Interim Rules, while the exception does not permit unregistered bank employees to receive bonuses based on brokerage referrals, it does not prohibit bonuses based on the overall profitability of a bank that are determined and paid regardless of the brokerage-related activities of an employee receiving such a bonus.[62] This is true even though the financial performance of the bank as a whole would in part depend on the bank's securities networking activities, because such activities are unlikely to represent a significant source of the bank's overall profits and such bonuses are not likely to give unregistered employees a promotional interest in the brokerage services offered by the broker-dealers with which the bank networks.

In addition, some commenters stated that a bonus program applicable to all employees of a bank holding company, or based on the profitability of a bank holding company as a whole, should not be limited by the networking exception's restrictions on brokerage-related compensation.[63] The Commission believes that a bonus based on the profitability of a bank's ultimate parent company should be analyzed in the same way as a bonus based on the bank's profitability. We believe that bonuses based on measures more closely related to securities brokerage, however, would be inconsistent with the statutory limitations on referral fees.

We request comment on the interpretation of the term ''one-time'' in the proposed amended definition of ''nominal one-time cash fee of a fixed dollar amount.'' We are also soliciting comment on what additional guidance, if any, commenters would find useful with respect to bonus programs.

c. Meaning of ''Cash Fee''

In addition to cash payments, the definition of ''nominal one-time cash fee of a fixed dollar amount'' in the Interim Rules provided for payments in points in a system or program covering a range of bank products and non-securities related services in which points count toward a bonus, so long as the value of the points awarded for referrals involving securities are not greater than the value of the points awarded for activities not involving securities.[64] While Exchange Act Section 3(a)(4)(B)(i) does not contemplate the payment of referral fees in points instead of cash, the Commission included this provision in recognition of banks' existing practices to give them additional flexibility. While some commenters supported the provision, others expressed concern or raised questions about it. For example, some asserted that it should not be limited to points awarded for securities referrals as part of a broader program or argued that it unfairly limited the value of fees paid in points.[65]

In response to questions and concerns expressed about this provision, the Commission is proposing to modify it. The amended definition of ''nominal one-time cash fee of a fixed dollar amount'' [66] would allow the payment of referral fees or portions of referral fees other than in cash to the extent that: (1) Such payments are in units of value with a readily ascertainable cash equivalent;[67] (2) the total value of the referral fee meets the nominal value conditions of the proposed amended definition; and (3) the payment is made under an incentive program that covers a broad range of products and that is designed primarily to reward activities unrelated to securities.[68] As noted above, this interpretation of the networking exception's ''cash fee'' requirement would permit banks to continue using certain types of point-based incentive programs under which points are accumulated toward a cash bonus or other incentive. These provisions are intended to maintain the flexibility provided in the Interim Rules for banks to continue using such programs, while providing greater certainty as to the conditions under which such programs may be used to reward securities brokerage referrals. Of course, a referral fee paid in part or entirely in points must not only have a nominal value, but it must also meet the other conditions of the networking exception.

We request comment on the proposed interpretation of the exception's''cash fee'' requirement. In particular, commenters are invited to discuss whether the limitations in this provision

[61] *See, e.g.*, July 17, 2001, ABA/ABASA letter; Banking Agencies letter; and PNC letter. The Bank One letter, Mellon letter, and SIA letter also sought clarification regarding the circumstances under which bonuses would not be impermissible incentive compensation under the networking exception.

[62] *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27766. The explanation continued with the caveat that a bank could not rely on the networking exception and use bonuses as a means of indirectly paying their unregistered employees brokerage-related incentive compensation based on the performance of a branch, department or line of business of the bank. This is also true for bonuses based on points paid under the proposed interpretation of ''cash fee.'' Such bonuses also must not be contingent on factors on which the payment of a referral fee, or the value of a referral fee, may not be conditioned. *See* discussions regarding ''fixed-dollar amount'' and ''contingent on whether the referral results in a transaction,'' *infra*. Of course, whether an unregistered employee receives a bonus based in part on brokerage referrals could be contingent on factors unrelated to securities brokerage, such as whether the employee opens a certain number of deposit accounts or consistently follows the bank's risk management policies. However, as explained below, the exception's ''fixed dollar amount'' condition means that the value of any points paid for brokerage referrals that might count toward the bonus would need to have a set, nominal value at the time the referrals were made.

[63] *See e.g.*, letter dated July 12, 2001 from Michael P. Smith, President, New York Bankers Association (''NYBA letter''); Harris Trust letter; Mellon letter; and SIA letter.

[64] *See* 17 CFR 240.3b–17(g)(1)(ii).

[65] *See* Banking Agencies letter; BSA letter; Harris letter; Mellon letter; NYCH letter; Regions letter; and letter dated July 17, 2001 from Ted T. Cecala, Chairman & CEO, Wilmington Trust Company (''Wilmington Trust letter''). Moreover, in meetings with the Commission staff, bank representatives explained they were uncertain regarding the scope of services a program would need to cover to qualify for the exception.

[66] *See* proposed Exchange Act Rule 710(b)(1).

[67] The ''readily ascertainable cash equivalent'' condition would limit the value of a referral fee paid in points to an amount that is determined by a bank and known to an employee before the employee makes a brokerage referral. This requirement would not permit the value of a ''point'' to be based on the number of points an employee earns from brokerage referrals. For example, the size of a points-based bonus could not be based on the number of brokerage referrals an employee makes over a target number of brokerage referrals. Similarly, the value of a points-based bonus could not be increased by the percentage of an employee's total points earned from securities brokerage referrals.

[68] *See* proposed Exchange Act Rule 710(b)(3). The condition that the incentive program cover a broad range of products and be designed primarily to reward activities unrelated to securities means the program provides incentives for activities such as selling bank products or services not involving securities or for making referrals for non-securities products such as insurance, and that the program is not focused on brokerage referrals.

would be sufficient to assure that unregistered bank employees are not given incentives to promote a broker-dealer's brokerage business by engaging in more than the limited activities permitted under the exception. We are also soliciting comment on what additional guidance, if any, commenters would find useful with respect to such programs.

d. Meaning of ''Fixed Dollar Amount''

We also propose to amend the definition of ''nominal one-time cash fee of a fixed dollar amount'' to specify that a fee of a ''fixed dollar amount'' means a flat fee.[69] The proposed definition would state that fees paid for brokerage referrals made by a particular employee must have a set value and may not vary based on factors such as the financial status of a customer the employee refers, the identity of the broker-dealer to which the customer is referred, the number of referrals the employee makes, or whether the customer expresses an interest in a particular type of securities product.

3. Comments on Definition of ''Referral'' and Proposed Amendments

The Interim Rules define the term ''referral'' to exclude any activity beyond arranging a first securities-related contact between a registered broker-dealer and a bank customer. We received over a dozen comments on the definition of ''referral.''[70] Commenters characterized the definition as excessively narrow,[71] and generally took the position that it was more restrictive than required by the Exchange Act, the Banking Agencies, and the Interagency Statement.[72] Several commenters indicated that they saw no need to restrict referral payments at all.[73] A few objected to the use of the phrase ''first securities-related contact,'' or suggested that the phrase be defined.[74]

In response to these comments and to address concerns commenters expressed about difficulties they might have in meeting the definition in the Interim Rules, we propose to eliminate the first securities-related contact limitation from the definition of ''referral.'' We also propose to simplify the definition in a manner consistent with pre-GLBA networking arrangements. Under the amended definition, a ''referral'' would mean the action taken by a bank employee to direct a customer of the bank to a registered broker or dealer for the purchase or sale of securities for the customer's account.[75]

The proposed amendment also would specify that a bank may pay a fee for a brokerage referral only to the employee who made the referral and not to other employees, such as a branch manager or other supervisor. This interpretation of the statute is consistent with existing networking practices and banking agency guidance. We request comment on these proposed changes and clarifications to the definition of ''referral.'' Commenters are invited to discuss whether banks need additional guidance on what constitutes a referral.

4. Proposed New Definition of ''Contingent on Whether the Referral Results in a Transaction''

The Interim Rules stated that the payment of a ''nominal one-time cash fee of a fixed dollar amount'' for a referral cannot be related to certain enumerated factors, including the value of any securities transaction or a customer's financial status.[76] Although some commenters indicated that limitations on the conditions under which referral fees may be paid are unnecessary,[77] the networking exception is clear that the payment of referral fees in reliance on this exception may not be contingent on whether the referral results in a transaction.[78]

Thus, to provide guidance on those contingencies on which incentive compensation may not be based under the exception, we propose to define the term ''contingent on whether the referral results in a transaction'' to mean, with two exceptions, contingent on any factor related to whether the referral results in a transaction, including whether it is likely to result in a transaction, whether it results in a particular type of transaction, or whether it results in multiple transactions.[79]

For example, under the proposed definition, a bank could not make referral fees contingent on whether a customer opens a brokerage account because such a contingency would make it more likely that the referral would result in a securities transaction.[80] Referral fees also may not be contingent on whether the customer invests more than a specified amount in securities or maintains a brokerage account for a specified time.

In response to commenters' requests,[81] however, the proposed definition specifically would permit referral fees to be contingent on two factors. First, the term would permit referral fees to be contingent on whether a customer contacts or keeps an appointment with a broker-dealer as a result of a referral.[82] Second, referral fees may be contingent on whether a bank customer has assets meeting any minimum requirement that the registered broker-dealer, or the bank, may have established generally for referrals for securities brokerage accounts.[83] Both of these factors give broker-dealers the flexibility to avoid paying fees for worthless referrals without inappropriately aligning the financial interests of the bank's employee with those of the broker-dealer. A customer could fail to keep an appointment scheduled at the time of a referral but still contact a broker-dealer as a result of the referral. Banks may wish to pay referral fees in those contexts. These contingencies appear to be commonly used in existing networking arrangements. In contrast, contingencies based on whether a referral results in a customer opening or funding a brokerage account, on

[69] The proposed definition would clarify that rewarding referrals with non-flat fees that vary in amount based on ''success'' factors would be inconsistent with the ''fixed dollar'' amount requirement in the statute.

[70] *See, e.g.*, Banking Agencies letter; Bank of America letter; BONY letter; Connecticut Bankers letter; NYCH letter; Regions letter; Roundtable letter; UMB Bank letter; and Wells Fargo letter.

[71] *Id.*

[72] *See* Interagency Statement, *supra* note 37.

[73] *See* Banking Agencies letter; Connecticut Bankers letter; and UMB Bank letter.

[74] *See, e.g.*, NYCH letter and Wells Fargo letter.

[75] *See* proposed Exchange Act Rule 710(c). Representatives of banks have expressed an interest in paying their unregistered employees for broker-related activities other than referrals, such as screening potential brokerage customers. The Commission believes that such activities constitute brokerage activities beyond those intended to be covered by the networking exception. The Commission believes it would be inconsistent with the networking exception for banks to pay fees to unregistered bank employees to perform functions—other than those expressly permitted by the GLBA or an applicable exemption—that are traditionally performed by a registered representative of a broker-dealer. A broker-dealer has a duty to know its customers, which involves obtaining financial information from them through its registered representatives. Moreover, whether investing in securities through a broker-dealer is appropriate for a particular individual must be determined by that broker-dealer's registered representative, not unregistered bank employees that are not subject to suitability obligations.

[76] *See* 17 CFR 240.3b–17(g)(2). Proposed Regulation B uses the word ''including'' as expanding or illustrative, not as exclusive or limiting. The use of the term ''including, but not limited to'' in Exchange Act Rules 10b–10 and 15b7–1 is not intended to create a negative implication regarding the use of ''including'' without the term ''but not limited to'' in Regulation B or other Exchange Act rules.

[77] *See* Bank of America letter and SIA letter.

[78] Exchange Act Section 3(a)(4)(B)(i)(VI).

[79] *See* proposed Exchange Act Rule 710(a).

[80] Opening a brokerage account is the first step in a securities transaction. Typically, opening a brokerage account results in the purchase or sale of securities.

[81] *See* Bank of America letter and SIA letter.

[82] *See* proposed Exchange Act Rule 710(a)(1).

[83] *See* proposed Exchange Act Rule 710(a)(2).

whether the customer keeps the account open for a certain period of time, or on whether the referral results in brokerage-related fees above a certain amount or assets invested above a certain amount are the type of success-based factors that are close measures of whether a referral results in a transaction.

We request comment on the proposed definition of ''contingent on whether the referral results in a transaction.'' In particular, we seek comment on whether there are additional contingencies that banks currently place on referral fees that should be permissible under the proposed definition of ''contingent on whether the referral results in a transaction.'' In addition, we encourage commenters to discuss other areas where they believe the Commission should grant exemptive relief related to networking arrangements. For example, in addition to the asset, net worth, and income contingencies excluded from the proposed definition, we seek comment on whether banks should be able to condition the payment of referral fees on other criteria relating to other aspects of a customer's financial profile, such as tax bracket. Banks also are invited to discuss whether they would be able to continue their existing networking activities if the current rules were amended as described above. If not, banks should explain what proposed rule provisions would prevent them from doing so. Banks should also explain what changes, if any, they would need to make to their existing networking programs to comply with the amended rules.

5. Interpretations of ''Contractual or Other Written Arrangement'' and ''Qualified Pursuant to the Rules of a Self-Regulatory Organization''

The Commission has received requests to provide further guidance on certain terms used in the Interim Rules in connection with the networking exception that were not defined in the Interim Rules. Therefore, it may be useful to clarify the meaning of some of these terms. First, one commenter proposed that the Commission interpret the networking exception requirements expansively to ''apply to any bank subsidiary expressly formed for the purpose of engaging in securities transactions.'' [84] We decline to expand the scope of the networking exception in this manner. The Exchange Act's functional exceptions for banks from the definitions of ''broker'' and ''dealer'' apply only to banks, and only under limited circumstances. Non-bank affiliates of banks are not subject to the same level of regulation as banks, and such entities were not exempted from the Exchange Act's broker-dealer registration requirements by the general exemption that the GLBA replaced with limited, functional exceptions for banks. Non-bank subsidiaries or affiliates of a bank may not rely on a bank exception or exemption from broker-dealer registration.[85] This interpretation is consistent with the plain language of the GLBA. Non-bank entities that refer customers, including bank customers, to broker-dealers would generally have to register as broker-dealers.[86]

Second, the Commission has received informal requests to clarify the term ''qualified pursuant to the rules of a self-regulatory organization.'' This term means to be qualified to effect a securities transaction as a natural person associated with a registered broker or dealer under Exchange Act Rule 15b7–1, which requires broker-dealers to comply with SRO qualification standards.[87]

We request comment on these interpretations, and on whether banks require additional clarification of these terms or explanations of other terms used in the networking exception. We also seek comment on whether these interpretations or any other suggested interpretations related to the networking exception should be included as amendments to the Interim Rules.

The Commission staff also has received informal requests for guidance on whether particular activities are clerical or ministerial, and thus can be performed by unregistered bank employees within the scope of the networking exception. Clerical and ministerial functions are those such as scheduling appointments with a broker-dealer that do not require specific qualifications or licensing when performed by an employee of a broker-dealer. These functions do not require familiarity with the securities industry, or the exercise of judgment concerning securities. Detailing all of the activities that would constitute clerical and ministerial functions is beyond the scope of this release. Nevertheless, the Commission would welcome requests for exemptive or no-action relief or interpretive guidance with respect to specific activities that interested parties believe are clerical or ministerial in the banking context.

*B. Trust and Fiduciary Activities Exception*

Section 3(a)(4)(B)(ii) of the Exchange Act [88] permits a bank, under certain conditions, to effect transactions in a trustee or fiduciary capacity without registering as a broker. Under this exception, a bank must effect such transactions in its trust department, or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards.[89] The bank also must be ''chiefly compensated'' for such transactions, consistent with fiduciary principles and standards, on the basis of: (1) An administration or annual fee, (2) a percentage of assets under management, (3) a flat or capped per order processing fee that does not exceed the cost the bank incurs in executing such securities transactions, or, (4) any combination of such fees.[90] The term ''chiefly compensated'' is not defined in the GLBA. Therefore, in the Interim Rules, the Commission provided a definition for the term to establish clear standards for complying with the ''chiefly compensated'' requirement under the GLBA.[91]

[84] *See* letter dated July 17, 2001 from Neil Milner, President and CEO, Conference of State Bank Supervisors (''CSBS letter''). Similarly, the Commission staff has received informal requests for guidance on whether the networking exception would permit a bank to avoid being considered a broker based on a networking arrangement entered into by an affiliate or a subsidiary of the bank, and whether a bank could participate in networking activities under arrangements entered into by an affiliated insurance agency.

[85] *See* Exchange Act Section 3(a)(6) which defines ''bank.''

[86] In general, absent an exception or exemption, a person who regularly refers securities business prospects for compensation to a broker-dealer would be a broker required to be registered with the Commission. *See* Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017–18 (July 18, 1989).

[87] *See* 17 CFR 240.15b7–1.

[88] 15 U.S.C. 78c(a)(4)(B)(ii).

[89] *Id.*

[90] 15 U.S.C. 78c(a)(4)(B)(ii)(I). Banks relying on this exception may not publicly solicit brokerage business, other than by advertising that they effect transactions in securities in conjunction with advertising their other trust activities. 15 U.S.C. 78c(a)(4)(B)(ii)(II). The exception also provides that a bank's trust and fiduciary activities that result in a transaction in the United States of any security that is publicly traded must meet the conditions set out in Section 3(a)(4)(C) of the Exchange Act. 15 U.S.C. 78c(a)(4)(C). These conditions require a bank to direct a trade to a registered broker or dealer for execution, to effect the trade through a cross trade or substantially similar trade either within the bank or between the bank and an affiliated fiduciary that is not in contravention of fiduciary principles established under applicable federal or state law, or to effect the trade in some other manner permitted by the Commission. 15 U.S.C. 78c(a)(4)(C)(i)–(iii). The term ''assets under management'' is not defined in the Exchange Act or in the proposed rules.

[91] Exchange Act Rule 3b–17(a) defines the term ''chiefly compensated'' to mean that ''the 'relationship compensation' received by a bank from a trust or fiduciary account exceeds the 'sales compensation' received by the bank from such account during the immediately preceding year. * * *''

Provisions of the Interim Rules relating to the ''chiefly compensated'' requirement engendered a great deal of public comment and have been a primary focus of the discussions the Commission staff has had with banking industry representatives and bank regulators since the Interim Rules were adopted. As a result of these comments and discussions, the Commission is proposing to modify substantially the ''chiefly compensated'' provisions in the Interim Rules. In the Commission's view, these proposed improvements should facilitate their compliance with the ''chiefly compensated'' requirement while permitting banks to continue many of their current practices. This, in turn, should ease their costs of transition to the new statutory scheme without compromising investor protection.

1. Chiefly Compensated

a. Statutory Requirements and Existing Rules

To qualify for the trust and fiduciary activities exception, Exchange Act Section 3(a)(4)(B)(ii) requires a bank to be ''chiefly compensated'' for transactions effected in its trustee or fiduciary capacity, consistent with fiduciary principles and standards. This condition reflects Congress' goals to implement the functional regulation of securities activities and to permit banks to continue to conduct limited securities activities while acting as, and being paid as, fiduciaries.[92] The statutory conditions that a bank must meet to qualify for this exception are designed to ensure that bank trustees and fiduciaries conducting securities activities outside of the protections of the securities laws are compensated as traditional trustees and fiduciaries.[93]

By its terms, the ''chiefly compensated'' condition divides a bank's compensation into qualifying (traditional fees received by trustees and fiduciaries) and non-qualifying types (traditional fees received by broker-dealers), and limits the amount of non-qualifying compensation a bank may receive and still rely on the exception. In other words, Section 3(a)(4)(B)(ii) contemplates that a bank relying on the trust and fiduciary activities exception will need to limit its non-qualifying compensation and will need to have a mechanism in place to determine whether it has succeeded in doing so.

While defining the types of compensation to compare is essential to making the test meaningful, the statutory limitations require many banks to categorize and compare their compensation in a manner that is new to them. Current Exchange Act Rule 3b–17 was intended to facilitate that categorization and comparison. The Rule defines ''chiefly compensated'' to mean that more of a bank's payments for securities transactions must come from qualifying, or ''relationship compensation,''[94] than from non-qualifying, or ''sales compensation.''[95]

To determine compliance with the ''chiefly compensated'' condition, current Exchange Act Rule 3b–17 requires banks to compare their ''relationship compensation'' to their ''sales compensation'' annually, on an account-by-account basis. Unrelated compensation is not included in the ''chiefly compensated'' calculation because it is not relevant to whether a bank is acting as a broker.[96]

The Interim Rules also provided two exemptions from the general requirements of the ''chiefly compensated'' condition. First, current Exchange Act Rule 3a4–2 exempts banks that receive less than ten percent sales compensation from making calculations on an account-by-account basis. Second, Exchange Act Rule 3a4–3 exempts banks from the definition of broker when they act in the narrow role of indenture trustees investing in no-load money market funds. These exemptions are explained in more detail below.

b. Comments on ''Chiefly Compensated'' Requirement

We received multiple comments addressing the ''chiefly compensated'' condition.[97] Many commenters agreed

[92] By enacting a trust and fiduciary activities exception in the Exchange Act, Congress acknowledged that banks held securities in trust accounts. In the GLBA's legislative history, the conference committee stated that ''[t]he Conferees expect that the SEC will not disturb traditional bank trust activities under this provision.'' H.R. Conf. Rep. No. 106–434, 164 (1999).

The House Committee on Commerce further stated that it expected the Commission ''to interpret this exception, and, in particular the references to ''chiefly'' and ''fiduciary principles and standards'' contained in this exception, so as to limit a bank's ability to receive incentive compensation or similar compensation that could foster a salesman's stake in promoting securities transactions.'' That Committee also stated that it did not intend for a bank to conduct a full-scale securities brokerage operation in the trust department that would be exempt from Commission regulation and the imposition of appropriate investor protections under the Federal securities laws. H.R. Rep. No. 106–74, pt. 3, at 164 (1999).

[93] The question of when a bank may be acting in a fiduciary *capacity* is separate and distinct from the question of whether a specific account is established for a fiduciary *purpose*. For example, a bank may be acting in a fiduciary *capacity* when it provides investment advice to a common investment fund. Such a fund, however, will be excluded from the definition of investment company under the Investment Company Act of 1940 (''Investment Company Act'') only if it is employed solely as an aid to the administration of accounts maintained for a traditional fiduciary *purpose*. *See* Section 3(c)(3) of the Investment Company Act.

[94] *See* Exchange Act Rule 3b–17(i). The term ''relationship compensation,'' an amended version of which the Commission is proposing to codify in Exchange Act Rule 724, includes administrative or annual fees (payable on a monthly, quarterly, or other basis), fees based on a percentage of assets under management, a flat or capped per order processing fee limited by the bank's cost in effecting the transaction, or any combination of such fees.

[95] *See* Exchange Act Rule 3b–17(j). The ''sales compensation'' definition, an amended version of which the Commission is proposing to codify in Exchange Act Rule 724, includes compensation that a bank receives for a securities offering that the bank does not receive directly from a customer, beneficiary, or the assets of the trust or fiduciary account. ''Sales compensation'' also includes Rule 12b–1 fees. ''Rule 12b–1 fees'' or ''12b–1 fees'' are fees paid out of fund assets pursuant to a distribution plan adopted under Rule 12b–1 under the Investment Company Act. 17 CFR 270.12b–1. The ''sales compensation'' definition reflects the fact that bank trust departments, like broker-dealers, receive payments for securities transactions from third parties. Many of the sales practice provisions of the federal securities laws, including a number of NASD rules, are designed to address such conflicts of interest. ''Sales compensation'' also includes revenue sharing payments that bank trust departments receive from mutual fund companies.

[96] Any fee a bank receives that is not related to effecting securities transactions is considered ''unrelated compensation'' and, except as discussed below, is not included in the definition of ''relationship compensation.'' Unrelated compensation includes fees charged separately for activities, including taking deposits, lending funds (including margin lending), preparing taxes, or providing other services that are not related to managing securities accounts pursuant to the trust and fiduciary activities exception. Unrelated compensation also includes compensation received as permitted under the terms of another bank exception from the definitions of ''broker'' and ''dealer.'' This exclusion includes any payment made to the bank or one of its employees pursuant to the networking exception. *See* Exchange Act Section 3(a)(4)(B)(i)(VI).

[97] *See, e.g.*, ABA/ABASA letters; ACB letter; Bank of America letter; ABA Banking Law Committee letter; Bank One letter; Banking Agencies letter; BONY letter; Broadway letter; CSBS letter; letter dated July 17, 2001 from Jerry W. Powell, General Counsel, Compass Bancshares (''Compass letter''); Connecticut Bankers letter; letter dated July 2, 2001 from Melanie L. Fein, Attorney at Law, on behalf of Federated Investors, Inc. and letter dated June 18, 2001 from Eugene F. Maloney, Executive Vice President and Corporate Counsel, Federated Investors, Inc. (''Federated letters''); letter dated July 10, 2001 from William Nappi, CTCP, Trust Compliance Officer, FirstMerit Corp., N.A. (''FirstMerit letter''); letter dated July 13, 2001 from Michael Watkins, Senior Vice President and Deputy General Counsel, First Union Corporation (''First Union letter''); Fleet letter; Harris Trust letter; IIB letter; Mellon letter; National City letter; Bar of NY letter; NYCH letter; PNC letter; Regions letter; Roundtable letter; letter dated July 17, 2001 from Stewart P. Greene, Chief Counsel, Securities Law, Teacher Insurance and Annuity Association (''TIAA–CREF letter''); Texas Bankers Trust Division letter; UMB Bank letter; Victoria letter; Virginia Bankers letter; Wells Fargo letter; letter on behalf of an unnamed client, dated July 17, 2001 from Satish M. Kini of Wilmer, Cutler & Pickering (''Wilmer, Cutler letter''); and letter dated July 16, 2001 from W. David Hemingway, Chief Financial

Continued

that the term ''chiefly compensated'' should not be interpreted to require a higher percentage threshold than the fifty percent standard in the Interim Rules.[98] Many commenters disagreed with the Commission's interpretation, however, that the ''chiefly compensated'' calculation should be made on an account-by-account basis.[99] Commenters opposing an account-by-account calculation argued that the GLBA does not expressly require such a calculation and that determining compliance in this manner would be unduly costly and complicated. Some commenters expressed the view that the ''chiefly compensated'' condition should instead be interpreted to allow banks to determine compliance on a line-of-business basis because they believe that Congress intended a line-of-business approach.[100]

Some commenters also raised concerns about the way in which the Commission proposed to categorize certain types of compensation. For example, under the Interim Rules, Rule 12b–1 fees are considered ''sales compensation'' rather than ''relationship compensation.'' Some commenters believed that 12b–1 fees should be categorized as ''relationship compensation.''[101] In addition, one commenter asserted that banks should be able to treat fees based on a percentage of assets under management, such as separately charged fees for managing real property, as ''relationship compensation.''[102]

One commenter recommended that the Commission ''grandfather'' trust and fiduciary arrangements that were entered into prior to the establishment of the parameters for categorizing compensation.[103] Others emphasized the need for a cure period or ''safe harbor'' for banks that inadvertently failed to meet the ''chiefly compensated'' condition during a particular time period.[104]

c. Proposed Changes in Response to Comments

In response to comments on provisions of the Interim Rules dealing with the ''chiefly compensated'' condition, the Commission is proposing new exemptions and expanding the existing exemptions. To simplify compliance, the Commission also is proposing to expand the definition of ''relationship compensation'' to expand the types of assets that could qualify for assets under management fees paid directly by the customer, beneficiary, or account.[105] The Commission believes that the proposed amendments to the provisions of the Interim Rules that address the ''chiefly compensated'' condition should significantly simplify compliance with the condition, alleviate concerns about inadvertent noncompliance, and reduce the costs banks were likely to have incurred in making the ''chiefly compensated'' calculation under the Interim Rules.

For example, the Commission is proposing a ''line-of-business'' alternative to the account-by-account methodology in response to requests by representatives from the banking industry. Moreover, the Commission is proposing to exempt existing living, testamentary, and charitable trust accounts from the ''chiefly compensated'' calculation. Finally, the Commission is proposing to establish a multi-tiered ''safe harbor'' for banks determining compliance on an account-by-account basis that find themselves out of compliance with respect to particular accounts. The proposed safe harbors would provide banks with legal certainty during those periods in which they were not compliant and would provide them opportunities to come into compliance with the ''chiefly compensated'' condition. These proposed changes to the Interim Rules, as well as Commission guidance on other aspects of the Interim Rules, are discussed below.[106]

d. Proposed Line-of-Business Exemption

i. Description of Existing Rule

Exchange Act Rule 3a4–2 permits a bank to rely on the trust and fiduciary activities exception from broker registration under the GLBA if the bank's total ''sales compensation'' during the previous year was less than ten percent of its total ''relationship compensation'' for that period, provided the bank meets other conditions in the exception.[107] The rule was intended to provide banks with an alternative to the account-by-account calculation of the ''chiefly compensated'' requirement.

Commenters generally agreed that an alternative to the account-by-account ''chiefly compensated'' calculation was desirable. [108] Some argued, however, that the alternative that the Commission adopted in Exchange Act Rule 3a4–2 was unduly restrictive and in practice would not provide meaningful relief from the account-by-account calculation. In particular, several commenters stated that the procedural conditions in the exemption essentially require an account-by-account calculation, thereby defeating the purpose of the exemption.[109]

Officer, Zions Bank Capital Markets, Zions First National Bank, letter dated July 17, 2001 from Rick D. Burtenshaw, Senior Vice President, Investment Division, Zions National Bank (''Zions Bancorporation letters'').

[98] *See, e.g.,* Banking Agencies letter.

[99] *See, e.g.,* ABA/ABASA letters; ACB letter; Banking Agencies letter; BONY letter; Compass letter; Connecticut Bankers letter; Mellon letter; NYCH letter; PNC letter; Regions letter; UMB Bank letter; Wells Fargo letter; and Wilmer, Cutler letter.

*But see* Statement of the ABASA Before the Committee on Banking and Financial Services, U.S. House of Representatives, on The Financial Services Act of 1999, H.R. 10, February 16, 1999:

[H.R. 10's] fee provisions . . . will force every trust bank to analyze each fiduciary account to ensure that the account satisfies the exemption's fee requirements. . . .. Despite the regulatory burdens associated with complying with the fee aspect of the exemption, the overall exemption is, ABASA believes, workable. . . .

The Commission notes that H.R. 10 contained language regarding bank securities activities within a trust and fiduciary exception to the definition of broker that was virtually identical to the version that Congress ultimately adopted.

[100] *See, e.g.,* ABA/ABASA letters.

[101] *See* NYCH letter and PNC Bank letter.

[102] *See* Texas Bankers Trust Division letter.

[103] *See* NYCH letter.

[104] *See* ABA/ABASA letters; Banking Agencies letter; Roundtable letter; Bar of NY letter; and Wilmer, Cutler letter. The Commission also received a number of comments regarding the exemptions from the ''chiefly compensated'' requirement in current Exchange Act Rules 3a4–2 and 3a4–3. These comments are discussed below in connection with proposed amendments to those exemptions.

[105] Although the term ''assets under management'' is defined in Section 203A(a)(2) of the Advisers Act, it is not defined in the Exchange Act or in these proposed rules and would include non-securities assets. *See* section III.B.1.h *infra.*

[106] Despite commenters' suggestions, an annual account-by-account calculation is consistent with implementing functional regulation to protect investors. It also is consistent with the way in which both broker-dealers and banks establish their obligations and duties to their customers which, in turn, defines the capacity in which they will act. It is also consistent with accounting requirements and other fundamental determinations that trustees must make under state trust law. Moreover, bank trust departments primarily charge fees at the same level at which securities transaction fees are assessed—the account level.

[107] A bank relying on the Exchange Act Rule 3a4–2 exemption must comply with all other terms of the trust and fiduciary activities exception and must maintain procedures reasonably designed to ensure compliance with the ''chiefly compensated'' requirement with respect to a trust or fiduciary account. Exchange Act Rule 3a4–2 currently requires those procedures to provide that an account will be reviewed when it is opened, when the compensation arrangement for the account is changed, and when sales compensation received from the account is reviewed by the bank for purposes of determining an employee's compensation. Exchange Act Section 3(a)(4)(C) requires that a bank must also execute any securities orders through a broker-dealer (or in a cross trade or other means that the Commission may prescribe).

[108] *See, e.g.,* Banking Agencies letter and BSA letter.

[109] *See, e.g.,* Banking Agencies letter; BONY letter; Bank One letter; Federated letters; Fleet letter; ICBA letter; Mellon letter; PNC letter; Regions letter; and UMB Bank letter. Commenters expressed concern about the costs and burdens associated with these requirements. *See, e.g.,* Mellon letter. One commenter suggested eliminating one of the

ii. Description of Proposed Line-of-Business Exemption

In response to comments, we propose to adopt a ''line-of-business'' approach in proposed Exchange Act Rule 721.[110] The proposal would define a ''line of business'' as an identifiable department, unit, or division of a bank organized and operated on an ongoing basis for business reasons with similar types of accounts and for which the bank acts in a similar type of fiduciary capacity as listed in Exchange Act Section 3(a)(4)(D).[111] Under the proposal, a bank could use an alternative calculation for ''chiefly compensated'' during one year if it could demonstrate that during the preceding year its ratio of ''sales compensation'' to ''relationship compensation'' was no more than one to nine either on a line-of-business or bank-wide basis (*i.e.*, ''one to nine ratio'').[112]

A bank could use this proposed alternative on a line-of-business basis provided that the ''sales compensation'' and ''relationship compensation'' from all trust and fiduciary activity accounts within a particular line of business (or all such accounts within a particular line of business established before a single date certain) is used to determine whether the bank meets this condition.

For example, the bank could limit the accounts in a personal trust line of business that would be used in the line-of-business compensation comparison to all of the accounts established before a single date certain. The enhanced flexibility in this part of the proposal would permit a bank to phase in the use of account-by-account exemptions for qualifying fiduciary activities as long as the bank establishes a specific cut-off date for older accounts within a line of business. This flexibility also should allow them to use this proposal consistent with their changing business practices.

Banks relying on the proposed line-of-business alternative would be required to meet the other conditions in the trust and fiduciary activities exception and would be required to maintain procedures reasonably designed to ensure that, before opening or establishing an account, the bank reviews the account to ensure that the bank is likely to receive more ''relationship compensation'' than ''sales compensation'' with respect to that account.[113] In addition, in contrast to the requirement in current Exchange Act Rule 3a4–2 that the bank review an existing account whenever the compensation arrangement for the account changes, the proposal would only require the bank to maintain procedures reasonably designed to ensure that, after opening or establishing an account, at such time as the bank individually negotiates with the accountholder or beneficiary of that account to increase the proportion of ''sales compensation'' as compared to ''relationship compensation,'' the bank reviews the account to ensure that the bank is likely to receive more ''relationship compensation'' than ''sales compensation'' with respect to that account.[114] In other words, only when the bank is revising the fees of a particular account with the accountholder or beneficiary in a way that would increase the proportion of ''sales compensation,'' would it also have to review the account to ensure that it is likely to receive more ''relationship compensation'' than ''sales compensation.'' [115]

The proposed line-of-business alternative is intended to give banks legal certainty for each year based on their demonstrated compliance for the previous year.

We request comment on the line-of-business alternative in proposed Exchange Act Rule 721. Generally, would the proposed line-of-business alternative make it easier for banks to comply with the ''chiefly compensated'' condition? If so, please provide quantitative information regarding the cost savings banks that choose the line-of-business alternative could expect versus the account-by-account calculation. In this regard, we request comment on how banks are generally compensated with respect to their existing trust and fiduciary activity accounts. The one to nine ratio is essentially the same comparison used in the Interim Rules, but expressed as a ratio rather than as a percentage to align the comparison in the proposed rules more closely with the ''chiefly compensated'' condition in the statute. We request comment on whether the use of a ratio makes the comparison more clear, or whether the comparison should be expressed as a percentage. We also request comment on whether a one to nine ratio (or, if expressed as a percentage, 11 percent) is the most appropriate comparison, if a one to ten ratio would be sufficient to accommodate banks' current business, or if another ratio would be more practicable. Commenters should include specific information on each particular bank's ''sales compensation'' compared to its ''relationship compensation.''

In addition, we request comment on what impact the expanded definition of ''relationship compensation,'' which would now include separately charged assets under management fees for managing other assets (such as real property, oil and gas, etc.), would have on banks' ability to meet the proposed line-of-business alternative.[116]

Further, we solicit comment on the procedural requirement that a bank review an account when the proportion of ''sales compensation'' is increased, and the impact of this condition on waiving ''relationship compensation'' for a particular account.[117] Is there an alternative that would allow for fee waivers without allowing the bank to be continually compensated by a significant number of accounts entirely through ''sales compensation''?

We also request comment on what impact the requirement that the bank use the compensation from all trust and fiduciary activity accounts within a particular line of business would have on the bank's ability to use the other exemptions proposed in this release,

procedural conditions so that banks could adopt an across-the-board fee increase without triggering an account-by-account compliance review. *See* Federated letters.

[110] *See* proposed Exchange Act Rule 721(c). We do not expect banks to be in compliance with the ''chiefly compensated'' condition during the delayed compliance period for the Interim Rules. Moreover, given that the exemption we are proposing under Exchange Act Rule 721 depends on compliance during the preceding year, this condition would not apply during the first year that the broker exceptions apply to banks. Of course, banks would be expected to demonstrate compliance at the end of the first year after the delayed compliance period. Then, by demonstrating year-end compliance, a bank would have legal certainty for the following year under the terms of the proposed exemption.

[111] *See* proposed Exchange Act Rule 724(e).

[112] We are proposing a one to nine ratio, which is similar to the test in the Interim Rules, because we understand that many banks would fit within this proposed exemption using this threshold. *See* Exchange Act Release No. 44291, *supra* note 13. A one to nine ratio allows banks to receive slightly more than ten percent in sales compensation and not run afoul of the proposed exemption. The proposal would require that the comparison be made based on compensation from accounts within the scope of Exchange Act Section 3(a)(4)(D). For this exception and all of the proposed related exemptions, year continues to be defined as a calendar year or other fiscal year consistently used by a bank for recordkeeping and reporting purposes.

[113] *See* proposed Exchange Act Rule 721(a)(3).

[114] *See* proposed Exchange Act Rule 721(a)(4). This proposed requirement would not be triggered, for example, when the fees received by the bank change due to changes in assets or asset allocation, or if the bank makes across-the-board changes in fees to address inflation.

[115] We also propose to eliminate the requirement in current Exchange Act Rule 3a4–2 that a bank review an account when sales compensation is reviewed for purposes of determining an employee's compensation. *See* Exchange Act Rule 3a4–2(a)(2)(iii).

[116] *See* proposed Exchange Act Rule 724(h) and section III.B.1.h *infra*.

[117] *See* proposed Exchange Act Rule 721(a)(4).

such as the exemptions in proposed Exchange Act Rules 720 and 776. In particular, we solicit comment on whether living, testamentary, and charitable trust accounts are grouped with other non-exempt accounts in a line of business. We also request comment on whether banks place employee benefit plan accounts and other accounts not subject to a special purpose exemption within a particular line of business. Banks that believe they will need additional flexibility for their personal trust and retirement business should provide a detailed explanation of the type of relief they believe would be useful and discuss the sources of their compensation in connection with that business. In addition, we request comment on whether the definition of line of business is practicable. Is this definition subject to manipulation by banks that may have difficulty meeting the line-of-business test in a particular year, and if so, how should it be modified to prevent this?

We also request comment on whether it is appropriate that banks be permitted to use the proposed line-of-business alternative for some lines of businesses, and use an account-by-account calculation or other proposed exemptions for its other lines of business if available. In addition, we request comment on whether it is appropriate for banks to choose whether to use this proposed exemption for particular accounts based on a cut-off date that the bank determines.

Bank representatives informed Commission staff that it would be simpler and more cost effective if banks were permitted to compare ''sales compensation'' to a bank's total trust and fiduciary activities compensation rather than to ''relationship compensation.'' Presumably, total trust and fiduciary activities compensation would include ''relationship compensation,'' ''sales compensation,'' and any compensation that a bank receives for the sale of other products and services. We are soliciting comment on the feasibility and desirability of amending the ''one to nine ratio'' in the line-of-business calculation to require banks to compare their ''sales compensation'' to their total compensation from qualifying fiduciary activities, as opposed to the current comparison of ''sales compensation'' to ''relationship compensation.'' What ratio would be appropriate if the basis were expanded?

In particular, we solicit comment on what compensation items, in addition to ''sales compensation'' and ''relationship compensation,'' would be included in a bank's total compensation for qualifying fiduciary activities and the quantitative impact of including these compensation items on the line-of-business proposal. In addition, what impact, if any, would such a change in the calculation have on the number of banks that could meet the trust and fiduciary activities exception? Moreover, what would be the cost savings to banks in complying with the ''chiefly compensated'' condition if we were to permit banks to compare ''sales compensation'' to total compensation rather than to ''relationship compensation?'' We would like to know the types of compensation that banks would include in total compensation from qualifying fiduciary activities. To evaluate the recommendation that we permit banks to compare ''sales compensation'' to total compensation for trust and fiduciary activities, we are soliciting quantitative information from banks that would illustrate how such a bank would fare under each of the tests.[118] What other changes, if any, do commenters believe should be made to the ''chiefly compensated'' calculation?

Finally, we are seeking comment on the way in which banks are likely to use the proposed calculation alternatives to determine whether additional flexibility is needed in this particular exemption and how best to provide it. For example, do banks have lines of business containing both accounts covered by the special purpose exemptions (*e.g.*, for Regulation S or employee benefit plan accounts) and accounts that are not? If so, which lines of business contain both types of accounts?

e. Proposed New Living, Testamentary, and Charitable Trust Account Exemption

Commenters indicated that banks need flexibility with respect to established personal trust accounts that have terms that cannot readily be changed without consequences to both the bank and the trust beneficiaries. These commenters explained that fees received in connection with these accounts were negotiated in the past and may be difficult to change to meet the ''chiefly compensated'' condition based on, for example, the age or type of the trust.[119] Banks may administer trusts that were created by settlors who have died or who may have become incompetent. In addition, we understand that state law may make it impracticable to change the compensation structure of existing trusts.

In response to these concerns, we are proposing new Exchange Act Rule 720. This proposed rule would exempt a bank from meeting the ''chiefly compensated'' condition to the extent that it effects transactions for a living, testamentary, or charitable trust account opened, or established before July 30, 2004, in a trustee or fiduciary capacity if the bank does not individually negotiate with the accountholder or beneficiary of the account to increase the proportion of ''sales compensation'' as compared to ''relationship compensation'' after July 30, 2004.[120] For purposes of this proposed rule, a testamentary trust may be deemed to be established as of the date of the will that directed that the trust be established. Banks making an account-by-account calculation that rely on a particular exemption must comply with all of the requirements in that exemption, but have the option of choosing the exemption or exemptions they need to match their business.

We invite comment on the proposed exemption for existing personal trust accounts. Banks are particularly invited to explain the ways in which they are compensated for administering existing personal trust accounts.

f. New Conditional Safe Harbor

We also propose to adopt a one-year conditional safe harbor for a bank that exceeds the one to nine ratio that it would need to meet to rely on the line-of-business alternative in proposed Exchange Act Rule 721.[121] Under this safe harbor, a bank that exceeds the one to nine ratio in any given year may continue to rely on the proposed line-of-business alternative for the following year if it meets three requirements.[122] First, it must meet the other requirements of the rule and the other requirements of the trust and fiduciary activities exception. Second, the bank's ratio of ''sales compensation'' to ''relationship compensation'' the bank received from its qualifying fiduciary business must have been no more than one to seven.[123] Third, it may not have relied on this safe harbor during any of the five preceding years.

Used in conjunction with the line-of-business alternative, discussed above,

[118] To the extent that such information would be deemed proprietary, banks could request confidential treatment for that information.

[119] *See, e.g.*, Banking Agencies Letter and NYCH letter.

[120] This date was chosen for administrative simplicity.

[121] *See* proposed Exchange Act Rule 721(b).

[122] *See supra* note 112 for a discussion of the term ''year.''

[123] The one to seven ratio is intended to provide legal certainty to banks that are working in good faith to comply with the terms of the proposed exemption.

this proposed new safe harbor should provide banks with time to adjust their ''sales compensation,'' when necessary, to ensure that it does not exceed the exemption's limit. For example, a bank that finds its ''sales compensation'' is likely to exceed the one to nine compensation ratio could begin to adjust its compensation immediately. The legal assurance that it would have time to make this adjustment without consequence should permit banks to refine their compensation sufficiently to assure that they will remain in compliance.

This new safe harbor should supplement the rule's general exemption in addressing banks' concerns that if they inadvertently exceed the exemption's ''sales compensation'' percentage in one year, they would immediately need to conduct an account-by-account analysis to determine whether they are in compliance with the ''chiefly compensated'' condition. We understand that banks relying on proposed Exchange Act Rule 721 may not have compliance procedures in place to do account-by-account monitoring. Banks could rely on the proposed new safe harbor for one year while taking steps to ensure that they will meet the terms of the general exemption before the end of that year.[124]

We invite comment on the proposed one-year safe harbor in proposed Exchange Act Rule 721, including whether an additional year is a sufficient amount of time and whether one to seven is the appropriate ratio.

g. New Proposed Account-by-Account Exemption

Proposed Exchange Act Rule 722 would provide banks with a new exemption designed to give additional flexibility and legal certainty to banks that determine their compliance with the ''chiefly compensated'' requirement on an account-by-account basis.

i. Proposed Account-by-Account Exemption

Proposed Exchange Act Rule 722 is intended to provide banks that determine compliance with the ''chiefly compensated'' condition through an account-by-account calculation with legal certainty for one year based on their demonstrated compliance for the previous year. Under proposed paragraph (a) of Rule 722, a bank would be exempt from the ''chiefly compensated'' condition with respect to a particular account during any year if it meets four conditions. First, the bank would be required to meet the other conditions of the trust and fiduciary activities exception. Second, the bank must have met the ''chiefly compensated'' condition with respect to that particular account during the preceding year.[125] Third, a bank would be required to maintain procedures reasonably designed to ensure that, before opening or establishing an account, the bank reviews the account to ensure that the bank is likely to receive more ''relationship compensation'' than ''sales compensation'' with respect to that account. Fourth, a bank would be required to maintain procedures reasonably designed to ensure that, after opening or establishing an account, at such time as the bank individually negotiates with the accountholder or beneficiary of that account to increase the proportion of ''sales compensation'' as compared to ''relationship compensation,'' the bank reviews the account to ensure that the bank is likely to receive more ''relationship compensation'' than ''sales compensation'' with respect to that account.

We request comment on the proposed exemption. Banks are particularly invited to discuss the extent to which the proposed exemption would provide them with legal certainty. In addition, we are seeking comment from those who believe that the account-by-account calculation should be eliminated. In particular, we invite comment on how banks would satisfy the ''chiefly compensated'' requirement of the trust and fiduciary exception in the absence of an account-by-account calculation requirement.

ii. New Safe Harbor for Account-Specific Exemption

Commenters expressed concern that banks that determine their compliance with the ''chiefly compensated'' condition on an account-by-account basis would need flexibility if they discovered that their ''sales compensation'' for a particular account had exceeded their ''relationship compensation'' in a particular year.[126] To mitigate banks' compliance concerns, we are proposing a one-year conditional safe harbor for a bank that does not meet the ''chiefly compensated'' requirement with respect to a particular account.[127] This new safe harbor would provide a bank the time to bring its compensation arrangements for that account into compliance with the ''chiefly compensated'' condition.

Under the proposed safe harbor, a bank with one or more accounts that exceed the ''chiefly compensated'' requirement could continue to rely on the trust and fiduciary activities exemption in the next year for these ''sales compensation'' accounts so long as these accounts represent ten percent or less of the total number of accounts for which the bank acts in a trustee or fiduciary capacity.[128] A bank relying on this exemption would need to meet two requirements. First, it must meet the other requirements of the rule, as well as the other requirements of the trust and fiduciary activities exception. Second, the bank may not have relied

[124] These steps could include employing brokers to execute transactions for trust and fiduciary activity accounts, or charging those accounts only a flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers. A bank could also rebate 12b-1 fees to the account. Alternatively, the bank could restructure the compensation from some or all of its trust and fiduciary activity accounts to change the proportion of ''relationship compensation'' by reducing the price it charges for executing transactions, executing transactions at cost so the reimbursement would be characterized as ''relationship compensation,'' or raising the bank's annual fee and offering unlimited securities transactions at no additional cost to the account.

A bank could implement any, or several, of these alternatives at any time during the year. For example, a bank might identify a problem in November of a calendar year that it finds is caused by a large account with high ''sales compensation'' that would likely cause the bank to fail its compensation comparison. The bank could waive securities transaction fees, or refund fees already charged to the account. The bank could also restructure the compensation in the account by not charging for additional securities transactions, or by converting to an annual fee that includes unlimited transactions.

[125] This condition would not apply during the first year that the broker exceptions apply to banks. During that first year, banks will be expected to demonstrate compliance at the end of the year. By demonstrating compliance during the first year that the broker exceptions are implemented for banks, a bank will have legal certainty for the following year under the terms of the exemption.

[126] Some commenters indicated that occasionally, prudent financial management of an individual customer account, such as a position concentration, could result in a particular account exceeding the chiefly compensated requirement in a particular year. For example, a bank could need to lessen a customer's concentration in a particular investment. *See, e.g.*, Banking Agencies Letter.

In addition, the Banking Agencies, bank trade associations and a law firm stated that banks would be at risk of unintentionally violating the securities laws because a bank can fall out of compliance with the exception for the preceding year based on one account without any type of cure period. *See* Roundtable letter and Wilmer, Cutler letter.

We note that there are many ways that a concentrated portfolio may be diversified without incurring high transaction payments to the bank.

[127] *See* proposed Exchange Act Rule 722(b) and (c). This alternative safe-harbor is not necessary until after the first year that the bank broker exceptions apply.

[128] The ten percent limitation is intended to provide legal certainty to banks that are working in good faith to comply with the terms of the proposed exemption.

on this safe harbor with respect to the particular ''sales compensation'' account during any of the five preceding years.

This safe harbor is intended to provide banks with time to restructure the compensation arrangement with respect to a particular account or accounts. It would not require banks to expand or otherwise modify their overall compliance procedures. Rather, it would permit them to target particular accounts and adjust their compensation accordingly.

We would expect banks to use the safe harbor period to ensure that their new compensation arrangement with respect to the ''sales compensation'' account will allow them to meet the ''chiefly compensated'' condition in the future for that account. While this should theoretically mean that an account that exceeds the ''chiefly compensated'' threshold would not exceed that threshold again, the character of an account can change over time. Therefore, the safe harbor would be available for a bank to use for the same account once every five years.

Banks that choose to calculate their compliance with the ''chiefly compensated'' condition on an account-by-account basis will need to have systems in place to monitor their own compliance. We would expect banks' systems to ensure that few accounts actually exceed the ''chiefly compensated'' threshold. While the proposed safe harbor would permit up to ten percent of a bank's trust and fiduciary activities accounts to exceed the compensation threshold in a given year, we would expect banks to monitor their compliance closely enough that their percentage of non-complying accounts remains small. We request comment on the ten percent limit. Banks that believe the limit should be higher are encouraged to discuss what limit would be consistent with the compliance systems they plan to put in place.

In addition to the general one-year safe harbor, we are proposing to give additional flexibility to banks when a small number of accounts do not meet the ''chiefly compensated'' condition more frequently than once in a five-year period. Under this proposal, a bank can continue to be exempt even though the lesser of 500 accounts or 1 percent of the total number of its qualifying fiduciary activity accounts continued not to meet the ''chiefly compensated'' condition, provided the bank has documented the reason that each such account continued not to meet the condition and linked that reason to the bank's exercise of fiduciary responsibility.[129]

Commenters are invited to discuss the utility of the proposed safe harbors and whether they would provide banks with sufficient legal certainty. We also request comment on whether the general limit on using the exemption once every five years for a particular account together with the additional flexibility for a few accounts that exceeded the ''chiefly compensated'' condition more than once in a five-year period would provide banks with sufficient flexibility while remaining consistent with the statutory purpose. We also solicit comment on the additional safe harbor for a small number of accounts that fail the ''chiefly compensated'' test more than once in a five-year period and on whether the lesser of 500 or one percent of the total number of a bank's qualifying accounts is the appropriate threshold. Banks likely to need additional flexibility are invited to include a discussion of their planned compliance systems.

h. Other Provisions

i. ''Chiefly Compensated'' and Related Definitions

In addition to expanding the exemptions to facilitate banks' compliance and eliminate unnecessary burdens, we are proposing several technical changes to the definitions and proposing to expand the definition of ''relationship compensation.'' Otherwise, we are not proposing to change substantially the definition of ''chiefly compensated'' or related definitions. The technical changes to these rules are intended to simplify and clarify the definitions. Moreover, we believe the proposed exemptions discussed above should address many of the practical problems commenters noted in discussing these definitions.[130]

The expansion of the definition of ''relationship compensation'' that we are proposing would add types of assets that could qualify for assets under management fees paid directly by the customer, beneficiary, or account. This amended definition would include, for example, separately charged assets under management fees for managing real property, and would affect the ratio in the line-of-business exemption in proposed Exchange Act Rule 721 discussed above.[131] While the original definition of ''relationship compensation'' required the bank to be engaged in securities management activities for these fees to be included in the definition, we propose this change to address banks' accounting and systems concerns that it would be difficult to treat assets under management fees differently for managing different types of assets.

One commenter urged the Commission to amend the definition of ''flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers;'' in current Exchange Act Rule 3b–17(b) to allow banks to include the cost of shared resources as opposed to the ''exclusively dedicated'' standard in the Interim Rules.[132] In response, we propose to amend the definition to

[129] See proposed Exchange Act Rule 722(c)(4). For example, during a particular year, an accountholder may have unexpectedly inherited a large number of shares of stock that a trust instrument required to be deposited into an account for which the bank was acting in a trust or fiduciary capacity. This proposed threshold is intended to provide banks that are working in good faith to comply with the provisions of the proposed exemption with an additional safety valve.

[130] For example, we address commenters' concerns about defining Rule 12b-1 fees as ''sales compensation'' by proposing amendments to simplify the exemption in Exchange Act Rule 3a4–2 to allow banks to compare ''sales compensation'' to ''relationship compensation'' derived from its trust and qualifying fiduciary activity accounts on a line-of-business basis and proposing a separate exemption in proposed Exchange Act Rule 770. We also note that an investment company may restructure its fee arrangement to pay shareholder servicing fees that are not being paid for sales or distribution outside of a Rule 12b–1 plan. This type of fee arrangement is unrelated compensation under the Interim Rules rather than ''sales compensation.'' We also propose to replace the term ''trust or fiduciary account'' with the term ''an account for which the bank acts in a trustee or fiduciary capacity.'' Because this language more closely matches the statutory language in the trust and fiduciary activities exception, it should reduce confusion.

We also note that the definition of ''sales compensation'' includes revenue sharing payments. As we discussed in proposing targeted disclosure requirements for broker-dealers selling mutual funds, revenue sharing arrangements not only pose potential conflicts of interest for the recipient, but also may have the indirect effect of reducing investors' returns by increasing the distribution-related costs incurred by funds. *See* Exchange Act Release No. 49148 (Jan. 29, 2004), 69 FR 6437 (Feb. 10, 2004). Revenue sharing arrangements may give broker-dealers heightened incentives to market the shares of particular mutual funds, or particular classes of fund shares. These incentives may be reflected in the use of ''preferred lists'' that explicitly favor the distribution of certain funds, or they may be reflected in other ways, including incentives or instructions to employees of a bank or broker-dealer. The magnitude of revenue sharing payments—estimated in 2001 at $2 billion annually—suggests that those arrangements influence the mutual fund choices presented to investors. *See* ''How high can costs go?,'' *Institutional Investor,* May 2001 at 56.

[131] Banks determining compliance on an account-by-account basis would not need to consider accounts that did not contain securities, such as an account that only contained real estate, since broker-dealer registration is not necessary for these accounts.

[132] *See* ABA/ABASA letters.

include the direct marginal cost of any resources of the bank that are used for transaction execution, comparison, or settlement for trust and fiduciary activity accounts if the bank makes a precise and verifiable allocation of these resources according to their use. We believe this proposed change is consistent with the statutory requirement of cost recovery. We also propose to amend the definition to clarify that the account, rather than the bank, pays the fee. We request comment on the proposed amendments to the definition of ''flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers;'' in proposed Exchange Act Rule 724(b).

We request comment on these proposed amendments to the definitions. Commenters are invited to discuss whether the ''sales compensation'' definition should include additional sales-related arrangements that may create conflicts of interest, such as sales or distribution-related payments to affiliates or employees of banks. We also invite banks to provide us with any specific information on their compensation arrangements that might help us to further simplify the ''chiefly compensated'' calculation while implementing the statutory provisions.

ii. Formulas to Allocate Sales Compensation to Individual Accounts

A. 12b–1 Fees

Rule 12b–1 under the Investment Company Act permits investment companies to use their assets to finance sales-related expenses.[133] Unlike fees for assets under management by the bank, which do not differ depending on the investment that the bank selects, Rule 12b–1 fees paid to banks and other distributors often vary from investment company to investment company. Rule 12b–1 fees create incentives to distribute particular investment company securities and create conflicts between the bank and investors. Such conflicts of interest drive much of broker-dealer regulation. Accordingly, Rule 12b–1 fees are included in the ''sales compensation'' definition.[134]

Commenters pointed out that because Rule 12b–1 fees are paid based on the amount of assets in an omnibus account, it would be difficult to allocate such fees on an account-by-account basis.[135] We therefore propose to add a formula to the definition of ''sales compensation'' in proposed Exchange Act Rule 724 to allow banks to estimate the amount an individual account pays annually in Rule 12b–1 fees that are paid on an entity basis. The proposed formula would allow a bank to calculate the Rule 12b–1 fees for each account using one of two methods. First, a bank could calculate the 12b–1 fees based on the number of each class of an investment company's shares held in each account on the last business day of the preceding year, multiplied by the net asset value per share on that day and by the annual Rule 12b–1 fee rate applicable to that class of securities. Alternatively, a bank could use another allocation method if it fairly and consistently measures the amount of ''sales compensation'' attributable to each account during the preceding year.[136]

We request comment on whether the proposed formula would facilitate banks' allocation of the 12b–1 fees to individual accounts. We also invite commenters to discuss any alternative allocation methods they believe would more accurately measure the amount of ''sales compensation'' attributable to each account. In addition, commenters are invited to suggest other allocation methods that they believe would be simpler, while providing a reasonably accurate allocation of these fees to individual accounts. Commenters should explain how the results from any alternative method would compare to the results from the proposed allocation method.

*B. Other Fees*

We also propose to amend the definition of ''sales compensation'' in proposed Exchange Act Rule 724(i)(4) and (6) to allow a bank to estimate the amount that it receives annually that is attributable to an individual account, but that is not paid directly from the account. This formula would allow a bank to calculate these fees for each account by using one of two methods. First, a bank could divide the number of shares of each class of each type of investment company held in each account on the last business day of the preceding year by the total number of the same type of investment company shares that the bank held in a trustee or fiduciary capacity on the same day, and multiply the resulting number by the total dollar amount of these fees the bank received in connection with that class during the preceding year. Second, a bank could use its own method of allocation if it fairly and consistently measures the amount of ''sales compensation'' attributable to each account during the preceding year.[137]

We request comment on the proposed formula. Commenters are invited to discuss whether it will facilitate banks' allocation of these fees to individual accounts. We also invite comment on whether there would be a simpler method that would provide a reasonably accurate allocation of these fees to individual accounts. We also invite comment on how to address the problem of the sale of shares at the end of the year. For example, an account that held a substantial proportion of a bank's total holdings in a given fund for most of a year, but whose shares were sold just before year-end, may be allocated none of the bank's fees earned from that fund. At the same time, an account with relatively small holdings in the same fund that did not sell at the end of the year might be allocated a disproportionately large amount of the bank's fees earned from that fund. In addition, we invite comment on whether this formula should be revised to make it more consistent with other proposals on which the Commission is currently seeking comment regarding revenue sharing payments that occur at the fund complex level, as opposed to the fund level.[138] Commenters are specifically requested to consider whether the formula should compare the value of the account with the value of all assets held by the bank in a fund complex if revenue sharing is paid on a fund complex basis.

iii. Indenture Trustee Exemption

Exchange Act Rule 3a4–3 currently provides a limited exemption from broker registration for a bank that serves

[133] *See* Investment Company Act Release No. 11414, 45 FR 73898 (Nov. 7, 1980).

[134] *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27775.

[135] *See* NYCH letter and PNC Bank letter. We note, however, that in connection with E*Trade's Rule 12b–1 fee rebate program, E*Trade explains its fifty percent rebate formula as follows: ''For example, if the average daily value of your eligible mutual fund holdings for the year is $200,000 and we receive 12b–1 fees at the annual rate of 0.25% (25 basis points) from the funds you selected, you would receive an annual rebate of $250 (0.0025 x $200,000÷2).'' *See* (*https://us.etrade.com/e/t/home?SC=LBH4249*).

[136] We chose the year-end formula to allow banks performing the ''chiefly compensated'' calculation on an account-by-account basis to make a reasonable estimate, consistent with the chiefly timeframe, of the amount of 12b–1 fees paid by an account during the preceding year. The proposed formula also is intended to provide banks with the additional flexibility to measure the changing value of an account during the year to determine the amount of 12b–1 fees paid by that account, provided that the bank uses the same fair method for each account.

[137] *See id.* for a discussion of the reasons why we are proposing this formula.

[138] *See infra* note 405.

as an indenture trustee in a no-load money market fund, provided that it meets certain conditions. Comments we received on this rule criticized its utility in part based on the definition of ''indenture trustee,'' which is currently codified in Exchange Act Rule 3b–17.[139] For example, two commenters recommended that we expand the ''indenture trustee'' definition to include trustees appointed pursuant to pooling and servicing agreements, trust agreements, bond resolutions, and mortgages, given that, according to these commenters, documents appointing trustees generally are not limited to indentures.[140]

In lieu of modifying the ''indenture trustee'' definition (which we are proposing to move to Exchange Act Rule 724), as discussed previously, the Commission is proposing a broad general exemption (proposed Exchange Act Rule 776) that would permit banks to effect transactions for qualified investors and certain other investors in money market funds.[141] As discussed below, we propose to eliminate the definition of ''trustee capacity,'' which defined the term to include the capacity of a trust indenture trustee. As a result, banks acting in an indenture trustee capacity would not need to look to the definition of ''indenture trustee'' to determine whether they qualify for the trust and fiduciary activities exception.

We propose to move the definition of ''indenture trustee'' to proposed Exchange Act Rule 724(c), where the term would be defined for purposes of the exemption in proposed Exchange Act Rule 723, which would provide an exemption from the ''chiefly compensated'' calculation for banks to effect transactions as an indenture trustee in no-load money market funds. While the exemption would still be available on the same terms as before, we believe that banks acting as indenture trustees may opt for the exemption in proposed Exchange Act Rule 776.

We request comment on proposed Exchange Act Rule 723. Commenters are specifically invited to discuss whether the exemption would be necessary if we adopt proposed Exchange Act Rule 776.

2. Definition of ''Trustee Capacity'' and Indenture Trustees

We received numerous comments on the definition of ''trustee capacity,'' which was included in the Interim Rules to clarify that for purposes of the trust and fiduciary activities exception, the term includes indenture trustees and trustees for tax-deferred account described in sections 401(a), 408, and 408A under subchapter D and in section 457 under subchapter E of the Internal Revenue Code of 1986 (26 U.S.C. 1, *et seq.*)[142] Some commenters supported the definition's provision of legal certainty for indenture trustees and trustees for certain tax-deferred accounts.[143] However, some commenters urged the Commission to expand the definition to cover banks acting as custodial trustees for Individual Retirement Accounts (''IRAs'').[144] Commenters also indicated that the definition should cover both indenture trustees operating under appointive documents other than indentures, and indenture trustees serving on issues or transactions outside those delineated in the Interim Rules.[145] Some commenters urged the Commission to withdraw the definition of ''trustee capacity'' and instead interpret the trust and fiduciary activities exception to cover all types of ''trustees.''[146] Several commenters indicated that defining ''trustee capacity'' as including an indenture trustee or a trustee for certain tax-deferred accounts may create ambiguity by suggesting that other ''trustees'' may not be able to rely on the trust and fiduciary activities exception.[147] One commenter took issue with the analysis of trustee relationships because, in the commenter's view, it focused on whether a bank exercises investment discretion.[148] This commenter asserted that there are numerous trustee relationships in which a bank may not exercise investment discretion, but would still be subject to fiduciary duties, such as personal trusts, charitable foundation trusts, insurance trusts, rabbi trusts, secular trusts, conservatorships and guardianships.[149] Two commenters stated that the governing trust instrument under state and federal fiduciary law, and not the Commission, should determine the nature of a trust or fiduciary relationship.[150] One commenter maintained that it is unclear how banks could ''push out'' trust accounts to broker-dealers.[151]

After considering these comments, we propose to withdraw the definition of ''trustee capacity'' and not specifically identify the types of trustee capacities in which banks may act in reliance on the trust and fiduciary activities exception. This should simplify compliance and allow banks that effect transactions in a trustee capacity to continue doing so even if they do not assume significant fiduciary responsibilities as trustee. As discussed in more detail below, however, we do not propose to broaden the meaning of the term ''trustee capacity'' to include banks acting in non-trustee capacities, such as IRA bank custodians, for purposes of Exchange Act Section 3(a)(4)(B)(ii).[152] We request comment on our proposal to eliminate the definition of ''trustee capacity'' and not specifically identify trustee capacities that would provide a basis for relying on the trust and fiduciary activities exception. We also request comment on whether additional clarification regarding the meaning of ''trustee capacity'' would be helpful.

3. Interpretations of ''Fiduciary Capacity'' and ''Similar Capacity''

The definition of ''fiduciary capacity'' in Exchange Act Section 3(a)(4)(D) provides that a bank may qualify for the trust and fiduciary activities exception if it acts in certain specified fiduciary capacities or ''in any other similar capacity.'' In adopting the Interim Rules, the Commission identified several capacities from state uniform acts and codes that were not expressly listed in the statutory definition of

[139] 17 CFR 240.3b–17(c). Current Exchange Act Rule 3a4–3 permits banks to effect transactions as indenture trustees in no-load money market funds without meeting the ''chiefly compensated'' condition in the trust and fiduciary activities exception.

[140] *See* ABA/ABASA letters and Bank One letter.

[141] *See* Section III.F.1 *supra* for discussion of proposed Exchange Act Rule 776, under which banks not acting in an indenture trustee capacity could effect transactions for customers who are ''qualified investors'' and customers for whom they act in a trustee or fiduciary capacity or in certain escrow capacities in money market funds, including those that charge a ''load.''

[142] *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR 27767–69. *See, e.g.,* ABA/ABASA letters; Bank One letter; Banking Agencies letter; BONY letter; Bar of NY letter; Fleet letter; KeyBank letter; Mellon letter; NASAA letter; NYCH letter; PNC letter; Regions letter; letter dated August 31, 2001 from Andrew Cecere, Vice Chairman, Private Client and Trust Services, U.S. Bancorp (''U.S. Bancorp letter''); Wells Fargo letter; and Zions Bancorporation letters.

[143] *See, e.g.,* ABA/ABASA letters and Federated letters.

[144] *See* ABA/ABASA letters; Federated letters; and Wells Fargo letter.

[145] *See* ABA/ABASA letters.

[146] *See, e.g.,* Banking Agencies letter; BONY letter; Federated letters; PNC letter; Roundtable letter; and Wells Fargo letter.

[147] *See, e.g.,* Banking Agencies letter; BONY letter; Federated letters; Frost letter; Harris Trust letter; NYCH letter; PNC letter; Roundtable letter; UMB Bank letter; and Wells Fargo letter.

[148] *See* Roundtable letter.

[149] *Id.*

[150] *See* ICBA letter and National City letter.

[151] *See* NYCH letter.

[152] As discussed above and below, however, we propose other exemptions that may address some of the business needs of banks that are not trustees but act in capacities that commenters suggest should be recognized as such—*e.g.,* IRA custodians, escrow agents, and paying agents.

''fiduciary capacity.'' [153] The Commission also noted that in some cases, state authorities used different nomenclature to refer to the same fiduciary capacity.[154] The Commission did not expand the term ''similar capacity'' to include agency activities that are not subject to the standards applicable under trust and fiduciary law to banks acting as fiduciaries.

Some commenters indicated that, because the definition of ''fiduciary capacity'' in Exchange Act Section 3(a)(4)(D) [155] is similar to the definition of the same term in regulations issued by the OCC,[156] the Commission should interpret the term to include the same range of activities.[157] Some commenters suggested, for example, that the Commission should treat banks that act as IRA custodians as if they were IRA trustees for purposes of the trust and fiduciary activities exception.[158] Other commenters urged us to define a bank that performs escrow services to be acting in a similar capacity to an indenture trustee.[159] Similarly, commenters have suggested that the Commission consider various other capacities as ''similar'' to the fiduciary capacities listed in the statute. Examples of such other capacities include escrow agent, commercial paper listing and paying agent, debt securities paying agent, collateral agent, custodian for mortgage loan files, and titleholder or qualified intermediary in like-kind exchange transactions. As discussed above in connection with indenture trustees, some of these capacities would be within the scope of proposed Exchange Act Rule 776.

We do not propose to identify additional capacities as similar to those specified in the statute because such capacities, for example the capacity of IRA custodian, do not involve fiduciary duties similar to those exercised by banks acting in true fiduciary capacities; nor are they trustees, which are separately identified in the statute as well as included within the definition of fiduciary.[160] In addition, the Commission understands from discussions with bank representatives that many of the capacities some commenters suggest should be considered as ''similar to fiduciary capacities'' typically do not involve investing in securities, but rather involve financial record keeping. While we recognize that some state laws may use nomenclature different from that used in the Exchange Act to refer to certain fiduciary capacities,[161] we do not consider additional capacities that are merely the functional or economic equivalent of capacities listed in Exchange Act Section 3(a)(4)(D) [162] to be ''similar'' capacities for purposes of the definition of ''fiduciary capacity.'' These capacities do not necessarily involve fiduciary obligations or carry the same legal obligations as those assumed by the types of fiduciaries identified in the statute. Banks acting in some of these types of agency capacities, however, would be able to rely on the general exemption contained in proposed Exchange Act Rule 776.[163]

In contrast to a bank's ability under banking law to engage in a wide variety of activities not implicating the broker-dealer registration requirements, a bank cannot rely on the trust and fiduciary activities exception to avoid being considered a broker merely because it is performing any function under state law that is permitted for a competitor of that national bank. A term does not necessarily have the same meaning under different statutes enacted for different purposes.[164] Moreover, the purpose of the functional regulation approach taken in the GLBA's bank exceptions from ''broker'' and ''dealer'' was to ensure that broker-dealer functions outside the scope of certain narrow bank activities specifically identified in the statute will be performed by registered broker-dealers.

We request comment on this approach. We specifically invite comment on any capacities similar to the fiduciary capacities listed in the statute in which banks assume fiduciary obligations equivalent to those assumed by banks acting in the listed capacities.

4. Comments on Definition of ''Investment Adviser if the Bank Receives a Fee for its Investment Advice'' and Proposed Amendments

Exchange Act Section 3(a)(4)(D) defines the term ''fiduciary capacity'' to include acting as an ''investment adviser if the bank receives a fee for its investment advice.'' [165] The Interim Rules defined ''investment adviser if the bank receives a fee for its investment advice'' to mean that a bank investment adviser provides, in return for a fee, continuous and regular investment advice to a customer's account that is based upon the individual needs of the customer, and that under state law, federal law, contract, or customer agreement, the bank owes the customer a duty of loyalty, including an affirmative duty to make full and fair

[153] For example, the Uniform Probate Code uses the term ''Personal Representative'' and similar successor titles in place of executor or administrator as the representative of a decedent. Similarly, under the Uniform Custodial Trust Act, the terms that are used for fiduciaries who act for persons who have become incapacitated include ''conservator'' and ''custodial trustee.''

[154] For example, Exchange Act Section 3(a)(4)(D)(i) refers only to the capacity of a ''custodian under a uniform gift to minor act,'' while the Uniform Transfers to Minors Act uses both the terms ''conservator'' and ''custodian'' for fiduciaries that act for minors.

[155] 15 U.S.C. 78c(a)(4)(D).

[156] *See* 12 CFR 92(e). Notably, the range of permitted banks activities under the OCC's regulations is significantly broader than activities in which banks could engage in reliance on the trust and fiduciary activities exception under our definition. In particular, the OCC's regulations provide that a national bank may act in any fiduciary capacity in which national banks' competitors may act under the law of the state where the national bank is located. *See* 66 FR 34792 (July 2, 2001). In addition to the enumerated fiduciary capacities, OCC staff has identified escrow agent and personal investment management (other than in the capacity of an investment adviser for a fee) as functions they believe should be added to those a bank may perform in reliance on the exception.

[157] *See, e.g.,* July 17, 2001 ABA/ABASA letter; Banking Agencies letter; PNC letter; and NYCH letter. Commenters suggested adding to the list of permissible fiduciary capacities certain non-fiduciary capacities such as escrow agent, commercial paper issuer, distribution agent, collateral agent, exchange accommodation, titleholder, and qualified intermediary. To the extent that any of these capacities do not involve effecting transactions in securities, a bank would not need to rely on any exception or exemption to engage in that activity.

[158] *See* ABA/ABASA letters; Federated letter; and Wells Fargo letter.

[159] *See, e.g.,* ABA/ABASA letters; Compass letter; and Federated letters.

[160] For example, we would not consider a bank, if effecting transactions in securities as an IRA custodian which may act in a capacity that is the functional equivalent of a directed trustee, to be acting in a capacity that is similar to one of the capacities listed in Exchange Act Section 3(a)(4)(D). In guidance to trust examiners, the OCC states, ''Agency service arrangements that do not involve the exercise of discretion or other similar responsibilities, such as escrow, safekeeping and custody, may be performed by a bank under the incidental powers of banking, without having trust powers.'' OCC, *Handbook for Trust Examiners* at 9.2600.

[161] *See* discussion of ''other similar capacity'' in Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27772.

[162] 15 U.S.C. 78c(a)(4)(D).

[163] *See* Section III.F.1 *supra.*

[164] Just as the meaning of the term ''security'' under the securities law does not determine the term's meaning under the Glass-Steagall Act, the meaning of the terms ''fiduciary capacity'' and ''similar capacity'' under Exchange Act Section 3(a)(4)(D) is not determined by meanings these terms may have been given by the OCC's regulations and interpretations for purposes of the federal banking laws. *See Investment Co. Institute* v. *Conover,* 790 F. 2d 925, 933 n.7 (D.C. Cir. 1986) (citing *Securities Industry Ass'n* v. *Board of Governors of Fed. Reserve Sys.,* 468 U.S. 137, 175, 104 S. Ct. 2979, 2999–3000, 82 L. Ed. 2d 107 (1984) (O'Connor, J., dissenting) as support for the proposition that the definition of the term ''security'' under the securities laws should be different than the definition under the Glass-Steagall Act because ''the purposes of the banking and securities laws are quite different'') *cert. denied, Investment Co. Inst.* v. *Clarke,* 479 U.S. 939, 107 S. Ct. 421, 93 L. Ed. 2d 372 (1986).

[165] *See* 15 U.S.C. 78c(a)(4)(D).

disclosure to the customer of all material facts relating to conflicts of interest.[166]

We received multiple comments on the definition of ''investment adviser if the bank receives a fee for its investment advice.'' [167] One commenter stated that this definition is appropriate because it is consistent with current law regarding investment advisers.[168] Another stated that the ''continuous and regular'' requirement is consistent with its understanding of how such activities are performed by bank trust departments.[169] This commenter suggested that the Commission provide banks with a safe harbor if they review customers' accounts at least annually.[170] In addition, this commenter also urged the Commission to take the position that periodic rebalancing of asset allocation models by banks would be viewed as providing ''continuous and regular'' investment advice.[171]

In contrast, several commenters viewed the definition as contrary to their understanding of the statute, inconsistent with their interpretation of congressional intent, or too restrictive.[172] One commenter stated that some customers may only want or need a one-time portfolio review.[173] Another commenter indicated that a ''continuous and regular'' requirement could create undesirable pressure on banks to recommend inappropriately frequent transactions in a customer's investment account.[174] One commenter expressed the view that banks should be able to provide advice that is based principally on market events.[175]

Three commenters urged the Commission to eliminate the condition that a bank must have a duty of loyalty to its customer.[176] The Banking Agencies expressed a similar opinion.[177] In their view, a duty of loyalty may arise as a consequence of a bank or other person acting as an investment adviser, but is not a precondition to acting as an investment adviser.[178] While the Banking Agencies agreed that banks providing investment advice for a fee have fiduciary obligations to their customers, including the duty to disclose potential conflicts of interests, they asserted that the bank regulation and examination process provides the most appropriate method for ensuring banks' compliance with these important duties.[179] Another commenter stated that a duty of loyalty is not determinative of whether an entity or an individual is functioning as an investment adviser.[180] This commenter indicated that the duty of loyalty is derived from bank regulation, ERISA, federal tax law, state statutes, common law, and case law.[181] Other commenters remarked that there is no need to place another duty of loyalty on banks under the federal securities laws.[182] Another commenter stated that because disclosure of material facts relating to fiduciary conflicts of interest is an area that has historically been regulated by state fiduciary laws, it would not be appropriate for the Commission to scrutinize the fiduciary disclosure obligations of banks.[183]

While it appears that most banks conduct continuous and regular reviews of the accounts of customers to whom they provide investment advice for a fee, we understand that they may not necessarily communicate with each customer on a continuous and regular basis. Accordingly, we propose to revise the definition of ''acting as an investment adviser if the bank receives a fee for the investment advice'' to eliminate the implication that a bank must communicate continuously and regularly with customers.[184] The revised definition would omit the phrase ''continuous and regular.'' Instead, the amended definition would provide that to rely on the exception a bank must have an ongoing responsibility to review, select, or recommend specific securities for its customers.[185]

The proposed amendment recognizes that a bank's advice must relate to specific securities or other investments the customer may purchase or sell, and is intended to ensure that the securities transactions the bank effects in an investment advisory capacity are effected subject to the bank's fiduciary obligations that attach when it is acting as an investment adviser for a fee.[186] Under the amended definition, a bank would be able to rely on the trust and fiduciary activities exception to continue to effect transactions for advisory customers such as mutual fund wrap account customers, provided the investment advice the bank provides to its wrap account customers includes the review, selection or recommendation of specific securities, and the transactions result from customers acting on the bank's advice. A bank providing only general asset allocation advice not relating to specific securities, however, could not rely on the exception to effect transactions resulting from that advice.

The amended definition would also retain the concept that a bank acting as an investment adviser for a fee has a duty of loyalty to the customer and must make full and fair disclosure of all conflicts. This duty, in part, differentiates a bank acting as an investment adviser from one acting as a broker.[187] As we recently explained, an

[166] *See* current Exchange Act Rule 3b–17(d).

[167] *See, e.g.,* ABA/ABASA letters; Banking Agencies letter; Frost letter; Harris Trust letter; NASAA letter; Regions letter; Roundtable letter; TIAA–CREF letter; UMB Bank letter; and Wilmer, Cutler letter.

[168] *See* NASAA letter.

[169] *See* Federated letters.

[170] *Id.*

[171] *Id.*

[172] *See* ABA/ABASA letters; ABA Banking Law Committee letter; ACB letter; Banking Agencies letter; Bank One letter; BSA letter; Fleet letter; Frost National letter; Harris Trust letter; ICBA letter; IIB letter; KeyBank letter; Mellon letter; NationalCity letter; NYCH letter; Regions letter; Roundtable letter; TIAA–CREF letter; UMB Bank letter; Wells Fargo letter; and Wilmer, Cutler letter.

[173] *See* ICBA letter.

[174] *See* Federated letters. We note, however, that the Interim Rules do not require banks relying on this exception to provide continuous and regular advice to trade.

[175] *See* Wilmer, Cutler letter.

[176] *See* ACB letter and Regions letter.

[177] *See* Banking Agencies letter.

[178] *Id.*

[179] *Id.*

[180] *See* ABA/ABASA letters.

[181] *Id.* National banks, however, are not subject to uniform disclosure obligations with respect to their material conflicts. The source of fiduciary law governing national banks' fiduciary relationships may include federal law, state laws, the terms of the instrument governing a fiduciary relationship, and any court order pertaining to the relationship. *See* OCC, Fiduciary Activities of National Banks, 61 FR 68543, 68544 (Dec. 30, 1996).

[182] *See* ABA/ABASA letters; ABA Banking Law Committee letter; and NYCH letter.

[183] *See* TIAA–CREF letter.

[184] *See* proposed Exchange Act Rule 724(d).

[185] This interpretation is consistent with the view expressed by staff of the Banking Agencies, who indicated that a bank may not fairly be considered to be acting as an ''investment adviser if the bank receives a fee for its investment advice'' unless the bank provides investment advice based on the particular needs of a customer and the bank's advice or recommendations to the customer concern the purchase or sale of specific securities. *See* appendix to the Banking Agencies letter at 14 (citing 12 CFR 9.101(a), and 12 CFR 9.101(b)(2)(i) (''[a] bank does not provide 'investment advice' merely by providing market information to customers in general.'')). Similarly, instructions to the Commission's Form ADV Uniform Application for Investment Adviser Registration explain that an investment adviser without discretionary authority over an account provides continuous and regular supervisory or management services with respect to the account if the adviser has ''ongoing responsibility to select or make recommendations, based upon the needs of the client, as to *specific* securities or other investments the account may purchase or sell and, if such recommendations are accepted by the client, [the adviser is] responsible for arranging or effecting the purchase or sale.'' *See* Form ADV: Instructions for Part 1A, at 4 (available at *http://www.sec.gov/about/forms/formadv.pdf*) (emphasis added).

[186] *See* proposed Exchange Act Rule 724(d). This proposal is consistent with the definition in the Interim Rules. *See* Exchange Act Rule 3b–17(d).

[187] As explained by the Supreme Court in 1963 in *SEC* v. *Capital Gains Research Bureau, Inc.,*

Nor is it necessary in a suit against a fiduciary, which Congress recognized the investment adviser to be, to establish all the elements required in a suit against a party to an arm's-length transaction.

investment adviser must act for the benefit of its clients and not use its clients' assets for its own benefit.[188] This duty of loyalty is implicit in the role of an investment adviser.[189]

We propose to clarify that the trust and fiduciary activities exception is available to a bank providing investment advice for a fee only if the bank does so in a fiduciary capacity in which the bank owes its advisory customer a duty of loyalty. In other words, a bank may only rely on the exception if it takes on fiduciary obligations, including obligations to disclose conflicts of interest and other material facts. This duty of loyalty requirement is inherent in the fiduciary obligations of a bank that is in a position to rely on the exception based on the bank's acting in an investment advisory capacity—which include a duty of loyalty to the customer for whom the bank is effecting securities transactions under the exception. Because this duty is implicit in the role of an investment adviser, the amended definition would not specify any particular source of such a duty, such as contract or state law.[190]

We request comment on the proposed amendments to the definition of ''investment adviser if the bank receives a fee for its investment advice.'' We are particularly interested in receiving information about activities commenters believe the proposed definition would, but, in the commenter's view, should not, preclude. We also would appreciate descriptions of any fiduciary obligations that banks acting in such capacities owe their customers.

5. Comments on ''Other Department That Is Regularly Examined by Bank Examiners for Compliance With Fiduciary Principles and Standards''

Exchange Act Section 3(a)(4)(B)(ii) requires a bank to effect transactions in a trustee or fiduciary capacity in a trust department or other department that is ''regularly examined by bank examiners for compliance with fiduciary principles and standards.'' In adopting the Interim Rules, we explained that this statutory requirement means that ''all aspects'' of effecting securities transactions in compliance with the trust and fiduciary activities exception must be conducted in the part of a bank that is regularly examined by bank examiners for compliance with fiduciary principles and standards.[191] Moreover, at that time we clarified that effecting transactions in securities includes more than just executing trades or forwarding securities orders to a broker-dealer for execution.[192]

Some commenters expressed the view that requiring ''all aspects'' of securities transactions conducted by a bank for its trust and fiduciary customers to be conducted in a part of the bank regularly examined by bank examiners for compliance with fiduciary principles and standards is overly broad and could unduly restrict new business and cross-selling efforts.[193] Other commenters noted that banks conducting fiduciary activities often delegate securities processing and settlement activities for cost or operational efficiencies to either a separate department, an affiliate or a third-party service provider, and that those entities may not be regularly examined for compliance with fiduciary principles and standards.[194] Some banks and bank trade groups also explained that banks may use the trading desk of a registered investment adviser to process trades in fiduciary activity accounts, or bank fiduciaries may find it more economical to outsource certain trust back office functions.[195] One commenter maintained that the examination requirement set forth in the Interim Rules would require banks to set up parallel back offices and other facilities solely for the purpose of relying on the trust and fiduciary activities exception and asked the Commission to clarify that this requirement would only apply to the part of the bank managing fiduciary activity accounts.[196] Another commenter stated that because certain activities are not typically examined for compliance with fiduciary standards and principles, the Interim Rules' interpretation would constrain a bank's normal business operations.[197] One commenter noted that small banks often conduct trust activities outside of their trust departments and urged us to clarify that it is the activity that qualifies for the exception, and not where the activity is conducted.[198]

In light of these comments, we propose to recast the examination requirement to more closely correlate with how bank trust and fiduciary activities are currently examined. We propose to interpret this requirement to mean that ''all aspects'' of effecting securities transactions in compliance with the trust and fiduciary activities exception must be regularly examined by bank examiners for compliance with fiduciary principles and standards. In other words, we would view this requirement to mean that the activities, rather than the department in which they are conducted, would need to be regularly examined. For example, a bank could meet the terms of the exception if bank examiners regularly examined a trading desk located outside of the trust department for compliance with fiduciary principles and standards in executing the trades for the bank's trust and fiduciary customers. Similarly, advertising for the trust department activities could be examined without

Courts have imposed on a fiduciary an affirmative duty of ''utmost good faith, and full and fair disclosure of all material facts,'' as well as an affirmative obligation ''to employ reasonable care to avoid misleading'' his clients.

*SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 194 (1963) (footnotes omitted) (citing Prosser, *Law of Torts* (1955), 534–535; Keeton, *Fraud—Concealment and Non-Disclosure,* 15 Texas L. Rev. 1 (1936); 1 Harper and James, *The Law of Torts* 541 (1956)). In contrast, although a broker may have disclosure obligations with respect to matters entrusted to it by a client with whom it has a relationship of trust and confidence, absent such a relationship ''there 'is no general fiduciary duty inherent in an ordinary broker/customer relationship.' '' *See United States* v. *Szur,* 289 F.3d 200 (2d Cir. 2002) (quoting *Independent Order of Foresters* v. *Donaldson, Lufkin & Jenrette, Inc.,* 157 F.3d 933, 940 (2d Cir. 1998)).

[188] *See In re Alliance Capital Management, L.P.,* Investment Advisers Act Release No. 2205, Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 and Sections 9(b) and 9(f) of the Investment Company Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (Dec. 18, 2003), available at *http://www.sec.gov/litigation/admin/ia-2205.htm* (adviser's activities permitting inappropriate market timing were found to have constituted breaches of the investment adviser's fiduciary duty).

[189] *See* Investment Advisers Act Release No. 2209, Investment Company Act Release No. 26337, *Investment Adviser Codes of Ethics* (Jan. 20, 2004), 69 FR 4039, 4040 (Jan. 27, 2004) (proposing new rule and related rule amendments under the Investment Advisers Act of 1940 (''Investment Advisers Act'') that would require registered advisers to adopt codes of ethics, and citing *Capital Gains Research Bureau* at 375 U.S. 181, 181–82 for the proposition that ''[a]dvisers are fiduciaries that owe their clients a duty of undivided loyalty.'').

[190] The duty is not established by the definition, but rather an element of the relationship between an investment adviser and its fee-paying client that must exist if the bank is to satisfy the definition of ''fiduciary capacity'' on that basis—that is, it is acting as an investment adviser for a fee.

Of course, a fiduciary has a duty to disclose fully all material conflicts of interest. For guidance on the fiduciary disclosure obligations that characterize the status of a bank acting as an investment adviser for a fee, a bank seeking to rely on the exception may look to the disclosure obligations applicable to an investment adviser under the Investment Advisers Act. *See* 15 U.S.C. 80b *et seq. See also* Rule 204–3 under the Investment Advisers Act and Form ADV, Part II.

[191] *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27772.

[192] *Id.* at 27772–73.

[193] *See, e.g.,* UMB Bank letter.

[194] *See, e.g.,* Bank Agencies letter; letter dated July 17, 2001, from Maureen W. Sullivan, Associate General Counsel, Manufacturers and Traders Trust Company (''M&T letter''); IIB letter; Bankers Trust (Iowa) letter; and Harris Bank letter.

[195] *See, e.g.,* ABA/ABASA letters; KeyBank letter; and M&T letter.

[196] *See* NYCH letter.

[197] *See* Harris Bank letter.

[198] *See* ICBA letter.

reviewing the other advertising of the bank. As noted in the Interim Rules, we rely primarily on the Banking Agencies to ensure that banks meet the examination requirements of this condition.[199]

This interpretation does not extend to bank affiliates and third-party service providers that carry out brokerage activities. Bank affiliates and third-party service providers cannot rely on any bank exception from registration, unless these affiliates and third-party service providers are themselves banks.[200] This means that if some aspect of a securities transaction occurs outside of a bank, unless the securities-related activity in question is located within a registered broker-dealer,[201] the bank would be unable to rely upon the trust and fiduciary activities exception for that transaction. Moreover, an affiliate participating in key points of securities transactions would be required to register as a broker-dealer, absent an exemption or no-action relief.

We note that the Banking Agencies distinguish between core and ancillary bank fiduciary activities.[202] The Banking Agencies' analysis and our analysis serve two different purposes.[203] A bank intending to qualify for the exception would need to rely on its banking regulator to ensure that all of its activities that constitute effecting securities transactions are regularly examined for compliance with fiduciary principles and standards.

The proposed amendments should give banks increased flexibility in satisfying this statutory requirement, while ensuring that investors receive all of the protections contemplated by this exception to the definition of broker. We also expect it to accommodate the needs of the Banking Agencies in fulfilling their supervisory functions by permitting them to target their examination resources more precisely. We solicit comment on the proposed amendments to this interpretation of the ''other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards'' requirement of trust and fiduciary activities exception. Do commenters believe that this proposed approach would make it easier for banks to comply with this statutory requirement?

*C. Sweep Accounts Exception*

In general, any person that induces transactions in securities for the account of others by selling securities products or services together with other, non-securities products or services sold by that person would be a broker required to register with the Commission.[204] The sweep accounts exception set out in Exchange Act Section 3(a)(4)(B)(v), however, permits a bank to participate in mixed product arrangements in which the bank offers a mutual fund ''sweep'' service linked to deposit accounts under certain conditions. Specifically, this section excepts a bank from the definition of ''broker'' to the extent it ''effects transactions as part of a program for the investment or re-investment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act that holds itself out as a money market fund.'' [205]

To provide guidance to banks seeking to rely on the sweep accounts exception, the Interim Rules defined the terms ''money market fund'' and ''no-load.'' We propose to retain the definition of ''no-load'' substantially as in the Interim Rules, with a minor adjustment to recognize that some investment companies offer both load and no-load shares. We are also proposing to provide a new exemption for banks effecting transactions for certain customers in money market funds, including, with certain disclosures, money market funds that would not qualify as ''no-load'' funds.[206]

1. Comments on Definition of ''No-Load'' and Proposed Amendments

Exchange Act Rule 3b–17(f)[207] provides that an investment company is ''no-load'' for purposes of the sweep accounts exception if: (1) it does not have a sales load [208] or a deferred sales load; and (2) its total charges against net assets to provide for sales-related expenses and service fees (including

[199] *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27772. We note the use by the federal financial institutions' regulators of the Uniform Interagency Trust Rating System in evaluating financial institutions' fiduciary activities. In 2000, there were 2,886 banks and trust companies (both insured and uninsured) that were subject to reporting requirements of the Federal Financial Institutions Examinations Council regarding their trust assets. *See http://www2.fdic.gov/structur/trust/00trustdata.asp.* Any institution that intends to rely on a bank exception from broker-dealer regulation must determine whether it falls within the definition of ''bank'' in Exchange Act Section 3(a)(6).

[200] *See also Division of Market Regulation, Staff Compliance Guide to Banks on Dealer Statutory Exceptions and Rules* (Sept. 2003), which clarified the exceptions found in the GLBA and that the additional exemptions granted by the Commission apply only to bank activities. Available at *http://www.sec.gov/divisions/marketreg/bankdealerguide.htm.*

''Question #1: May a bank holding company, subsidiary of a bank, or affiliate of a bank use the bank exceptions in the Exchange Act?

Answer #1: No. The exceptions in the Exchange Act only exclude banks' securities activities from broker-dealer regulation, and then only in certain specified circumstances. Only the bank itself may claim an exception or exemption. The exceptions and exemptions are not available to a subsidiary or affiliate of a bank (unless the subsidiary or affiliate is itself a bank).'' (emphasis omitted)

[201] Certain securities related activities may occur in a registered investment adviser. Trustees routinely turn to registered investment advisers for professional asset management of a trust's portfolio. The adviser is hired as an agent, usually pursuant to a limited power of attorney, and the trustee is able to receive client disclosure and, when necessary, provide client consent.

[202] Activities that are considered to be ancillary to a bank's or savings association's business include many activities that constitute key points of a securities transaction, such as advertising, marketing, or soliciting fiduciary business. *See, e.g.,* 12 CFR 9.2(k) (OCC) (''Examples of ancillary activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as liaison between the trust office and the customer (*e.g.,* forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); inspecting or maintaining custody of fiduciary assets or holding title to real property.''); *See also* 12 CFR 550.60 (OTS).

[203] The Banking Agencies focus on providing guidance to national banks regarding their multi-state fiduciary activities. For example, the OCC explains at the Supplementary Information section of its release on this topic that ''[t]he purpose of the rulemaking was to provide clarity and certainty for national banks' multi-state fiduciary activities.'' *See* 66 FR 34792 (July 2, 2001); *See also* 67 FR 76293 (Dec. 12, 2002) (OTS) (amending 12 CFR 550.60 to include a definition of the term ''activities ancillary to your fiduciary business.'' The amendment codified OTS legal opinions that concluded that a Federal savings association is not ''located'' in a state for purposes of Section 5(n) of the Home Owners'' Loan Act when the association conducts in that state activities that are ancillary to the association's fiduciary business.).

In contrast, our interpretation is intended to provide guidance to banks on the requirements necessary to qualify for the trust and fiduciary activities exception from registering as a broker pursuant to Section 15 of the Exchange Act.

[204] *See* Exchange Act Release No. 27017, *supra* note 86, 54 FR at 30017–18 (explaining, in the context of the broker-dealer registration requirements as applied to foreign broker-dealers, that the Commission generally views solicitation requiring broker-dealer registration ''as including any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates,'' and stating, ''[s]olicitation includes efforts to induce a single transaction or to develop an ongoing securities business relationship.'').

[205] *See* Exchange Act Section 3(a)(4)(B)(v).

[206] *See* proposed Exchange Act Rule 776.

[207] 17 CFR 240.3b–17(f).

[208] For purposes of determining whether a fund is a ''no-load'' fund, ''sales load'' includes any charges related to the offering price of a fund, such as contingent deferred sales charges. *See Order Approving Proposed Rule Change Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies,* Exchange Act Release No. 30897 (July 13, 1992), 57 FR 30985 n.8 (citing interpretation of definition of ''sales load'' in Section 2(a)(35) of the Investment Company Act [15 U.S.C. 80a–2(a)(35)] in NASD Notice to Members 89–35, Apr. 1989).

12b–1 fees)[209] do not exceed 0.25 of one percent of average net assets annually and are disclosed in the mutual fund's prospectus. This definition is consistent with the way in which the term ''no-load'' is used under the federal securities laws. In particular, it is consistent with the NASD's definition of ''no-load'[210] and the interpretative position taken by Commission staff,[211] under which NASD member firms and others may not describe a fund as being ''no-load,'' or as having ''no sales charge,'' if it is subject to Rule 12b–1 fees exceeding a minimal amount.

We received numerous comments on the definition of ''no-load.''[212] One commenter expressed the view that defining the term to be consistent with the NASD definition of ''no-load'' was a ''logical and appropriate'' approach.[213] Most commenters asserted that the term should be interpreted to mean only that a fund is not subject to front-end or back-end sales charges. In their view, this approach would be consistent with Congressional intent.[214] Some claimed that the definition of ''no-load'' in the Interim Rules would require revisions to banks'' existing sweeps programs that would involve significant administrative expense for banks, as well as inconvenience for bank customers.[215]

Commission staff consulted with banks and bank representatives to gather more information about sweep account practices. Industry groups confirmed that mutual fund transactions in sweep programs are effected regularly, typically on a daily or overnight basis.[216] One group indicated that banks often charge account-level fees for sweep services, typically on a monthly basis.[217] In addition to possibly receiving Rule 12b–1 fees that exceed 25 basis points, this group indicated that banks might directly charge customers ''rate spread fees''[218] as well as direct servicing fees.

We understand that banks generally offer sweep account services to customers seeking higher interest rates than the rates that banks pay on deposits. The most common types of sweep account fee structures appear to involve a minimum balance requirement, and some banks also charge a monthly fee of between $25 and $100. Banks also receive Rule 12b–1 fees from funds into which deposit balances are swept, which we understand range from 25 to 55 basis points.[219]

After considering comments, we continue to believe that ''no-load'' as used in the statute should be given its customary meaning under the securities laws. We believe customers have come to rely on this term no-load as denoting not more than minimal Rule 12b–1 fees and no front-end or deferred sales charge. Thus, consistent with common industry and investor understanding, Commission staff guidance, and NASD rules, a bank may not use the sweep accounts exception, which covers only transactions in *no-load* money market fund securities, to effect transactions in securities that are subject to more than 25 basis points in charges against net assets for distribution. Although payments by investment companies of asset-based fees to distributors of their securities create conflicts of interest for the distributors, the sweep accounts exception mitigates these conflicts by restricting the funds eligible to be used under the exception to no-load money market funds that are subject to only certain types of minimal distribution fees. In addition, limiting the type of funds that may be used in sweep arrangements offered under the exception to no-load money market funds regulated under Rule 2a–7 under the Investment Company Act[220] limits the risks to investors. The customary emphasis of such funds on maintaining a constant net asset value, the absence of a sales load, and the minimal distribution fees that funds could pay to their bank distributors under the Interim Rules are also important conditions of the exception that could reduce the risks to investors who choose to invest in mutual funds through sweep accounts without using a broker.

Allowing banks that rely on the sweep accounts exception to use mutual fund shares subject to asset-based sales fees exceeding a level that sweep account holders might expect to pay for a ''no-load'' fund would effectively strike the term ''no-load'' from the exception. Indeed, interpreting the term to mean only that a fund does not charge a front-end or deferred sales load could mislead investors, who would end up with accounts paying distribution fees they reasonably did not expect to pay. As understood by the investing public and the securities industry when the GLBA was being drafted and after it was enacted, the term ''no-load'' meant having Rule 12b–1 fees of not more than 25 basis points.[221]

We considered the comment that the definition of ''no-load'' in Exchange Act Rule 3b–17 would create significant administrative expenses for banks and

[209] As we noted in adopting the Interim Rules, 12b–1 fees, which funds are permitted to impose under Investment Company Act Rule 12b–1, are asset-based charges whose purpose may be entirely for the distribution of fund shares. *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27775 and 27779 n.167.

[210] *See* NASD Rule 2830(d)(4).

[211] *See* letter dated August 22, 1994 from Barry P. Barbash, Director, Division of Investment Management, to Paul Schott Stevens, General Counsel, Investment Company Institute, regarding use of ''no-load'' terminology (observing that investors ''have a reasonable expectation that terminology will be used uniformly for all funds with similar fees,'' and that using a description such as ''no-load'' or ''no sales charge'' in connection with a fund having a Rule 12b–1 fee or service fee of more than 0.25% of average net assets per year, ''may be misleading and may constitute a violation of the antifraud provisions of the federal securities laws,'' whether or not the description is attributable to an NASD member firm).

[212] *See, e.g.,*, ABA/ABASA letters; Bank of America letter; Bank One letter; Banking Agencies letter; BONY letter; Compass letter; Fleet letter; Frost letter; Harris Trust letter; KeyBank letter; Mellon letter; NASAA letter; National City letter; NYCH letter; PNC letter; Regions letter; Roundtable letter; Shaw Pittman letter; Texas Bankers Trust Division letter; and Wells Fargo letter.

[213] *See* NASAA letter.

[214] *See, e.g.,* ABA/ABASA letters; Compass letter; and NYCH letter.

[215] *See, e.g.,* Banking Agencies letter; PNC letter; and Regions letter.

[216] *See* Letter dated January 22, 2004 from America's Community Bankers, the American Bankers Association, the Bank Insurance and Securities Association, the Financial Services Roundtable, the Independent Community Bankers of America, the Institute of International Bankers, and the New York Clearing House Association (''ACB/ABA letter''). The letter does not comment on the definition of ''no-load'' in the Interim Rules.

[217] *See* ACB/ABA letter.

[218] We understand a rate spread fee to be the difference between the return that the money market fund pays the bank's customer whose deposit funds are swept into the fund and the fee the bank charges the customer for the sweep service.

[219] In addition, some banks may retain a portion of the yield on a money market account, but this does not appear to be a common practice. In the rare cases in which a bank and its customer agree that the bank will retain a portion of the yield from a fund in a sweep arrangement, it appears that the retained yield would likely be between 25 and 50 basis points. For example, the bank might reduce a 2 percent yield on a fund to 1.5 percent and keep the 0.5 percent difference. This type of fee appears to be the same as the ''rate spread fee'' discussed above.

[220] 17 CFR 270.2a–7.

[221] For example, the Glossary of Mutual Fund Terms in the 1997 edition of the Investment Company Institute's publication *A Guide to Understanding Mutual Funds* defines a ''no-load fund'' as, ''[a] mutual fund whose shares are sold at net asset value,'' and the 1998, 2000 and 2002 editions of the same publication define a ''no-load fund'' as, ''[a] mutual fund whose shares are sold without a sales commission and without a 12b–1 fee of more than .25 percent per year.'' A banking trade group also communicated this commonly understood meaning of the term to Congress as it considered the bill that became the Gramm-Leach-Bliley Act. *See The Financial Services Modernization Act of 1999: Hearings on H.R. 10 Before the House Comm. on Banking and Fin. Services,* 106th Cong., 1st Sess. 354 (1999) (''Statement for the Record of the ABA Securities Association (''ABASA'')'' citing NASD Rule 2830 as support for the statement, ''Mutual funds that assess service fees that do not exceed .25 of 1% of average net assets per annum are generally understood to be no-load.'').

inconvenience bank customers. We understand that the conditions of the statutory exception may require banks to modify some sweep arrangements involving funds that impose more than minimal charges against fund assets. In particular, some banks that wish to rely on the exception may need to begin charging customers directly for sweep services if they wish to continue receiving fees for the services equivalent to what they currently may receive from funds in the form of sales loads, deferred sales loads, Rule 12b-1 fees, and shareholder service fees. As we explained in adopting the Interim Rules, banks are not prohibited by the statute's ''no-load'' condition or our interpretation of it from directly charging their customers for sweep services, because those direct charges would not be charges against fund assets.[222] While some banks may need to restructure some of their sweep arrangements to comply with the statute's ''no-load'' condition, and such restructuring may entail some expense to banks or inconvenience to bank customers, these considerations do not justify changing our interpretation of ''no-load'' in ways that could subject bank customers to unexpected fees. Identifying funds that meet the definition of ''no-load'' should not be burdensome because the Commission's definition is the industry standard.[223]

Some commenters indicated that our definition of ''no-load'' should be changed because limitations on asset-based sales charges might cause some banks to increase their account fees to offset losses of fees from money market funds or cause them to stop offering sweep accounts. If a bank can only offer sweep services by charging its customers additional fees above the built-in fees of true no-load funds, however, we believe investors should understand that and make their investment decisions accordingly.[224] Fees charged directly to the account of a sweep account customer would permit the customer to evaluate the worth of the sweep services provided by the bank.

Moreover, banks offering sweep account services have incentives other than earning fees to sweep balances out of deposit accounts. Notably, sweeping allows banks to reduce the amount of assets they are required to hold in vault cash or Federal Reserve accounts, neither of which earns interest. Sweep accounts, therefore, inherently allow banks to use more of their assets to generate income.[225] They also provide a means by which a bank may direct investments into proprietary funds from which the bank or an affiliate of the bank may receive advisory fees and other revenue.

One mutual fund company[226] suggested amending the definition to reflect the fact that different classes or series of shares issued by a particular fund may be subject to different distribution-related charges. This commenter noted that many investment companies offer multiple classes or series of shares, and some, but not others, may be subject to sales loads or deferred sales loads. In response to this comment, we propose to amend the definition of ''no-load'' to refer to loads applicable to a class or series of investment company security, rather than to the securities of an investment company in general.[227] We request comment on the proposed amendment to the definition of ''no-load,'' and specifically on the provision that ''no-load'' means not subject to Rule 12b–1 fees and certain other charges of more than 25 basis points. We also invite comment on whether rate spread or retained yield fees should be counted as sales charges in determining whether money market funds in a sweep account program involving such fees should be considered ''no-load'' for purposes of the exception.

2. Interpretation of ''Program''

Counsel for banks and investment companies asked the Commission staff whether the sweep accounts exception would permit a bank to sweep deposit balances into mutual funds less frequently than daily. They also asked whether a bank could rely on the exception to effect sweep transactions only at the direction of a customer rather than automatically. In addition, one commenter asked the Commission staff whether the exception would permit a bank to effect money market mutual fund transactions for a customer of another bank.[228]

In light of the legislative history, we do not believe that the sweep accounts exception permits other than regular, automatic sweeps.[229] Moreover, we do not believe, and there is nothing in the legislative history to suggest, that this exception permits a bank to effect money market mutual fund transactions for another bank using deposits held at the other bank. Therefore, to limit potential confusion, we are clarifying that the term ''program'' in Exchange Act Section 3(a)(4)(B)(v)[230] refers to arrangements for the automatic transfer of funds on a regular basis. We also interpret the term ''program'' as referring to a bank's investment and reinvestment of deposit balances held at the bank by the bank's own customers. We request comment on our interpretation of the term ''program,'' and on whether the term should be defined by a rule.

3. Definition of ''Money Market Fund''

The Interim Rules defined the term ''money market fund'' as an open-end management investment company registered and regulated as a money market fund pursuant to Rule 2a–7 under the Investment Company Act.[231] We did not receive any comments on this definition, and we propose to leave it unchanged.[232] We request comment on whether the definition should remain unchanged.

*D. Affiliate Transactions Exception*

Exchange Act Section 3(a)(4)(B)(vi) excepts from the definition of broker a bank that ''effects transactions for the account of any affiliate of the bank.''[233]

[222] Therefore, direct charges by banks of sweep fees would not affect the fund's status as a ''no-load'' fund. *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27779.

[223] As we explained in adopting the Interim Rules, a bank could satisfy its obligation to assure that any money market fund included in the bank's sweep program is in fact a no-load fund by using only money market funds that hold themselves out as no-load funds or by obtaining written confirmation from the money market fund that it is a no-load fund before including the fund in its sweep program. *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27779 n.169.

[224] As mentioned above, according to the ACB/ABA letter, banks often charge their sweep customers monthly, account-level fees.

[225] *See* Paul Bennett and Stavros Peristiani, *Are U.S. Reserve Requirements Still Binding*?, 8 Economic Policy Review of the Federal Reserve Bank of New York 53 (May 2002) (available at *http://www.ny.frb.org/research/epr/02v08n1/0205benn.pdf*); Remarks of Treasury Under Secretary Gary Gensler Before the House Banking and Financial Services Committee, May 3, 2000 (available at *http://www.ustreas.gov/press/releases/ls600.htm*).

[226] *See* letter dated October 2, 2002 from Steve Keen, General Counsel, Federated Investors, Inc.

[227] *See* proposed Exchange Act Rule 740(c).

[228] *See* Federated letters.

[229] Legislative history suggests the scope of the sweep accounts exception could be limited to overnight sweeps. *See* H.R. Rep. No. 106–74, pt. 3, at 167 (1999) (''Section 201 [of the GLBA] contains a limited exception for banks that 'sweep' depositors' funds on an *overnight* basis into a no-load money market account. The exception has the effect of permitting banks to continue investing depositors' funds from depository accounts into no-load money market accounts.'') (emphasis added). However, we interpret the term ''program'' to include programs that involve regular, automatic sweeps of deposit balances meeting preset levels, even if the transactions are effected on a periodic basis less frequently than daily.

[230] 15 U.S.C. 78c(a)(4)(B)(v).

[231] 17 CFR 270.2a–7.

[232] *See* proposed Exchange Act Rule 740(b).

[233] 15 U.S.C. 78c(a)(4)(B)(vi). Bank Holding Company Act Section 2(k) [12 U.S.C. 1841(k)]

The affiliate transactions exception applies to a bank effecting trades for the accounts of its affiliates, other than those affiliates that are registered broker-dealers or engaged in merchant banking. Affiliates, including operating subsidiaries and other subsidiaries of the bank, may not use the bank exceptions and exemptions from the definitions of broker and dealer. While none of the Interim Rules addressed the affiliate transactions exception, in the release adopting the Interim Rules, the Commission interpreted the exception as not covering a bank effecting trades with non-affiliated customers, even when the customer transaction also is effected as part of a trade involving an affiliate.[234]

We received two comments relating to the Commission's interpretation of this exception.[235] One of these commenters stated that the Commission's interpretation, if construed literally, would effectively negate the statutory exception by prohibiting a bank from completing a brokerage transaction with non-affiliated customers under the affiliate transactions exception.[236] The other commenter said that this exception should cover transactions with non-affiliates if one of the parties to the transaction is an affiliate of the bank.[237]

Under the interpretation of the exception that these commenters have proffered, a bank could avoid broker-dealer registration for a securities brokerage transaction if an affiliate is involved in the transaction. The Commission believes that this interpretation is contrary to the plain meaning of the GLBA. As a result, we are proposing to clarify the Commission's interpretation of this exception by defining the term ''effects transactions for the account of any affiliate.''[238] Under this proposed definition, the affiliate must be acting as a principal or as a trustee or fiduciary purchasing or selling securities for investment purposes.[239] Moreover, the affiliate may not act as a riskless principal for another person, as a registered broker-dealer, or be engaged in merchant banking.[240] Finally, the bank would be required to obtain the securities to complete the subject transaction from a registered broker-dealer, from a person acting in that capacity that is not required to register, or pursuant to another exception or exemption from Exchange Act Section 3(a)(4)(B).

We request comment on this proposed definition. In particular, commenters are invited to discuss whether this definition would enhance the clarity of the affiliate transactions exception.

*E. Safekeeping and Custody Activities Exception*

1. Background on Safekeeping and Custody Exception

Exchange Act Section 3(a)(4)(B)(viii) provides an exception from broker-dealer registration with respect to certain securities-related safekeeping and custody services that banks may perform for their customers.[241] The exception explicitly allows a bank that holds funds and securities for its customers as part of ''customary banking'' activities to perform specified securities-related functions with respect to those securities without registering as a broker.[242] In particular, a bank may, among other things, exercise warrants or other rights, facilitate the transfer of funds or securities in connection with clearing and settling customers' securities transactions, effect securities lending or borrowing transactions and invest cash collateral pledged in connection with such transactions, and hold securities pledged by a customer or facilitate the pledging or transfer of securities that involve the sale of those securities. In addition, the exception expressly permits a bank to ''serve as a custodian or provider of other related administrative services'' to IRAs, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plans without being considered a broker. The exception does not apply, however, to a bank that acts as a carrying broker or clearing broker in connection with securities transactions (other than with respect to government securities).[243]

In the release adopting the Interim Rules, the Commission provided interpretive guidance with respect to the exception. In particular, the Commission stated:

> ''custody'' or ''related administrative services'' do not include accepting orders from investors to purchase or sell securities. In particular, we do not believe that by its terms the safekeeping and custody exception covers a bank that accepts orders from investors to purchase or sell securities other than those specifically permitted in the exception, such as with respect to securities lending and borrowing or investing collateral.[244]

To mitigate unnecessary disruptions in banks' existing safekeeping and custody practices that the GLBA might have caused, the Interim Rules provided conditional exemptions to permit banks to effect transactions in securities over which they have custody. In particular, current Exchange Act Rule 3a4–5 permits all banks to effect transactions in any security for custody accounts under narrow conditions.[245] In addition, current Exchange Act Rule 3a4–4 permits small banks to effect transactions in mutual funds for tax-deferred custody accounts.[246]

We received numerous comments on the safekeeping and custody exception.[247] These comments focused

defines affiliate to mean ''any company that controls, is controlled by or that is under common control with another company.''

[234] *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27783.

[235] *See* Banking Agencies letter and ICBA letter.

[236] *See* Banking Agencies letter.

[237] *See* ICBA letter.

[238] *See* proposed Exchange Act Rule 750.

[239] The securities laws and rules, however, distinguish ''dealers'' (which buy and sell securities as part of a regular business) from ''traders'' (which buy and sell securities for investment and not as part of a regualr business). For additional information on distinguishing ''dealers'' from ''traders,'' *see* Exchange Act Release Nos. 46745 (Oct. 31, 2002), 67 FR 67496, 67498 (Nov. 5, 2002) and 47364, (Feb. 14, 2003), 68 FR 8686, 8688 (Feb. 24, 2003).

[240] The affiliate may not be a registered broker-dealer or be engaged in merchange banking because the statute contains these conditions. Exchange Act Section 3(a)(4)(B)(vi). The affiliate may not act as a riskless principal because that would effectively be acting for another person who would be a customer of the affilaite.

[241] 15 U.S.C. 78c(a)(4)(B)(viii).

[242] In the absence of an exception or exemption, holding customer funds and securities in connection with securities transactions typically would require broker registration. *See, e.g., SEC* v. *Margolin*, [1992 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 97,025 (S.D.N.Y. 1992) (noting that evidence of brokerage activity included receiving transaction-based compensation, advertising for clients, and possessing client funds and securities). *See* letter re: *Financial Surveys, Inc.* (July 30, 1973) (persons in the business of effecting transactions in securities include persons who hold customer funds or securities in connection with securities transactions). *See also* 15 David A. Lipton, at 1.04[3] (having custody or control over funds and securities of others is a badge of being a broker).

[243] Exchange Act Section 3(a)(4)(B)(viii)(II).

[244] 66 FR at 27781.

[245] *See* 17 CFR 240.3a4–5.

[246] *See* 17 CFR 240.3a4–4. Both exemptions are subject to limits on solicitation activities, compensation, and use of bank employees. The exemptions also require banks to execute the resulting transactions pursuant to Exchange Act Section 3(a)(4)(C), which requires banks that accept orders to the extent they engage in transactions under a specified safekeeping and custody function either to transmit orders to be executed to a registered broker-dealer or internally cross those orders.

[247] *See* ABA/ABASA letters; Banking Agencies letter; BONY letter; Bank One letter; BSA letter; CSBS letter; FirstMerit letter; FirstUnion letter; Fleet letter; Frost letter; Harris Trust letter; ICBA letter; KeyBank letter; letter dated August 30, 2001 from D. Rodman Thomas, Senior Vice President and Senior Trust Officer, The Ledyard National Bank (''Ledyard letter''); Mellon letter; letter dated August 29, 2001 from Bill Beyer, President and CEO, Meredith Village Savings Bank (''Meredith Village Savings Bank''); National City letter; NYCH letter; PNC letter; Shaw Pittman letter; Roundtable letter; UMB Bank letter; Wells Fargo letter; State

Continued

primarily on the Commission's interpretation with respect to accepting orders, the general custody exemption, and the small bank custody exemption.

2. Comments on Commission's Interpretation Regarding Accepting Customer Orders

A number of commenters criticized the Commission's interpretation that the safekeeping and custody exception generally does not permit banks to accept their customers' securities orders. These commenters argued that the interpretation was contrary to the GLBA and its legislative history.[248] In particular, they contended that order taking is a customary banking activity in custody accounts and that in adopting the GLBA Congress did not intend to disturb such activities. A few commenters also opined that with respect to retirement and other benefit plans, the plain meaning of the exception and Congressional intent should expressly permit a bank to handle orders because the exception permits banks to engage in ''related administrative services'' for investors through retirement and benefit plans.[249] Moreover, two commenters stated that, whether under the trust and fiduciary exception or the safekeeping and custody exception, Congress clearly intended to allow banks to continue effecting transactions in securities for custodial IRAs.[250] Some commenters also asserted that the Commission staff has recognized that entities offering a bundle of custodial and administrative services may accept and process orders for retirement plans.[251]

Although we understand the concerns of the commenters discussed above, the Commission continues to believe that accepting orders to purchase or sell securities is a core broker-dealer function and was not intended to be permitted under the safekeeping and custody exception.[252] Therefore, we continue to believe that the combination of handling funds and securities with order taking, absent a specific exemption, requires broker-dealer registration. Although the safekeeping and custody exception generally does not provide for banks to take orders for securities, the Commission has proposed several exemptions to allow banks to accept orders from a custody account, subject to certain conditions.

3. Comments on and Proposed Amendments to the General Bank Custody Exemption

Current Exchange Act Rule 3a4–5 provides a limited exemption from the definition of ''broker'' for banks seeking to operate in the broader role of order takers for all types of securities while holding clients' funds or securities. To qualify for the exemption, however, a bank may not receive any compensation for effecting such transactions. In addition, the exemption would limit the ways in which banks: (1) Solicit orders; (2) use their employees to engage in brokerage activities; and (3) compensate their employees for the sale of securities.[253]

We received multiple comments regarding the general bank custody exemption.[254] One commenter argued that the safekeeping and custody exception is clear and unequivocal, and therefore an exemptive rule in this area is unnecessary.[255] Another explained that taking orders to execute securities transactions for its custody clients historically has been an important aspect of its custody business that it provides as an accommodation and convenience for clients rather than as a substitute for the brokerage business.[256]

Another commenter expressed concerns that a bank may not receive transaction-based compensation for placing orders for its customers and still rely on this exemption.[257] It viewed this condition as requiring banks to provide certain custodial services at a loss.

Other commenters indicated that Exchange Act Rule 3a4–5 could be misinterpreted to prohibit a bank from receiving certain fees that these commenters believed should be permissible under the exemption (*e.g.*, settlement fees, securities movement fees, or similar processing fees that do not depend on whether the bank placed an order for its customer).[258]

One commenter urged the Commission to expand the exemption so that banks may continue to be compensated for effecting securities transactions in custodial accounts where the compensation consists of Rule 12b–1 fees, shareholder servicing fees, mutual fund advisory fees, or other revenue sharing arrangements.[259]

Some commenters complained about the solicitation restrictions in Exchange Act Rule 3a4–5(a)(5), arguing, among other things, that they would prohibit banks from engaging in advertising activities that are expressly permitted by the Exchange Act.[260]

Some commenters stated that banks offering proprietary funds should not (as the rule requires) be required also to offer competitors' funds because their operational costs would increase as the number of investment options offered increased.[261]

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Street letter; M&T Bank letter; Fulton Street Financial letter; Union Bank of California letter; ICBA letter; IIB letter; Wilmer, Cutler letter; Wilmington Trust letter; Regions Financial letter; TIAA-CREF letter; Virginia Bankers Association letter; and Compass Bank letter.

[248] *See, e.g.*, ABA Banking Law Committee letter; ABA/ABASA letters; Banking Agencies letter; Financial Services Roundtable letter; and IIB letter.

[249] *See, e.g.*, ABA/ABASA letters; Banking Agencies letter; and NYCH letter.

[250] *See, e.g.*, Federated letters and Mellon letter.

[251] *See, e.g.*, Banking Agencies letter; PNC letter; and TIAA-CREF letter. Commenters cited Letter re: *Universal Pensions, Inc.* (Jan. 30, 1998). Pursuant to that staff no-action letter, a third-party pension plan administrator acted in a mechanical order-taking role subject to independent supervision, could not influence the purchase of securities by plan participants, did not receive transaction-based compensation related to those purchases, was not permitted to handle funds or securities, recommend any mutual funds, or provide any other investment advice. Broker-dealers worked directly with plan sponsors and advised the sponsors in which mutual funds to invest. While the administrator could receive and invest new participant contributions for each plan according to directions from the plan fiduciary, it could not net or match orders. An independent trust company independently calculated net orders and forwarded them along with cash to settle trades. We note that banks relying on the safekeeping and custody exception could not meet the terms of the Universal Pensions letter because they handle funds and securities.

[252] *See* H.R. Rep. No. 106–74, pt. 3, at 169 (1999) (''This exception is not intended to allow banks to engage in broader securities activities.'').

Although the term ''related administrative services'' is not defined in the securities laws, in the broker-dealer industry, administrative services generally are considered to be those that are ''clerical and ministerial.'' Clerical and ministerial activities include, for example, mechanical tasks such as bookkeeping and record keeping, performing calculations, and data processing functions. Accepting general orders to buy and sell securities, however, is not a ''clerical and ministerial'' activity. *See Exchange Services, Inc.* v. *S.E.C.*, 797 F.2d 188, 189–190 (4th Cir. 1986) (court determined that the Commission was not being arbitrary and capricious when it relied, as a reason to deny an exemption, on NASD's policy that anyone taking orders from the public must register as a broker-dealer).

[253] *See* Exchange Act Rule 3a4–5(a). For example, the rule restricts banks that wish to rely on the exemption from soliciting securities transactions except through one of four means specified in the rule. *See* Exchange Act Rule 3a4–5(a)(5)(i)–(iv). A bank relying on the exemption also must comply with the order execution condition in Exchange Act Section 3(a)(4)(C). *See* Exchange Act Rule 3(a)(3).

[254] *See, e.g.*, ABA/ABASA letters; Banking Agencies letter; BONY letter; Bank One letter; BSA letter; CSBS letter; FirstMerit letter; Fleet letter; Frost letter; Harris Trust letter; ICBA letter; KeyBank letter; Ledyard letter; Mellon letter; National City letter; NYCH letter; PNC letter; Shaw Pittman letter; Roundtable letter; UMB Bank letter; and Wells Fargo letter.

[255] *See* IIB letter.

[256] *See* BONY letter.

[257] *See* Mellon letter.

[258] *See, e.g.*, NYCH letter and BONY letter.

[259] *See* NYCH letter.

[260] *See, e.g.*, Banking Agencies letter and UMB Bank letter.

[261] See, *e.g.*, BONY letter; Frost letter; Harris Trust letter; Mellon letter; NYCH letter; PNC letter; and Roundtable letter.

Several commenters objected to the employee compensation provisions in the rule because they believe that banks should be able to reward their employees for securing new custody business.[262] Some commenters asserted that the rule's prohibition on using dually licensed employees to accept orders is contrary to the Commission's view that registration provides important investor protections.[263]

One commenter complained about a provision in the rule requiring that a bank employee taking customers' securities orders primarily perform duties for the bank other than effecting transactions in securities for customers.[264] This commenter contended that this provision restricts a bank's ability to staff custody accounts in a manner that it deems most appropriate without enhancing customer protection.

*a. Modifications to General Bank Custody Exemption*

*1. Bank Compensation*

In response to comments, and based on the Commission staff's discussions with representatives of banks, bank trade groups, and staff of the Banking Agencies, we propose to amend the general custody exemption to clarify that a bank that accepts orders for securities could be compensated for effecting a securities transaction for a person with an existing custody account or for a ''qualified investor'' so long as the compensation that the bank receives for its custody services (*e.g.*, securities movement fees, annual fees, asset based fees, and processing fees) does not directly or indirectly vary based on whether the bank accepts an order to purchase or sell a security.[265]

Accordingly, the proposed amendment would conditionally permit a custodian bank to be compensated for the movement of funds and securities for ''grandfathered'' custody accounts or accounts of ''qualified investors'' when that movement results from the bank's acceptance of a securities order. We propose to limit this exemption on a going forward basis to ''qualified investors'' because their custody accounts have not typically been used extensively for execution purposes.[266] Customers that do not already have a custody relationship, other than ''qualified investors,'' would not obtain securities (other than securities covered by other exceptions or exemptions) through their bank custodian. We solicit comment on limiting this exemption to ''qualified investors'' on a going-forward basis. In particular, we solicit comment on whether there are other institutional entities that have custodial, rather than trust accounts, with banks and that have a special need for banks to take their securities orders. We request that commenters, particularly those that are custody customers, set forth the specific reasons why banks would need to have other entities included within the terms of this exemption. Please include the special circumstances that apply to these entities and why these entities do not require the comprehensive protections of the federal securities laws.

The proposed amendment articulates more clearly the accommodative and historical nature of the limited securities business that banks have customarily performed through their custody departments. The proposed amendment also would remove limitations in the Interim Final Rules that prohibited custody department employees from being compensated for securities-related custody activities, including gathering assets and moving funds and securities, if the bank accepts customer orders. While we see no difference between a bank that effects transactions in securities as a custodian and a broker-dealer,[267] we believe an exemption would be appropriate where a bank's sales efforts and sales incentives are limited. While the proposal would be more accommodative than the current exemption, it would not permit a bank to operate as an ''introducing broker'' in the custody department, which we do not believe would be consistent with Exchange Act investor protection principles.[268]

Under the proposal, banks that accept securities orders would not be permitted to adjust their compensation to reflect the additional cost of forwarding orders on behalf of customers. These costs could not be recouped in any other aspect of their customer relationships to account for the acceptance of customers' orders pursuant to this exemption.[269] To give legal certainty to banks regarding the compensation condition, the proposed amendment would specify that a bank could demonstrate that it does not receive additional compensation for effecting securities transactions by utilizing fee schedules that specify charges for the movement of funds securities and identifying similarly situated customers who pay the same price for such movements and who do not utilize the bank or its affiliates to effect securities transactions.

In addition, we propose to amend the general custody exemption to permit banks to be compensated for accepting securities orders through Rule 12b–1 or shareholder servicing fees for accounts that were opened before the date of this proposing release or for ''qualified investors.'' While Rule 12b–1 fees create the types of conflicts of interest that broker-dealer regulation is designed to address, we propose to grandfather

[262] *See, e.g.*, ABA/ABASA letters; Harris Trust letter; Mellon letter; and NYCH letter.

[263] *See, e.g.*, Fleet letter; BONY letter; Meredith Village Savings Bank letter; National City letter; NYCH letter; PNC letter; and Roundtable letter.

[264] *See* PNC letter referencing Exchange Act Rule 3a4–5(a)(2)(ii).

[265] *See* proposed Exchange Act Rule 760. The term ''qualified investor'' is defined in Exchange Act Section 3(a)(54). Banks advised the Commission that banks provide custody services to a broad range of institutional customers, including corporations, endowments, market professionals (such as mutual funds, hedge funds, and investment advisers), employer pension plans, state, local, and foreign governmental entities, other not-for-profit organizations, welfare benefit plans, union plans, Indian Tribal Nations, and partnerships and limited liability companies. Bank custodians also act as custodians for individuals, such as private banking clients, trust clients, or IRA owners. Most of these customers did not use bank custodians to execute securities transactions.

[266] *See* Banking Agencies letter (''Based on our supervisory experience, banks customarily conduct accommodation trades for custodial accounts only upon the order of the customer and on an incidental and infrequent basis.'').

[267] When brokerage is conducted through a custody account, the investor protections associated with order entry through a registered broker-dealer are not available. However, the protections associated with order execution are available because orders are forwarded to a registered broker-dealer for execution.

[268] An ''introducing broker'' arranges securities transactions for a customer but uses a ''clearing broker'' to execute the transactions and maintain securities and funds on that customer's behalf.

[269] One bank trade group informed the staff that custody fee arrangements may reflect other products or services for which the customer uses the bank. Similarly, to ensure that the whole relationship with a customer is profitable, clearing brokers do not necessarily charge uniform fees to securities customers. For example, clearing firms may charge low custody fees and split securities lending income with the customer to offset other charges. In this example, a bank could engage in securities lending pursuant to the safekeeping and custody exception or the exemption for securities lending transactions in Exchange Act Rule 15a–11. A bank's compensation from securities lending transactions involving a custody customer's securities could not, however, be used to offset or credit fees for that custody customer's securities transactions pursuant to this exemption.

A non-exhaustive list of examples of indirect compensation for order-taking may include:

(1) The bank custody department varies the fees received based on securities transaction volume;

(2) The bank custody department only charges certain custody customers for purchasing securities;

(3) The bank varies the order acceptance fee for customers who purchase another product or service, such as by giving high net worth bank customers a certain number of free trades annually or by requiring a custody customer to purchase another product or service to qualify for a particular custody fee that includes order-taking services; and

(4) The bank receives payments of sales compensation from other persons related to the sale of mutual funds to custody customers, other than payments expressly permitted pursuant to this exemption.

existing custody accounts to avoid any unnecessary disruption of this business.

In keeping with the accommodative nature of banks' custody business and partially to address the conflicts associated with Rule 12b–1 fees, we propose to condition the receipt of Rule 12b–1 and shareholder servicing fees on the bank making available any class or series of a registered investment company's securities that can be reasonably obtained by the bank for purchase or sale by customers. This condition is designed to ensure that investors have a full range of choices available when they consider whether to pay custody costs directly or to offset some of these custody costs with Rule 12b–1 fees. By making different classes of shares available, including classes that do not pay 12b–1 fees (*e.g.*, institutional class), banks will not effectively require a customer to pay Rule 12b–1 fees to obtain execution services.

We believe that the additional conditions that we propose, however, will limit banks to the type of accommodation role that commenters represent banks act in when effecting transactions in securities as custodians. We do not propose to amend the exemption to permit banks to be compensated for accepting securities orders through revenue sharing arrangements because of the conflicts that these payments create.[270] We solicit comment on these proposed amendments, including specific comments on whether we have adequately protected the interests of these current bank customers through the conditions we propose. We request comment on whether it is appropriate to grandfather existing custody customers by allowing banks to take securities orders from these customers and collect 12b–1 fees from their accounts. We request comment on whether this proposed exemption creates an unreasonable level of competitive issues for other banks or broker-dealers that should be considered by us further. If commenters think that these customers should have additional investor protections that we have not provided through these proposed conditions, please tell us what additional investor protections we should require.

2. Solicitation Restrictions

In general, we propose to tighten the solicitation conditions in the proposed amendments. Consistent with commenters' assertions that banks effect transactions purely as an accommodation to their customers, we propose to remove a provision from the current custody exemption that permits banks to solicit investors through investment company advertising and other sales material. We propose to modify the current custody exemption to permit banks to respond to investor inquiries by delivering sales literature that is prepared by an investment company that is not an affiliated person.[271] We propose to remove the condition in the current exemption that permits banks to solicit their existing customers for securities transactions in connection with solicitation of their other custody activities.

In response to a request from one commenter to limit the solicitation condition to custodian accounts,[272] we propose to clarify that the solicitation restrictions in the general bank custody exemption apply only to solicitations of securities transactions pursuant to the proposed amended exemption covering accounts for which the bank acts as a custodian. Therefore, a bank could solicit a custody business, including securities transactions that are permissible under the safekeeping and custody exception in Exchange Act Section 3(a)(4)(B)(viii) and the stock lending exemption in Exchange Act Rule 15a–11. A bank could not, however, directly or indirectly solicit securities transactions in reliance on this proposed exemption, except as permitted pursuant to the terms of this exemption. For example, a bank making referral payments to another person for the solicitation of securities transactions for the bank operating pursuant to this proposed exemption would exceed the solicitation limits in this proposed exemption.

Banks advised the Commission staff that departments of a bank other than the custody department may provide lists of recommended securities, watch lists, research reports, or other publications highlighting particular securities or groups of securities, and may provide investment advice. These activities exceed the securities solicitation limits of Exchange Act Rule 3a4–5 and the proposed exemption.[273] Except as expressly permitted, the solicitation conditions would not permit a bank to solicit through another bank department securities activities in its custody department. We solicit comment on each of these proposed changes to the solicitation restrictions. We specifically invite comment on whether these restrictions are too lax or too strict. We also invite comment on whether we should impose any other or different restrictions.

3. Employee Activities and Compensation

As suggested by commenters, we propose to eliminate a provision in current Exchange Act Rule 3a4–5(a)(2)(i) that prohibits the use of dually licensed employees to effect transactions pursuant to the general custody exemption. We also propose to eliminate the requirement that a bank employee must primarily perform duties for the bank other than effecting transactions in securities.[274] Commenters explained that eliminating these prohibitions would enhance operational efficiencies and would allow them to use the most skilled persons for processing securities transactions.

We also propose to eliminate the restriction in current Exchange Act Rule 3a4–5 (a)(2)(iii)(B) that custody employees may not receive incentive compensation for the amount of securities-related assets gathered or the size or value of any customer's securities account. This will permit compensation for a custody employee that brings assets into the bank.

We request comment on the elimination of both of these restrictions. We invite commenters to tell us if other or more tailored conditions would be

[270] The NYCH advised the Commission staff that banks acting as custodians may enter into revenue sharing arrangements with investment advisers. As the Commission noted, the development of fund ''supermarkets'' sponsored by broker-dealers has led to related arrangements in which a fund or its affiliates compensates broker-dealers in ways that are not generally disclosed to investors. *See* 69 FR 6438 at 6443.

[271] *See* proposed Exchange Act Rule 760(a)(3)(B).

[272] *See* NYCH letter.

[273] As we explained in Exchange Act Release No. 27017, *supra* note 86, 54 FR at 30017–18:

[T]he Commission generally views ''solicitation,'' in the context of broker-dealer regulation, as including any affirmative effort by a broker or dealer intended to induce transactional business for the broker-dealer or its affiliates. Solicitation includes efforts to induce a single transaction or to develop an ongoing securities business relationship. Conduct deemed to be solicitation includes telephone calls from a broker-dealer to a customer encouraging use of the broker-dealer to effect transactions, as well as advertising one's function as a broker or a market maker in newspapers or periodicals of general circulation in the United States or on any radio or television station whose broadcasting is directed into the United States. Similarly, conducting investment seminars for U.S. investors, whether or not the seminars are hosted by a registered U.S. broker-dealer, would constitute solicitation. A broker-dealer also would solicit customers by, among other things, recommending the purchase or sale of particular securities, with the anticipation that the customer will execute the recommended trade through the broker-dealer.

This release explains that providing research reports may be a form of solicitation. Providing an asset allocation model to a custody customer is another example of an affirmative effort to induce transactional business.

[274] *See* Exchange Act Rule 3a4–5(a)(2)(ii).

more likely to enhance investor protections.

4. Trustee and Fiduciary Activity Accounts

We propose to add a new provision to the general custody exemption designed to ensure that a bank would use that exemption only for those custody accounts in which it does not act in a trustee or fiduciary capacity.[275] Transactions for trust and fiduciary activity accounts would need to be effected in compliance with the trust and fiduciary exception in Exchange Act Section 3(a)(4)(B)(ii). Congress enacted the conditions that apply to that exception in recognition of certain fiduciary obligations that banks have to their trust customers. In contrast, a custody account is created through a contractual relationship that does not provide the customer with any fiduciary protections. We solicit comment on the appropriateness of this proposed new provision of the general custody exemption. We also request comment on whether activities covered by any other exceptions or exemptions should be specifically carved out of this custody exemption. We also invite comment on whether any other restrictions would offer better protection to investors.

5. Employee Benefit Plans

In light of the proposed new exemption for banks effecting transactions for employee benefit plans, we propose to add a new provision to the general bank custody exemption to clarify that the custody exemption would not be available for banks to effect transactions in securities for an employee benefit plan account described in proposed Rule 770. We invite comment on this proposed provision and whether any other restrictions should be imposed for the protection of investors.

6. Small Bank Exemption

In light of the expanded availability of the small bank custody exemption, we propose to add a new provision to the general custody exemption that would limit the availability of the general bank custody exemption to banks that do not simultaneously use the small bank custody exemption. Banks that qualify for both exemptions could choose which custody exemption to use. We invite comment on whether it is appropriate to limit the use of these exemptions in this way.

7. Custody Account Definition

We propose to define an ''account for which the bank acts as a custodian'' to mean an account established by a written agreement between the bank and the customer, which, at a minimum, provides for the terms that will govern the fees payable, rights, and obligations of the bank regarding the safekeeping of securities, settling of trades, investing cash balances as directed, collecting of income, processing of corporate actions, pricing securities positions, and providing of recordkeeping and reporting services.[276] We based this definition on our understanding of what custodians do. In addition, to provide legal certainty to bank custodians accepting orders for IRAs, we specifically added such accounts to this definition of custody account. We invite comment on the extent to which custodians provide the services outlined in the proposed definition and whether there are additional services that custodians perform that should be included in this definition. We also invite comment on whether there are any other conditions or disclosure requirements that we should consider to protect investors.

8. Request for Comments

We request comment on these proposed modifications to the general custody exemption. In responding to this request for comments, please describe whether this exemption would cover most categories of custody customers from whom banks accept orders for the purchase or sale of securities. For bank commenters, with respect to each type of custody customer, please list: (1) The percentage of any type of order for the movement of funds or securities that includes an order for the purchase or sale of a security; (2) the types of securities the bank purchases or sells for these customers; (3) how the bank offers particular classes or series of mutual funds to these custody customers; (4) all of the types of compensation the bank receives in connection with its custody activities related to different types of custody customers; and (5) how the bank solicits these custody customers. We solicit comment regarding whether we should adopt disclosure requirements similar to the proposed general disclosure requirements in proposed Exchange Act Rule 776.

We request comment on whether the proposed definition of ''account for which the bank acts as a custodian'' in Rule 762(a) reflects the types of services that bank custodians typically provide. If not, please explain which of these services bank custodians typically provide. In addition, does the custody definition reflect the services that banks typically provide for investors who purchase or sell securities within individual retirement accounts?

9. Carrying Broker Definition

The Exchange Act generally[277] disqualifies banks that act as carrying brokers from utilizing the safekeeping and custody exception and the networking exception.[278] The applicable statutory condition defines the term ''carrying broker'' by reference to Exchange Act Section 15(c)(3) and the rules thereunder.[279] In adopting the Interim Rules, the Commission explained:

A bank acting as a carrying broker facilitates the transfer of funds and securities associated with the clearance and settlement of securities and related margin lending on behalf of a broker-dealer and executes trades for itself and its customers. A carrying broker relationship is distinguished from a custody relationship by the fact that the bank is

[275] *See* proposed Exchange Act Rule 760(a)(4).

[276] Proposed Exchange Act Rule 762(a).

[277] Exchange Act Section 3(a)(4)(B)(viii)(II) does not prohibit a bank from using the safekeeping and custody exception if the bank only acts as a carrying broker for government securities.

[278] Exchange Act Sections 3(a)(4)(B)(i)(VIII) and 3(a)(4)(B)(viii)(II). 15 U.S.C. 78c(a)(4)(B)(i)(VIII) and 15 U.S.C. 78c(a)(4)(B)(viii)(II).

[279] The legislative history indicates that the GLBA uses the terms ''carrying broker'' and ''clearing broker'' synonymously. *See* H.R. Rep. No. 106–74, pt. 3, at 169 (1999). (''The exception also will not apply to a bank that acts as a clearing broker in connection with securities transactions, except if the bank is acting in the U.S. as a clearing broker with respect to government securities.''). As the legislative history indicates:

''To ensure that an investor has SIPC protection for the securities that he or she purchases—protection that applies to the broker-dealer but not a bank—the broker-dealer that is part of a networking arrangement must carry the investor's account.'' H.R. Rep. No. 106–74, pt. 3, at 164.

There is a technical difference between a ''carrying broker'' and a ''clearing broker.'' A carrying firm knows the customer and is responsible for the underlying customer assets. A customer may clear elsewhere. As the Commission has explained, an introducing broker-dealer is one that has a contractual arrangement with another firm, known as the carrying or clearing firm, under which the carrying firm agrees to perform certain services for the introducing firm. Usually, the introducing firm submits its customer accounts and customer orders to the carrying firm, which executes the orders and carries the account. The carrying firm's duties include the proper disposition of the customer funds and securities after trade date, the custody of customer securities and funds, and the recordkeeping associated with carrying customer accounts. Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973, 56978 (Dec. 2, 1992). *See also* NASD Rule 3230 regarding clearing arrangements (discussing the contractual requirements for all ''clearing or carrying agreements entered into by a member''); NYSE Rule 382 and American Stock Exchange Rule 400. As noted above, however, Congress used these terms interchangeably.

selected and its systems are utilized primarily by the broker-dealer rather than primarily by the customer. In a situation where the broker-dealer arranges for a substantial majority of its customers to use bank custody or deposit services of a bank, a carrying broker relationship may be established particularly if the bank performs clearance and settlement functions that the broker-dealer cannot perform economically or efficiently. In contrast, a bank would not be a carrying broker when it acts as custodian for a customer of a broker-dealer and responds to customer directions to deliver securities against payment or cash against receipt of securities.[280]

One commenter stated that the distinction between permissible clearing and settlement functions within the custody and safekeeping exception and impermissible ''carrying broker'' activities was not clear.[281] This commenter expressed concern about a bank's status when multiple customers may have bank accounts for which the bank provides investment management and custody services, as well as accounts with the bank's affiliated broker-dealer for which the bank is a custodian. In this commenter's view, a bank in this situation may inadvertently act as a carrying broker merely by having a large number of accounts, even if the accounts were originated primarily because of the bank's relationship with customers.[282]

A brokerage relationship can involve an introducing broker-dealer that accepts customer orders, a clearing or carrying broker-dealer that settles the customer orders,[283] and a custodian that holds the funds and securities on behalf of the carrying or clearing broker-dealer. The prohibition on banks acting as carrying brokers for registered broker-dealers predates the GLBA.[284] Only registered broker-dealers have been permitted to act as carrying or clearing brokers.[285] The statutes and rules governing securities transactions generally use the terms, ''carrying broker'' and ''clearing broker'' interchangeably.[286] Under these earlier provisions, and consistent with the Exchange Act condition on the networking and safekeeping and custody exceptions, banks are only permitted to act as carrying brokers with respect to government securities.[287] Thus the question arises as to what a carrying broker is and when would a bank be engaged in prohibited conduct.

Under the securities laws and rules, a carrying or clearing broker has higher minimum net capital requirements than a broker-dealer that does not handle customer funds and securities.[288] In addition, a carrying or clearing broker often provides securities recordkeeping, trade execution, and settlement services. A carrying or clearing broker relationship must be documented and, at a minimum, must specify the responsibilities of the introducing broker and the carrying or clearing broker.[289] Because the responsibilities of the carrying or clearing broker and the introducing broker are clearly set forth, securities customers are protected and the legal obligations of the parties can be determined in the event of a dispute.[290]

When a bank performs the back office functions of a broker-dealer, the bank is often acting as a carrying broker for the broker-dealer. A bank may be acting as a carrying broker if it also executes customers' securities transactions through a broker-dealer whose primary purpose is to support the bank, and whose back office functions reside in the bank.[291] For example, a bank could be a carrying broker by acting as a custodian, performing many back office functions for a broker-dealer, and entering into a networking arrangement on an omnibus basis with the broker-dealer.[292] In this situation, the business of the two entities would be so inextricably intertwined, and the bank would be providing so many different functions to the broker-dealer, that the bank could be said to be ''carrying'' the broker-dealer's accounts.

One bank trade group advised the Commission staff that bank custody departments typically do not open accounts with large numbers of broker-dealers. Instead, when a large bank opens an account with a broker-dealer, the broker-dealer frequently is a bank affiliate. A bank could be acting as a carrying broker if it uses an affiliated broker-dealer whose main purpose is to execute the securities transactions of the bank and the bank assumes other functions, such as clearing transactions with a clearing agency, that properly belong within the broker-dealer. The carrying broker question arises when a bank assumes more broker-dealer functions, and the broker-dealer is dependent upon the specific relationship established between the bank and the broker-dealer. Of course, a bank would not be acting as a carrying broker when a customer chooses the bank to act as custodian and the bank then uses a variety of broker-dealers to execute and clear the subsequent

[280] Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27780, n. 174.

[281] *See* PNC letter.

[282] *Id.*

[283] If a broker-dealer effects securities transactions for a customer, Exchange Act Rule 15c3–1(a)(2)(i) requires a broker-dealer to hold the customer assets and settle the securities transactions. *See also* 15 U.S.C. 78o(c)(3)(A).

[284] *See* Decision of the Comptroller of the Currency on the Application by Zions First National Bank, to Commence New Activities in an Operating Subsidiary, December 11, 1997, at n. 74. The Comptroller references a Commission comment letter on the Zions' application in this footnote, and states that the subsidiary has committed to comply with all applicable federal securities laws and regulations, including the Commission's financial responsibility regulations. In more detail than was repeated in the OCC's order, the Commission's letter stated,''[b]ecause the bank is not a broker-dealer, the Operating Subsidiary would be required to introduce to a registered broker-dealer its customers' transactions in Revenue Bonds, or to carry and clear those accounts itself in compliance with the Commission's financial responsibility regulations, including Rules 15c3–1 and 15c3–3 under the Securities Exchange Act of 1934.'' *See* letter from Jonathan G. Katz, Secretary, Commission, to Office of the Comptroller of the Currency at page 2 (Nov. 21, 1997).

[285] *See* 15 U.S.C. 78o(c)(3)(A), Exchange Act Rule 15c3–1(a)(2)(i), NASD Rule 3230, Clearing Agreements and NYSE Rule 382.

[286] *Id.*

[287] 15 U.S.C. 78c(a)(4)(B)(viii)(II).

[288] *See* Exchange Act Rule 15c3–1(a)(2)(i).

[289] *See* NASD Rule 3230, Clearing Agreements and NYSE Rule 382, which set forth the following requirements to specify the responsibility of the introducing broker and the carrying or clearing broker: (1) opening, approving and monitoring customer accounts; (2) extension of credit; (3) maintenance of books and records; (4) receipt and delivery of funds and securities; (5) safeguarding of funds and securities; (6) confirmations and statements; and (7) acceptance of orders and execution of transactions. For purposes of the financial responsibility rules and SIPC, customers are customers of the clearing broker. Furthermore, each customer whose account is introduced on a fully disclosed basis must be notified in writing upon the opening of the account or the existence of the agreement and the relationship between the introducing and the carrying broker.

One way to divide the responsibilities of an introducing and a clearing broker-dealer is to list the front office activities conducted by an introducing broker-dealer (items one and seven above) as compared to the back office activities conducted by a clearing broker-dealer (items two through six above).

[290] For example, if either party were to become insolvent, the rights and obligations of the solvent party, the Securities Investor Protection Corporation, and the customers could be determined under the terms of the written agreement. Without this kind of clear documentation, a carrying or clearing broker relationship could result in chaos if one of the parties were to become insolvent, or in the event of any dispute over their respective responsibilities and obligations. This kind of dispute or insolvency may unnecessarily harm customers, or the Securities Protection Investors Corporation.

[291] *See supra* note 289 for an explanation of ''front office'' versus ''back office'' functions.

[292] This would be especially true if that broker-dealer does not engage in business other than executing securities transactions for the bank. Exchange Act Section 3(a)(4)(B)(vii) permits banks to enter into networking arrangements with broker-dealers on the basis that all customers that receive the services are fully disclosed to the broker-dealer. A bank relying on the networking exception may not, however, act as a carrying broker.

Broker-dealers could, of course, continue to use banks to fulfill their customer segregation requirements as provided in Exchange Act Rules 15c3–3(c)(5), 15c3–3(e)(1), and 15c3–3(k)(2)(i).

securities transactions as permitted by the safekeeping and custody exception.[293]

We solicit comment on whether we should adopt a rule setting forth specific factors to clarify the distinction between a bank acting as a carrying broker and a bank acting as a custodian. Some of the factors we would consider including in a rule as indications of whether a bank is acting as a carrying broker are: (1) A bank having opening, approving and monitoring control over the broker-dealer's customer accounts; (2) a bank extending credit to the broker-dealer's customers; (3) a bank maintaining the broker-dealer's books and records; (4) the bank receiving and delivering the broker-dealer's funds and securities; (5) the bank safeguarding the funds and securities of the broker-dealer's customers; (6) the bank preparing and issuing the broker-dealer's confirmations and statements; (7) the bank accepting the customer's orders; and (8) the bank arranging for the execution of the customer's transactions. We invite comment on whether there are any other factors that should be considered in determining whether a bank is acting as a carrying broker.

4. Comments on and Proposed Amendments to the Small Bank Custody Exemption

The Exchange Act exceptions from the definition of ''broker'' apply equally to all banks. To help alleviate possible administrative burdens imposed on small banks by the GLBA, current Exchange Act Rule 3a4–4 provides a limited exemption from the definition of ''broker'' under Exchange Act Section 3(a)(4) to permit small banks to receive transaction-based compensation for effecting transactions in investment company securities held in tax-deferred custodial securities accounts, such as custody IRAs.[294]

Exchange Act Rule 3a4–4 is available to banks with less than $100 million in assets and that are not part of bank holding companies with consolidated assets of more than $1 billion.[295] Compensation from securities transactions effected under this exemption may constitute up to three percent of a small bank's annual revenue. The exemption is only available to small banks offering custody accounts that do not have affiliated broker-dealers or networking arrangements with registered broker-dealers. The exemption is also subject to restrictions on solicitation, staffing, and employee incentive compensation.

We received several comments regarding the small bank custody exemption. Commenters criticized many aspects of the exemption asserting, among other things, that its conditions limit the exemption's usefulness.[296] In particular, commenters contended that the $100 million asset limit is too low. Some commenters recommended increasing the asset limit to $250 million, noting that the Banking Agencies, for purposes of the Community Reinvestment Act, define a small bank as one with less than $250 million in assets.[297] In later discussions with Commission staff, the ICBA recommended increasing the asset limit to $500 million. Some commenters asserted that the three percent limit on annual revenue would severely constrain small banks from receiving compensation for order taking services.[298] Commenters also objected to the restriction on utilizing networking arrangements with registered broker-dealers to effect securities transactions for a bank's customers in conjunction with the exemption.[299]

In response to comments, we propose to amend Exchange Act Rule 3a4–4, which would be redesignated as Exchange Act Rule 761, to expand the exemption's usefulness to small banks while minimizing their potential compliance costs. In particular, as discussed in detail below, we propose to raise the eligibility limit from banks with $100 million in assets to banks with $500 million in assets. In addition, we propose to eliminate the exemption's staffing restrictions. We propose to retain, however, the requirement that a bank may not be affiliated with a bank holding company that has more than $1 billion in assets. We also propose to limit the availability of the exemption to banks that have less than $100,000 in annual ''sales compensation'' and that do not have affiliated broker-dealers. This proposed exemption would be available for transactions in any type of security held in an account for which the bank acts as a custodian.

The small bank exemption, with the proposal modifications, reflects a balance between making it available to more banks while also assuring that these banks' securities activities are largely effected through registered broker-dealers, consistent with the functional regulation mandate in the GLBA. The conditions are designed to permit small banks to use a limited securities sales channel without meeting the licensing, sales practices, and other requirements that apply to registered broker-dealers.

In proposing these amendments, we have evaluated the benefits to small banks against the risk to investors of not receiving protections under the Exchange Act and SRO rules. We have also considered whether the proposed conditions could tilt the level playing field between securities market participants that Congress sought to establish with functional regulation. In particular, we have considered the competitive effect the scope of this proposed exemption may have on small broker-dealers. Commenters are invited to discuss whether this proposal strikes the right balance.

*a. Bank Asset Size Limit*

We propose to increase significantly the number of banks that potentially could utilize the small bank custody exemption by amending the definition of ''small bank'' to mean a bank with less than $500 million in assets.[300] We

[293] This interpretation does not affect the ability of a bank to act as a good ''control location'' of fully-paid and excess margin securities of customers pursuant to Exchange Act Rule 15c3–3(c). A broker-dealer is deemed to have control of securities under Rule 15c3–3(c)(5), if the securities:

are in the custody or control of a bank as defined in Section 3(a)(6) of the Act, the delivery of which securities to the broker or dealer does not require the payment of money or value and the bank having acknowledged in writing that the securities in its custody or control are not subject to any right, charge, security interest, lien or claim of any kind in favor of a bank or any person claiming through the bank * * * .

Under Exchange Act Rule 15c3–3(c), only a broker-dealer may have access to the securities held at a bank that is a good ''control location.''

[294] 17 CFR 240.3a4–4.

[295] The Interim Rules use the $1 billion limit for small bank holding companies because the Federal Reserve Board has categorized these companies as ''small, noncomplex bank holding companies'' for the purposes of determining the type of supervisory review that they receive. *See* Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27782 (citing the 1999 Federal Reserve Annual Report at 122). *See also* 2003 Federal Reserve Annual Report at 87.

[296] *See* ABA/ABASA letters; ICBA letter; IIB letter, Compass letter; and Trust Financial Services Division of the Texas Bankers Association letter.

[297] *See* ICBA letter and ABA/ABASA letters. *See also* Virginia Bankers Association letter (asserting the $100 million dollar asset limit is ''too narrow'').

[298] *See* ABA/ABASA letters; Banking Agencies letter; and ICBA letter.

[299] *See, e.g.,* Banking Agencies letter and ICBA letter.

[300] The Banking Agencies have recently proposed to raise the small institution asset limit of the Community Reinvestment Act from $250 million to $500 million, without reference to holding company assets. *See* 69 FR 5729 (Feb. 6, 2004). We do not consider this proposal relevant for purposes of setting the asset limit for this exemption because of the very different legislative purposes of the Community Reinvestment Act and the Exchange Act. The asset limit increase recently proposed by the Banking Agencies addresses a bank's responsibilities under the Community Reinvestment Act, while the asset limit increase we propose addresses whether a small bank must register as a broker-dealer to effect securities transactions for its custody customers.

Continued

propose, however, to retain the requirement that such a bank may not be an affiliate of a bank holding company or a savings and loan holding company with more than $1 billion in consolidated assets in the two prior calendar years.[301]

A $500 million asset limit would greatly expand the availability of this exemption, increasing the number of potentially eligible banks and thrifts from 4,359 (or approximately 48 percent of all banks and thrifts insured by the FDIC) to 8,021 (or approximately 88 percent of all FDIC insured banks and thrifts).[302] We solicit comment on the proposed amendment to the definition of small bank. We also solicit comment regarding whether an eligibility test based on deposits rather than assets would be better suited for an exemption targeted to small banks. Should the $500 million asset limit be adjusted for inflation? If so, what measure of inflation should be used?

*b. Annual Sales Compensation Limit*

We propose to replace the current three percent annual revenue limit with an annual ''sales compensation'' limit of $100,000 for effecting securities transactions in reliance on this exemption. Sales compensation would include compensation that a bank receives for a securities offering that the bank does not receive directly from a customer, beneficiary, or the assets of the trust or fiduciary account, such as Rule 12b–1 fees.[303] We anticipate that most sales compensation would be composed of Rule 12b–1 fees. Sales compensation could also include revenue sharing arrangements with mutual funds or commissions for securities trades that include a profit. Sales compensation, however, would not include fees for holding custody of a customer's funds and securities that do not vary based on whether orders for securities are accepted by the broker. In addition, the proposed rule provides that this $100,000 annual limit on ''sales compensation'' that the bank receives pursuant to this exemption would be adjusted for inflation so that this exemption remains useful to small banks in years to come.[304]

The $100,000 annual ''sales compensation'' limit should provide those banks that occasionally effect transactions in securities as an accommodation in their custody relationships with sufficient flexibility to continue to serve the needs of their customers without requiring the banks to register as brokers.[305] We solicit comment on the proposed $100,000 ''sales compensation'' limitation.

Commenters are invited to share information about how small banks assess custody fees. With respect to each type of customer with a custody relationship with a small bank, small banks are invited to discuss: (1) The types of securities that the bank purchases or sells for these customers; (2) all of the types of compensation that the bank receives in connection with its custody activities related to different types of such customers; (3) whether custody fees vary depending on whether small banks sell non-custody products and services to customers; and (4) whether small banks are compensated in other ways for custody accounts or relationships.

In particular, we seek comment regarding the amount of ''sales compensation'' that small banks receive for effecting transactions in securities for customers with whom they have a custody relationship. We seek comment regarding the percentage of custody revenue that small banks obtain from Rule 12b–1 fees. Commenters are invited to discuss whether small banks receive significant sales compensation outside of Rule 12b–1 fees, such as from revenue sharing arrangements for mutual funds held for custody customers or through commissions for securities trades that include a profit. Commenters should note if their answer varies depending on whether the custody accounts are for: (1) Companies; (2) market professionals; (3) individual private banking clients; or (4) clients holding IRAs. We seek comment on whether small banks would find it difficult to calculate the total amount of Rule 12b–1 fees they would receive on an annual basis in connection with this exemption.

We invite comment on whether the sales compensation limit should be set at a different level. Would a different limit on sales compensation such as $50,000 be more appropriate for an exemption designed to be used only by small banks? Should the limit be higher? Commenters that believe that this limit on sales compensation should be more than $100,000 should provide empirical data supporting this assertion. We request comment about the inflation-adjusted aspect of this condition. Is linking it to the Consumer Price Index All Urban Consumers published by the Department of Labor appropriate or should another measure of inflation be used?[306] The Commission is also interested in information regarding the types of securities transactions that a bank likely would effect at these different revenue levels.

We invite comment on whether particular types or sources of revenues should be excluded, temporarily or permanently, from the $100,000 sales compensation limit. For example, should Rule 12b–1 fees that small banks

The Interim Rules incorporate the definition of ''small bank'' used by the Small Business Administration (''SBA'') because it was a definition determined by an independent third agency. One option would be to raise the asset limit for this exemption to $150 million because the SBA raised its size standards for small banks from $100 million to $150 million since the Interim Rules were adopted. *See* 13 CFR 121.201. *See also* Small Business Size Standards, Inflation Adjustments to Size Standards, 67 FR 3041 (Jan. 23, 2002). Increasing the asset threshold to $150 million would expand the availability of this exemption to approximately 63 percent of all banks and thrifts insured by the FDIC.

However, the ABA and the ICBA have advised the Commission staff that few banks with assets of less than $150 million actually hold custody of customers' securities. They have indicated that a $500 million standard would be more useful. Because we believe that this exemption should be one that small banks having custody of securities can use, we have adopted the suggestion of the ABA and the ICBA and propose to increase the asset threshold for the proposed Exchange Act Rule 761 to $500 million.

[301] The requirement of two prior calendar years is a condition of current Exchange Act Rule 3a4–4. We received no comments on this requirement. It is intended to preclude short-term business changes from affecting a bank's reliance on this provision.

We propose a technical amendment to add savings and loan holding companies to bank holding companies. Because a new bank, bank holding company, or a savings and loan holding company would have no assets in either one or both of the two prior calendar years, a bank would qualify for the exemption for at least the period of time in which it had no assets.

[302] A smaller percentage than 88 percent of banks and thrifts would be able to use this proposed exemption because other conditions of this proposed exemption require that these banks cannot be affiliated with a bank holding company or a savings and loan holding company with consolidated assets of more than $1 billion and cannot be affiliated with a registered broker-dealer.

[303] *See* section III.B. *supra*.

[304] As of December 1, 2003, three percent of the annual revenue of an average bank with $500 million in assets was $183,570; for an average bank with $250 million in assets it was $131,010; and for an average bank with $150 million in assets it was $97,770. The proposed revenue limitation is necessary because some banks that would qualify for the proposed exemption have extremely high revenues in relation to total assets. For example, the Commission staff reviewed Schedule RC (''Consolidated Report of Condition'') and Schedule RC–I (''Consolidated Report of Income'') (Form FFIEC 041) of a bank that has assets of approximately $354 million but revenue of approximately $493 million. Some banks with $500 million or less in assets appear to be almost exclusively in the securities business, and these banks could potentially operate a large introducing broker-dealer within the bank without an overall revenue limitation such as the one we are proposing.

[305] The $100,000 limit was selected based on information the Commission staff received from a bank trade association. This information indicated that the proposed limit should accommodate small banks' existing business.

[306] *See* proposed Exchange Act Rule 761(c).

receive as a result of mutual fund sales that took place before the date of this proposal be excluded from the $100,000 sales compensation limit? If yes, please explain why. Should there be any limitations on such excluded revenue? Should revenues received from the sale of other types of securities be excluded from the $100,000 limit? If so, why?

*c. Other Conditions*

*1. Solicitation*

We propose to simplify the solicitation restrictions in current Exchange Act Rule 3a4–4 to permit small banks effecting securities transactions pursuant to this exemption to publicly solicit brokerage business as permitted by the trust and fiduciary activities exception.[307] The trust and fiduciary exception permits small banks to solicit brokerage business by advertising that they effect transactions in securities in conjunction with advertising their other trust activities.[308] This restriction on solicitation of securities transactions for custody accounts would not apply to securities transactions that are not effected pursuant to this proposed exemption.

We request comment on this proposed amendment to the small bank custody exemption. We are particularly interested in comments regarding how small banks market custody services to potential clients. We also request comment on the extent to which small banks inform those customers with whom they have custody relationship about securities. For example, do small banks provide these customers with recommended lists, watch lists, research reports, or other publications highlighting securities or groups of securities? Do small banks offer asset allocation advice, and, if so, do they suggest possible investments to achieve asset allocation goals? Do small banks recommend specific securities—or classes of securities—to such customers? Do small banks recommend specific trading strategies to these customers? Do small banks provide investment advice to such customers? How do small banks offer particular classes or series of mutual funds to their customers with whom they maintain a custody relationship? Finally, we solicit comment regarding whether we should adopt disclosure requirements similar to the proposed general disclosure requirements in proposed Exchange Act Rule 776.

*2. Securities Networking*

Commenters criticized the provision in Exchange Act Rule 3a4–4 that excluded banks that had a networking relationship with a broker. They argued that permitting small banks to have networking arrangements with third-party broker-dealers would allow banks to offer the services of a broker to their customers (the networking arrangement), while still allowing banks to conduct some transactions in-house.[309] We propose to replace that restriction with one that restricts a small bank from affiliating with a broker-dealer. Permitting banks to have networking arrangements with registered broker-dealers will greatly increase the utility of this exemption to small banks. Banks with a registered broker-dealer affiliate, however, have demonstrated their ability to put in place the infrastructure of a regulated broker-dealer to serve their customers, which can be used for other securities activities of bank customers. Small banks that have networking arrangements with broker-dealers are particularly invited to discuss whether this provision would be workable for them, and to suggest alternative provisions that might be more workable. We request comment on the proposal to replace the networking restriction in current Exchange Act Rule 3a4–4 with a restriction on having an affiliated broker-dealer. We also solicit comment on the number of small banks that have an affiliated broker-dealer.

*3. Employee Staffing Restrictions*

Commenters criticized the provision in the Interim Rules that prohibits bank employees from also being employees of a broker-dealer, asserting that having such dual employees allows banks to better serve the investment needs of retail customers with whom bank employees come into contact while performing their banking custodial responsibilities.[310] In response to this comment, we propose to permit small banks to use dual employees with broker-dealers.

Commenters also criticized the requirement that any bank employee must primarily have duties other than conducting securities transactions, arguing that this requirement is contrary to proper internal controls.[311] This requirement was designed to prevent banks from developing dedicated securities sales forces outside of the safeguards of the sales practice rules applicable to broker-dealers. We understand, however, that it would ease small banks' compliance burdens if specialized employees could be used to effect securities transactions for bank customers in the context of this exemption. We also understand that specialized employees may improve operational economies. Therefore, we propose to permit banks to use a dedicated bank sales force to effect transactions in securities under this exemption. This dedicated sales force may consist of either unregistered personnel or registered representatives employed by both a broker-dealer and the small bank seeking to qualify for the exemption.

We solicit comment with regard to these proposed amendments to the employee staffing restrictions for the small bank custody exemption. Commenters are particularly invited to discuss how small banks utilize personnel to effect securities transactions.

*4. Employee Compensation Restriction*

Some commenters expressed concern regarding the rule's restriction on payment of incentive compensation to bank employees for the sale of securities.[312] We propose to retain this restriction but to clarify that small banks may pay their employees incentive compensation pursuant to a networking arrangement that meets the conditions of Exchange Act Section 3(a)(4)(B)(i).[313] This condition encompasses payment of incentive compensation both to unregistered employees and to employees who are registered representatives.[314]

We request comment on this proposed amendment to the small bank custody exemption. Commenters are invited to discuss how small bank employees are compensated. For example, how much incentive compensation would a typical small bank employee receive in a year from making referrals to a broker-dealer via a networking arrangement? How much could a small bank employee earn in a year from this activity if he or she made so many referrals as to be in the top one percent of employees referring customers to broker-dealers?

*5. Investment Company Shares for Tax-Deferred Accounts*

Commenters also criticized the small bank custody exemption because it only applies to transactions in investment company shares for the benefit of tax-

[307] The Commission interprets solicitation broadly in the context of securities transactions. *See* Exchange Act Release No. 27017, *supra note* 86, 54 FR 30013.

[308] *See* Exchange Act Section 3(a)(4)(B)(ii)(II).

[309] *See, e.g.,* ICBA letter and Banking Agencies letter.

[310] *See* ABA/ABASA letters.

[311] *See* ICBA letter and Frost letter.

[312] *See* ICBA letter and BSA letter.

[313] *See* proposed Exchange Act Rule 761(e).

[314] *See* section III.B. *supra.*

deferred accounts.[315] One commenter suggested that the exemption should not be limited to providing order taking services for clients seeking to purchase mutual funds, but should be expanded to include tax-deferred accounts holding corporate debt and equity securities.[316] Other commenters suggested that the Commission eliminate the requirement that banks offering proprietary mutual funds also offer nonproprietary mutual funds.[317] To provide small banks and their customers more flexibility, we propose to expand the scope of this exemption to allow small banks to effect transactions in all securities, not just shares of investment companies. In addition, we are proposing to expand this exemption to apply to custodial accounts in general by eliminating the requirement that transactions pursuant to this exemption must be for tax-deferred accounts. Finally, we propose to permit small banks to offer proprietary mutual funds without the requirement that banks also offer nonproprietary mutual funds.

We solicit comment regarding how small banks select the mutual funds they offer to their custody customers, and the extent to which they limit offerings to proprietary funds. We also invite comment regarding the effect on investor protections of this proposed expansion of the securities transactions permitted under the exemption. Moreover, we are also interested in receiving comment on this exemption for small banks in light of the proposed ERISA exemption available to all banks. Do commenters believe that exempting bank trustees and non-fiduciary administrators that effect transactions in securities of open-end companies for participants in employee benefit plans from the definition of broker eliminates the need for the amendments being proposed to the small bank custody exemption?[318] In other words, do commenters believe that the small bank custody exemption will be used for securities transactions in securities other than investment company securities or for accounts other than IRA custody accounts?

*d. Trustee and Fiduciary Activity Accounts*

A small bank that has trust and fiduciary activity accounts may use the small bank custody exemption provided that it does not rely on any other of the trust and fiduciary exemptions in the Rules.[319] In other words, banks could elect to effect transactions for trust and fiduciary activity accounts under this exemption. The sales compensation that a bank would receive from these transactions would count towards the $100,000 annual limit. If small banks elect to utilize this exemption to effect securities transactions for trust and fiduciary activity accounts, they would avoid all calculation and other requirements of the trust and fiduciary exemptions—except in particular accounts where they elect to rely on the statutory test without utilizing any safe harbors. We understand that up to 85 percent of small banks may be able to avoid any other ''chiefly compensated'' comparison by using this proposed exemption.

*e. Availability of Exemption to Non-Depository Trust Companies*

An industry group representing non-depository trust companies complained that the small bank custody exemption is not workable for its members.[320] According to this commenter, because trust companies do not earn revenue from loan payments, the three percent annual revenue limit would not permit them to continue to effect transactions in securities.[321] While we do not propose specific amendments to address non-depository trust companies, the proposal to amend Exchange Act Rule 3a4–4 to replace the three percent limit on ''annual compensation'' with an annual sales compensation limit of $100,000 should address this comment. We seek comment on whether replacing the three percent annual revenue limit with the $100,000 annual limit on sales compensation addresses any competitive disadvantages that non-depository trusts might have with regard to small banks as a result of the small bank custody exemption.[322]

*f. Request for Comments*

We solicit comment on the small bank exemption in proposed Exchange Act Rule 761. In particular, we are soliciting comments on the Commission's proposal to raise the eligibility limit from $100 million to $500 million in assets. What would the impact of such a change have on the percentage of banks that could qualify for the exception? Should the threshold be higher or lower than $500 million? Commenters should provide a detailed discussion, including data, if available, to support a higher or lower standard. We also solicit comment on whether banks anticipate effecting transactions in securities as custodians for health savings accounts and whether this proposed exemption would accommodate this business.

In addition, we are soliciting comment on whether the proposed exemption would place small broker-dealers at a competitive disadvantage vis-á-vis small banks.

*F. General and Special Purpose Exemptions*

1. General Exemption

In response to requests by some commenters that the Commission provide banks with greater flexibility to provide cash management services to their customers, we are proposing a general exemption, not tied to any of the GLBA exceptions, that would, subject to certain conditions, allow banks to buy and sell money market securities for bank customers who are ''qualified investors,''[323] a person who directs the purchase of securities from any cash flows that relate to an asset-backed security that has a minimum original asset amount of $25,000,000, and for other customers for whom banks act in a trustee or fiduciary capacity, or in an escrow agent, collateral agent, depository agent, or paying agent capacity.

The new exemption, which would be contained in proposed Exchange Act Rule 776, is based in part on requests from some commenters on the Interim Rules that the Commission provide more flexibility with respect to the services banks could offer to their customers for whom they act in capacities such as indenture trustee, escrow agent, or paying agent.[324] Similarly, commenters and other industry representatives have indicated to Commission staff that banks desire

[315] *See* ICBA letter and ABA/ABASA letters.

[316] *See* ABA/ABASA letters.

[317] *See* Compass letter and Frost letters.

[318] *See* section III.F.2 *supra* (proposed ERISA exemption).

[319] *See* proposed Exchange Act Rule 761(d).

[320] *See* Association of Independent Trust Companies letter.

[321] This commenter stated that its trust company members typically have assets under management of between $50 million and $500 million and may, in some cases, have in excess of $1 billion in assets under management. *See id.*

[322] One commenter asked that we extend current Exchange Act Rule 3a4–4 to include small insurance agencies and insurance brokerage, arguing that these entities will be at a competitive disadvantage in the financial services marketplace if they do not also receive an exemption. *See* letter dated September 4, 2001 from Scott Sinder and Douglas S. Kantor, Counsel to the Council of Insurance Agents & Brokers. We are not proposing to extend this exemption to include these entities because, in contrast to banks, insurance agencies and insurance brokerages historically have not held customer assets, in connection with securities transactions or accepted customer orders as an accommodation to custer without using registered broker-dealers.

[323] ''Qualified investor'' is defined in Exchange Act Section 3(a)(54). 15 U.S.C. 78c(a)(54).

[324] *See, e.g.,* ABA/ABASA letters and Federated letters.

more flexibility to offer clients with particular cash management needs shares in money market funds that may pay more than 25 basis points in 12b–1 fees.

The Commission is sensitive to commenters' requests that banks be given greater flexibility in offering some of their customers a wider range of cash management services that include investing in money market funds that may include investing in money market fund shares that do not qualify as ''no-load.'' We believe that this enhanced flexibility could be granted to banks and would also be consistent with the Exchange Act investor protection principles with respect to these limited securities transactions that this proposed exemption contemplates.

Accordingly, the exemption in proposed Exchange Act Rule 776 would permit banks to make available money market funds for cash management purposes to customers that have particular cash management needs and that prefer to compensate banks for these or other services through Rule 12b–1 fees, or through a combination of Rule 12b–1 fees and other fees. For example, banks would be able to continue to provide these cash management services when the bank is acting as an indenture trustee for a municipality that needs to invest bond proceeds on a short-term basis or as escrow agent for corporations that need to invest funds pending the consummation of a corporate transaction.

We would limit the availability of the proposed exemption to certain investors. For purposes of the proposed exemption, a ''qualified investor'' would be identified as a qualified investor within the meaning of Exchange Act Section 3(a)(54). We include qualified investors because Congress already determined that investors in this category were able to engage in some transactions directly with banks that would not generally be available to other investors.[325] We would also permit a bank to use the exemption with respect to a person who directs the purchase of securities from any cash flows that relate to an asset-backed security that has a minimum original asset amount of $25,000,000. We selected a minimum $25,000,000 in original asset amount for qualifying for this exemption because we believe that it is consistent with minimum of $25,000,000 in investments found in many of the categories of qualified investor. We elected to make this $25,000,000 requirement applicable only to the original asset amount, so that the bank would not have to monitor the size of the remaining asset pool every time it entered into a sweep transaction with a person who directs the purchase of securities from any cash flows that relate to an asset-backed security. We believe that this description of the second category of persons should be broad enough to accommodate asset-backed securities issuers, such as certain small state and local governmental entities that use these kinds of sweep investments. Bank representatives suggested to Commission staff that these types of issuers of asset-backed securities be included under an exemption, such as the one found in proposed Exchange Act Rule 776, although many of these issuers may not meet the definition of qualified investors under Exchange Act Section 3(a)(54). We request comment on whether the proposed exemption is appropriate in its coverage, including the selected minimum $25,000,000 in original asset amount. If commenters believe that minimum qualifying amount should be changed, we request that commenters provide us with specific information on what the amount should be and why. We also request comment on whether the proposed exemption should be expanded to cover additional types of investors, such as commercial depositors that may not be qualified investors under Exchange Act Section 3(a)(54).

The exemption would be limited to certain, specified securities. The money market fund shares in which a bank could effect transactions in reliance on the exemption would have to belong to a ''no-load'' class or series of the fund's shares, or, alternatively, the bank would not be permitted to characterize or refer to the shares as ''no-load.'' A bank relying on the exemption to effect transactions in money market fund shares that do not qualify as ''no-load'' for customers (other than ''qualified investors'' and persons who direct the purchase of securities from any cash flows that relate to an asset-backed security that has a minimum original asset amount of $25,000,000) also would have to provide to these customers a fund prospectus and a clear and conspicuous notice disclosing payments the bank may receive in connection with the transactions from the fund's fund complex.[326] This notice would also be required to refer the customers to the fund prospectus for additional information regarding expenses. These conditions are designed to assure that a customer of a bank relying on the exemption would have sufficient information upon which to make an informed decision. We request comment on whether the proposed exemption should be conditioned on additional disclosures, and invite any commenters who believe the exemption should be expanded to cover transactions for additional types of investors to comment on whether such transactions should be conditioned on enhanced disclosures. In particular, we invite comment on whether the conditions under which banks may rely on the exemption should include disclosure obligations with respect to fees banks charge directly to their customers, such as rate spreads or retained yield fees. We also request comment on whether it is appropriate not to require that the additional disclosures for ''qualified investors'' and persons who direct the purchase of securities from any cash flows that relate to an asset-backed security that has a minimum original asset amount of $25,000,000.

We considered whether to extend the proposed exemption to cover transactions for additional types of bank customers. Most such customers, however, do not have the same specific cash management needs as the customers that we have identified. Moreover, we remain concerned that additional types of customers may be more vulnerable than the types of customers identified in the proposed exemption to being misled regarding the costs of their investments.[327] As a

[325] For example, the asset-backed transactions exception from the definition of dealer only permits a bank to issue and sell securities through a grantor trust or other separate entity to qualified investors. *See* Exchange Act Section 3(a)(5)(C)(iii). 15 U.S.C. 78c(a)(5)(C)(iii).

[326] The term ''no-load'' is defined in proposed Exchange Act Rule 740(c), which amends the definition of the term in current Exchange Act Rule 3b–17(f). Under the proposed definition, with certain exceptions, a class or series of a fund's securities would be considered no-load if it is not subject to a sales load or a deferred sales load and charges against net assets for sales or sales promotion expenses, for personal service, or for the maintenance of shareholder accounts do not exceed 25 basis points. The notice that would have to be provided to investors, other than qualified investors, in load money market fund shares under the proposed exemption would have to identify separately any payments to the bank that are a ''sales load'' or a ''deferred sales load,'' as those terms are defined in proposed Exchange Act Rule 740, or a fee paid pursuant to a plan under Rule 12b–1 under the Investment Company Act (17 CFR 270.12b–1).

[327] The services covered by the proposed exemption would involve fee-related issues similar to those raised by sweep accounts offered to retail investors. Sweep account fees can represent significant costs for retail investors, and sweep account customers have sued banks over excessive fees. However, cases in which investors

Continued

result, the proposed exemption would apply only to ''qualified investors'' and certain other customers who already use a bank for trust or fiduciary services, or for the agency services identified in proposed Exchange Act Rule 776.

Bank representatives have told Commission staff that some banks have existing business practices that include investments in a broader range of securities. We request comment on whether the proposed exemption should be extended to cover funds that are not money market funds and whether extending the exemption to these other funds would accommodate existing bank practices that would not otherwise be covered by one of the proposed exemptions or exceptions. It would be particularly helpful if any such comments identified and described mutual funds, other than money market funds, that banks would be unable to continue using for customers under the other exceptions or exemptions, as well as how much the banks currently invest in these other funds on behalf of customers that would qualify for this exemption. We also ask commenters to provide us with information on whether the 12b–1 fees generated by those funds are currently offset against bank fees. Would a custodial exemption that required that fees be offset, such as that proposed for ERISA activities, be appropriate?

Finally, we request comment generally on the exemption contained in proposed Exchange Act Rule 776. Commenters are specifically invited to discuss whether the proposed exemption should be limited to particular types of money market funds or to specific types of investors within the categories described in the proposed exemption, and, if so, under what conditions. Commenters that believe the proposed exemption should be expanded should also explain why any proposed expansion of the proposed exemption would be consistent with the protection of investors.

2. Employee Benefit Plan Exemption

The Exchange Act does not specifically exclude from broker-dealer registration banks that administer employer-sponsored retirement plans.[328] While banks do not typically charge plan participants directly for the cost of plan administration, banks may be compensated through Rule 12b–1 fees and other fees that meet the ''sales compensation'' definition in current Exchange Act Rule 3b–17. Because of this compensation arrangement, banks that administer these retirement accounts often cannot meet the requirement in the trust and fiduciary activities exception to be ''chiefly compensated'' through relationship fees.[329]

We propose conditionally to exempt from the definition of broker bank trustees and non-fiduciary administrators that effect transactions in securities of open-end companies for participants in employee benefit plans. A bank relying on this proposed exemption would be required to offset or credit any compensation it received from a fund complex related to securities in which plan assets are invested against fees and expenses that the plan owes to the bank. While ERISA permits banks to receive Rule 12b–1 compensation from mutual funds that they offer to plan sponsors, banks have advised the Commission staff that they offset or credit any compensation received from mutual funds against plan expenses.[330] A dollar-for-dollar offset or credit would address the conflict of interest that banks would otherwise have when choosing particular funds to offer to plan sponsors.

In addition, the exemption in proposed Exchange Act Rule 770 would require the bank to disclose clearly and conspicuously to the plan sponsor or its designated fiduciary, if any, all fees and expenses assessed for services provided to the plan and all compensation received or to be received from a fund complex.[331] The disclosures would need to be made in a manner that permits the plan sponsor or its designated fiduciary to determine that the bank has offset or credited any fees or expenses received from a fund complex related to securities in which plan assets are invested against the fees and expenses that the plan owes to the bank.

These disclosure requirements are intended to ensure that banks relying on the exemption provide their customers with information on their compensation and offsets that makes the disclosure of fees charged more transparent and easier to compare for plan sponsors or their designated fiduciaries.[332] As we have discussed before, investors need to know about the fees associated with these investments because these fees directly affect the amount of their returns.[333] This information should be transparent to purchasers of ERISA plans so that they can make ''apples to apples'' comparisons.[334]

unsuccessfully sued banks over excessive sweep fees indicate that retail investors do not have a private right of action for excessive sweep account fees under the federal banking laws. *See, e.g., In re Fidelity Bank Trust Fee Litigation,* 839 F. Supp. 318 (E.D. Penn. 1993). In addition, some courts have considered the anti-fraud protections of the federal securities laws inapplicable to excessive sweep account fees due to the extensive regulation of deposit accounts under the federal banking laws. *See, e.g., Simpson* v. *Mellon Bank,* 1993 U.S. Dist. LEXIS 17994 (E.D. Penn. Dec. 17, 1993).

[328] As of 2003, these plans accounted for $2.1 trillion in mutual fund assets. They, therefore, are an important vehicle through which ordinary Americans invest in securities. Investment Company Institute, 2003 Mutual Fund Fact Book at 47.

[329] For example, banks administering small plans advised the Commission staff that they often bundle their fees by offering Class C shares with one percent Rule 12b–1 fees. Banks that offer Class C shares to smaller plans do so in part to compete with insurance companies that are more prevalent in the small plan market and bundle their fees. Class B shares often carry relatively high 12b–1 fees, but may automatically convert into Class A shares (which generally carry lower 12b–1 fees) several years after purchase. Class C shares also generally carry relatively high 12b–1 fees, and usually do not automatically convert to a class of shares with lower 12b–1 fees. Because Class C shares do not automatically convert to a share class associated with lower 12b–1 fees, post-first year compensation for selling Class C shares may be particularly significant. *See, e.g.,* Release Nos. 33–8358, 34–49148, IC–26341 (Jan. 29, 2004) supra note 130, 69 FR 6438 at 6453, n. 97 and 101 (Feb. 10, 2004).

[330] Banks advised the Commission staff that they do a dollar-for-dollar offset, or credit, of the compensation they receive from the funds that they offer to plans against the fees imposed on the plans themselves. In this way, the bank avoids having a conflict of interest in selecting the funds in which plan participants invest.

This dollar-for-dollar offset practice is consistent with guidance issued by the Department of Labor (''DOL''). *See* ERISA Advisory Opinion 97–15A (available at: *http://www.dol.gov/ebsa/programs/ori/advisory97/97–15a.htm).* In that opinion, a bank acting as a directed trustee that reserved the right to add, delete, or substitute individual mutual funds or fund families within the investment menu that it made available to plans and applied the mutual fund fees received for the benefit of the plans. Because this bank applied the mutual fund fees for the benefit of the plans, either as a dollar-for-dollar offset against the fees that the plans paid for trustee and recordkeeping services, or as amounts credited to the plans, the DOL viewed the bank as not engaging in self dealing under 29 U.S.C. 406(b)(1) or (b)(3). At all times, the terms of the bank's fee arrangements with the mutual fund companies was fully disclosed to the plans. Although DOL also issued ERISA advisory opinion 97–16A (available at: *http://www.dol.gov/ebsa/programs/ori/advisory97/97–16a.htm),* no bank has advised the Commission staff that it does not apply mutual fund fees for the benefit of the plans.

[331] The term ''fund complex'' would be defined in proposed Exchange Act Rule 770(b)(1).

[332] This requirement is consistent with our proposal to increase transparency regarding mutual fund fees and expenses. *See, e.g.,* Exchange Act Release No. 49148, *supra note* 130.

[333] *Id.*

[334] It is very difficult for a plan sponsor to compare fees across plans because plan vendors have 80 different ways of charging plan fees. *See* Economic Systems, Inc, Study of 401(k) Plan Fees and Expenses (April 13, 1998) (study sponsored by the Office of Policy and Research of the Department of Labor's Pension and Welfare Benefits Administration). This may lead to fee disparities of up to 100 basis points for similar plans. A 100 basis point charge reduces the return to investors by 18 percent over 20 years. *See, e.g.,* Exchange Act Release No. 47023 (Dec.18, 2002), 68 FR 160 (Jan. 2, 2003).

Some plans allow plan participants to invest through their retirement plans in securities and funds beyond those offered in the plan menu. This is often referred to as a participant-directed brokerage account or a ''brokerage window.''[335] Bank representatives advised the Commission staff that when they offer brokerage windows to plan participants, they establish separate brokerage accounts for each participant with a broker-dealer. The proposed rule would codify this practice by requiring banks that offer brokerage windows to plan participants to continue to do so through a registered broker-dealer.

Finally, proposed Exchange Act Rule 770 would prohibit a bank that administers employee benefit plans from paying unregistered employees incentive compensation that differs based on the value of a security or the type of security purchased or sold by a plan participant. The payment of incentive compensation for securities transactions creates the type of salesman's stake the federal securities laws are designed to regulate. Banks could, of course, pay these employees nominal referral fees consistent with the terms of the networking exception for referring accounts to a broker-dealer. Banks could also register these employees as associated persons of broker-dealers for the purpose of receiving incentive compensation from the broker-dealers.

We solicit comment on all aspects of this exemption. In responding to comments, please specify the typical size of the employee benefit plan. We solicit comment regarding whether we have adequately captured the types of employee benefit plans for which banks act as pension plan administrators. If we have not listed all the types of employee benefit plans that a bank administers, please list the additional types of employee benefit plans that are not included in the proposed rule.

Please answer the following questions for employee benefit plans that are listed in the proposed rule, as well as for any additional types of employee benefit plans that a commenter believes should be added to the list. We seek bank-specific empirical data with respect to each question. In other words, a bank should answer these questions with respect to its own business and customers.

Does a bank typically act as a trustee or as a non-fiduciary recordkeeper? How does a bank determine in which capacity to act? What services does a bank provide in each different capacity in which it acts?

How does a bank's compensation differ depending on the capacity in which it acts? How does a bank's compensation differ depending on the type of compensation that it offers to plan participants? What transactional or asset-based charges does a bank earn when it acts in each different capacity? If a bank offers unaffiliated mutual funds, how is the bank compensated by these funds? If a bank is acting in a trustee or fiduciary capacity, can the bank meet the ''chiefly compensated'' comparison requirement, including the related exemptions?

Does a bank offset or credit any compensation that it receives from a fund complex related to securities in which plan assets are invested against fees and expenses that the plan owes to the bank? How does a bank disclose the total compensation that it receives for acting as trustee or non-fiduciary recordkeeper? How does it disclose any offsets or credits?

3. Regulation S Transactions with Non-U.S. Persons

Persons that conduct a broker or dealer business while located in the United States must register as broker-dealers (absent an exemption), even if they direct all of their selling efforts offshore.[336] A bank industry group has requested an exemption from the broker-dealer registration requirements to permit banks to continue to sell securities that are covered by the safe harbor from U.S. registration pursuant to Regulation S to non-U.S. persons, both as agent and on a riskless principal basis.[337] The group also requested that the exemption extend to resale of Regulation S securities held by non-U.S. persons to other non-U.S. persons in transactions pursuant to Regulation S. While the group indicated that banks need this exemption primarily to sell proprietary products, such as mutual funds, to non-U.S. persons,[338] they would like the flexibility to sell other Regulation S securities to non-U.S. persons as well.[339]

In explaining the need for an exemption, the industry group expressed the view to the Commission staff that non-U.S. persons expect to deal with one private banker and that these customers would not choose to deal with a registered broker-dealer to conduct securities transactions in Regulation S securities, but would instead look to foreign banks to effect these transactions.

In response to this request, we are proposing Exchange Act Rule 771, which would provide banks with a conditional exemption to effect transactions pursuant to Regulation S with non-U.S. persons.[340] This exemption would *not* permit banks to effect transactions involving U.S. persons, other than U.S. registered broker-dealers. This exemption would permit banks to effect transactions involving offshore, non-U.S. persons on an agency or riskless principal basis. The exemption defines riskless principal for the purposes of the exemption. A bank could also resell any eligible Regulation S securities after their initial issuance by or on behalf of a non-U.S. person or to a non-U.S. person as long as the bank continues to

[335] *See* description of ''participant-directed brokerage account'' in Schedule H of the 2003 Instructions for Form 5500 (combined Internal Revenue Service, Department of Labor and Pension Benefit Guaranty Corporation Annual Report of Employee Benefit Plan).

[336] As the Commission stated when it adopted Exchange Act Rule 15a–6:

As a policy matter, the Commission now uses a territorial approach in applying the broker-dealer registration requirements to the international operations of broker-dealers.

Under this approach, all broker-dealers physically operating within the United States that effect, induce, or attempt to induce any securities transactions would be required to register as broker-dealers with the Commission, even if these activities were directed only to foreign investors outside the United States.

Exchange Act Release No. 27017, *supra* note 86, 54 FR at 30016 (footnotes omitted).

[337] *See* letter dated May 27, 2004, from Lawrence R. Uhlick, Executive Director & General Counsel, Institute of International Bankers to Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission. Regulation S [17 CFR 230.901, *et seq.*] specifies the requirements for an offer or sale of securities to be deemed to occur outside the United States and therefore not subject to the registration requirements of Section 5 of the Securities Act. Regulation S permits the sale of newly issued off-shore securities and re-sales of off-shore securities from a non-U.S. person to a non-U.S. person.

[338] These mutual funds are usually specifically designed for sale offshore to avoid implicating U.S. tax laws for nonresident non-U.S. persons.

[339] Banks indicated to the Commission staff that although these products will vary depending on customer preferences and needs, among the most important products for banks are proprietary and non-proprietary offshore mutual funds structured (particularly for tax purposes) for non-U.S. investors, Euro bonds, and emerging market debt (especially debt sold to customers in the local jurisdiction—*e.g.*, Argentine debt sold to Argentine investors). To a lesser extent, banks indicated they may also sell European equity securities and emerging market equity securities (again, especially for investors in the local jurisdiction) to investors. Banks also noted they may sell tailored investment products, such as structured notes or deposits (*e.g.*, equity-or credit-linked notes), which often are customized to the individual needs of an investor and may be issued by a bank affiliate or an entity (*e.g.*, a special purpose vehicle) controlled by a bank affiliate. Banks may sell other products as well, such as offshore ''hedge funds,'' to certain investors.

[340] 17 CFR 242.771. Nothing in this proposed rule would affect the necessity of complying with Regulation S or any other requirements of or exemptions from the Securities Act of 1933.

comply with the requirements of Regulation S.[341] After the requirements of Regulation S cease to apply to an issuance, then the bank could resell the securities to another non-U.S. person or a broker-dealer without meeting the terms of Regulation S.

We are proposing this exemption with these limited conditions because we believe that non-U.S. persons will not be relying on the protections of the U.S. securities laws when purchasing Regulation S securities from U.S. banks.[342] While generally we believe that U.S. broker-dealers should be subject to the broker-dealer standards of conduct when dealing with non-U.S. persons, we feel that this principle is less compelling when the foreign person has chosen to deal with a U.S. bank with respect to Regulation S securities. We also understand that non-U.S. persons can purchase the same securities from banks located outside of the U.S. and would not have the protections of the U.S. law when purchasing these securities offshore. We invite comment on whether U.S. broker-dealer registration should be required with respect to transactions with these non-U.S. persons who are purchasing new offering securities offshore, or may be selling or purchasing seasoned securities.

We propose to define two other terms used in the exemption. We propose to define the term ''eligible security'' to include a requirement that the security is not being sold from the inventory of the bank or an affiliate of the bank. We request comment on whether this condition would be an appropriate safeguard against banks' financial conflicts that may disadvantage foreign investors. Within the definition of eligible security, we are also proposing to exclude from the exemption situations when the bank or an affiliate of the bank is underwriting a new issue security on a firm-commitment basis. In that instance, the bank could still sell the security using the exemption if the security is acquired from an unaffiliated ''distributor,'' that has not purchased the securities from the bank or a bank affiliate.[343] This condition is intended to prevent banks from soliciting investors, who do not have the protections of the U.S. securities laws, to purchase securities in which banks or their affiliates have an overriding financial interest as underwriters or selling group members. We understand, however, that there may be instances when a customer wants to purchase a security that is being underwritten by a bank or its affiliate. To facilitate these customer requests, a bank could sell the securities in reliance on this exemption if it obtained the securities from another distribution participant, other than an affiliate of the bank, as long as the other distribution participant did not directly or indirectly obtain the securities from the bank or its affiliate. We request comment on whether this condition would be an appropriate safeguard against banks' financial conflicts that may disadvantage foreign investors.

We also propose to define the term ''purchaser'' to mean a person that purchases a security and that is a non-U.S. person under Rule 902(k) of Regulation S.[344]

We request comment on this proposed exemption, as well as the other proposed definitions, including the definition of riskless principal that is consistent with the definition we have used previously in the bank dealer rules. We particularly request comment from non-U.S. investors on whether this exemption is necessary to serve their needs, or whether they would prefer to purchase Regulation S securities subject to the full investor protections of the U.S. federal securities laws. We also invite comment on the possible competitive effects this proposed exemption may have.

4. Redesignation and Revision of Exemptions for Savings Associations and Savings Banks

We propose to redesignate the current exemption for savings associations and savings banks found in Exchange Act Rule 15a–9[345] as Exchange Act Rule 773.[346] As is true under the current rule, the savings associations and savings banks would be subject to all of the same conditions and definitions as are applicable to banks that utilize the exceptions from the definitions of ''broker'' and ''dealer.''[347] We propose to extend to savings associations and savings banks the proposed money market exemption in Exchange Act Rule 776,[348] the proposed exemptions in Exchange Act Rules 720–723[349] relating to the bank trust and fiduciary activities exception, the proposed small bank custody exemption in Exchange Act Rule 761,[350] the proposed expanded exemption for the way in which banks effect transactions in investment company securities in Exchange Act Rule 775,[351] and the current exemption for securities lending transactions in Exchange Act Rule 15a–11,[352] which we are proposing to redesignate as Exchange Act Rule 772.[353]

We are not proposing to extend to thrifts the proposed general custody exemption in Exchange Act Rule 760,[354] the proposed new ERISA exemption in Exchange Act Rule 770,[355] or the proposed Regulation S exemption in Exchange Act Rule 771, however, because we were unable to obtain sufficient information to determine whether thrifts directly engage in the types of securities activities covered by these proposed exemptions.[356] We solicit comment on whether thrifts engage in securities activities or transactions that would be covered by the excluded exemptions. We invite commenters to provide specific information about their current business models that would require them to utilize these proposed exemptions. For example, do thrifts have income that does not qualify as ''relationship compensation'' for employee benefit plan accounts and that cannot be accommodated by the small bank custody exemption? With respect to those securities activities or transactions that are not covered by the excluded exemptions, we seek empirical data from individual thrifts regarding the type and amount of compensation received for each of these securities activities. Thrift commenters are invited to answer the specific request for comments in each of the exemptions.

[341] Rule 904 of Regulation S (17 CFR 230.904).

[342] While no rules have been adopted, the exemption provided by Exchange Act Section 30(b), pertaining to foreign securities, has been held unavailable if the United States is used as a base for securities fraud perpetrated on foreigners, *Arthur Lipper Corp.* v. *SEC*, 547 F.2d 171 (2d Cir. 1976), *reh. denied*, 551 F.2d 915 (2d Cir. 1977), *cert. denied* 434 U.S. 1009. *See also* Exchange Act Release No. 27017, *supra* note 86, 54 FR at 30016.

[343] The term ''distributor'' is defined in 17 CFR 230.902(d).

[344] 17 CFR 230.902(k).

[345] 17 CFR 240.15a–9.

[346] 17 CFR 242.773.

[347] Nevertheless, savings associations and savings banks that are municipal securities dealers must register and be regulated as municipal securities dealers pursuant to Exchange Act Section 15B. Banks must also register pursuant to Exchange Act Section 15B. Exchange Act Section 3(a)(34)(A) provides that the ''appropriate regulatory agency'' of a municipal securities dealer that is a bank regulated by the OCC, the Federal Reserve, or the FDIC is the agency that already regulates the bank. Exchange Act Section 3(a)(34)(A)(iv) designates the Commission as the appropriate regulatory agency in the case of all other municipal securities dealers, which includes savings associations and savings banks that are municipal securities dealers.

[348] 17 CFR 242.776.

[349] 17 CFR 242.720 through 723.

[350] 17 CFR 242.761.

[351] 17 CFR 242.775.

[352] 17 CFR 15a–11.

[353] 17 CFR 242.772.

[354] 17 CFR 242.760.

[355] 17 CFR 242.770.

[356] 17 CFR 242.771.

5. Credit Unions

Because credit unions are not ''banks'' under the Exchange Act,[357] they cannot utilize the bank exceptions from the definitions of broker and dealer. While nine commenters indicated that some, or all, of the exceptions should be extended to credit unions, the commenters generally conceded that credit unions do not currently engage in many of the securities activities authorized for banks under the Exchange Act exceptions from the definitions of ''broker'' and ''dealer.''[358]

Based on the Commission staff's discussions with credit union representatives, we understand that credit unions are engaged in a very limited securities business today.[359] We do not propose extending all of the transaction-based bank exceptions in Exchange Act Section 3(a)(4) to credit unions for their potential future securities activities. We do, however, propose to extend three of the bank exceptions to provide a limited accommodation for credit unions. As is true under the rule for the savings associations and savings banks, credit unions utilizing this proposed exemption would be subject to all of the same conditions and definitions as are applicable to banks that utilize the exceptions from the definitions of ''broker'' and ''dealer.''

*a. Networking*

Credit unions currently may enter into networking arrangements with broker-dealers under the conditions set forth in the Chubb letter.[360] However, banks, savings banks, and savings and loan associations can network with broker-dealers under the terms of the Exchange Act Section 3(a)(4)(B)(i) exception for third-party brokerage arrangements.[361] This bifurcated system makes compliance more complicated for broker-dealers that have networking arrangements with a variety of financial institutions. It also creates an unequal playing field among financial institutions offering the same services.

We, therefore, propose Exchange Act Rule 774[362] to address these issues by simplifying the terms under which credit unions may enter into networking arrangements by exempting them from the definition of broker under the terms of the bank networking exception in Exchange Act Section 3(a)(4)(B)(i),[363] including any related interpretive and exemptive rules for banks' networking activities that the Commission may adopt. The proposed rule would subject credit unions to the same uniform networking rules that apply to banks and savings associations. This should simplify compliance for credit unions as well as for the broker-dealers that enter into networking arrangements with different types of retail depository institutions. If the Commission adopts this proposal as a final rule, the rule would supercede the staff no-action letter. We request comment on whether this is appropriate. We also request comment on whether any additional conditions or limitations should be imposed on credit unions that enter into networking arrangements with broker-dealers.

*b. Sweep Accounts*

The sweep accounts exception is a limited transactional exception that permits banks to sweep deposit funds into no-load, open-end money market funds.[364] One credit union requested a Commission exemption to engage in this activity. The Commission published this request along with a request for comment in June 2002.[365] After reviewing the credit unions' comments, we are proposing Exchange Act Rule 774 to provide an exemption for credit unions to provide sweep account services. In particular, proposed Exchange Act Rule 774 would permit credit unions to sweep deposit accounts into no-load money market funds under the terms of the bank exception in Exchange Act Section 3(a)(4)(B)(v).[366] Because the statutory exception is limited, any incentives for abuse are also limited. Thus, we believe extending this exception to credit unions would not raise investor protection concerns. Moreover, it should place financial institutions offering similar services on a more level playing field.

*c. Investment, Trustee, and Fiduciary Transactions*

The investment transactions exception in Exchange Act Section 3(a)(5)(ii) permits a bank to buy or sell securities ''for investment purposes'' for its own account or for the accounts for which it acts as a trustee or fiduciary.[367] We propose to include in Exchange Act Rule 774 an exemption for credit unions from the definition of dealer to permit credit unions to buy and sell securities for investment purposes for themselves, or for accounts for which they act as trustee or fiduciary under the terms of the bank exception in Exchange Act Section 3(a)(5)(C)(ii).[368] While credit unions may rely on the dealer-trader distinction[369] for their proprietary trading, extending this exemption to credit unions should provide them with legal certainty. With respect to transactions for trust and fiduciary account customers, we would expect credit unions' fiduciary obligations to provide these customers with sufficient protections.

*d. Scope of Credit Union Exemption*

We propose to permit all credit unions to utilize the proposed Exchange Act Rule 774 exemptions. This would include federal- and state-chartered credit unions, as well as federally insured and privately insured credit unions. We are preliminarily of the view that these transactions should be handled in the same way under one uniform set of rules for all credit unions, as well as for all banks and savings

[357] The term ''bank'' is defined in Exchange Act Section 3(a)(6).

[358] *See* ACCU letter; CUNA letter; NACUSO letter; NASCUS letter; NCUA letter; NAFCU letter; Navy Federal letter; Ohio Credit Union League letter; and U.S. Central Credit Union letter.

[359] This reflects the fact that credit unions, unlike banks, never had a blanket exception from broker-dealer registration. Therefore, credit unions that wanted to conduct a securities business always had to do so through a registered broker-dealer.

[360] *See* Chubb Letter, a staff no-action letter, *supra* note 37. The staff no-action letter sets forth the terms under which financial institutions (federal and state chartered banks, savings and loan associations, savings banks, and credit unions) may participate in the networking arrangement.

[361] As discussed throughout this release, banks, savings banks and savings associations continue to have a temporary exemption from the Exchange Act definition of ''broker.'' The networking exception in Exchange Act Section 3(a)(4)(B)(i) and proposed Exchange Act Rule 710 set forth the terms that banks and savings associations will follow when the Exchange Act's bank broker exceptions and rules are fully implemented.

[362] 17 CFR 242.774.

[363] 15 U.S.C. 78c(a)(4)(B)(i).

[364] Exchange Act Section 3(a)(4)(B)(v). 15 U.S.C. 78c(a)(4)(B)(v).

[365] *See* Notice of Application of Evangelical Christian Credit Union for Exemptive Relief Under Sections 15 and 36 of the Exchange Act and Request for Comment, Exchange Act Release No. 46069 (June 12, 2002), 67 FR 41545 (June 18, 2002) (available at *http://www.sec.gov/rules/other/*).

[366] 15 U.S.C. 78c(a)(4)(B)(v).

[367] As we noted in footnote 83 of the release in which we adopted final ''dealer'' rules for banks, [Exchange Act Release No. 47364, 68 FR 8686 (Feb. 24, 2003)], the ''dealer'' exception for trustee and fiduciary transactions only applies when the bank buys or sells securities for investment purposes for the bank, or for accounts for which the bank acts as a trustee or fiduciary. Furthermore, in giving meaning to the term ''fiduciary'' in Exchange Act Section 3(a)(5)(C)(ii), we look to the legislative history. The legislative history states that Exchange Act Section 3(a)(5) ''excepts a bank from the definition of 'dealer' when it buys and sells securities for investment purposes for the bank, or for accounts for which the bank acts as trustee or fiduciary. This mirrors existing law distinguishing between investors and dealers, and is limited to the portfolio trading of the bank and the accounts for which it makes investment decisions.'' H.R. Rep. No. 106–74, pt. 3, at 170–171 (1999).

[368] 15 U.S.C. 78c(a)(5)(C)(ii).

[369] *See* Section IV of the Dealer Release for a discussion of the Dealer/Trader distinction. Exchange Act Release. No. 47364 (Feb. 14, 2003).

associations. The proposed exemption would grant credit unions these three statutory exceptions but this exemption would not automatically give them any associated exemptions we may grant to banks in the future.

The Commission requests comment on proposed Exchange Act Rule 774.[370] In addition, the Commission specifically requests comment on whether state-charted, privately insured credit unions (which do not have a federal regulator) should be included within the scope of the exemption.[371] Commenters are requested to discuss the scope of the supervision of state-chartered, privately insured credit unions and the legal framework applicable to these entities.

*e. Additional Exemptions for Credit Unions*

Exchange Act Section 3(a)(4)(B)(viii) provides banks with an exception from the definition of broker for certain safekeeping and custody activities.[372] Under this exception, a bank is not considered a ''broker'' if, as part of its customary bank activities, it engages in certain specified types of safekeeping and custody services with respect to securities on behalf of its customers. The exception generally permits banks to hold securities, pledge securities, lend securities held in custody, and reinvest collateral.[373]

The National Credit Union Administration (''NCUA'') has indicated to the Commission staff that credit unions are authorized to hold custody of customer funds and securities in connection with securities transactions. However, the Commission staff has no evidence that credit unions engage in the activities included in the safekeeping and custody activities exception. For this reason, we are not proposing to give credit unions a custody exemption.

We invite comment on the extent to which credit unions utilize their authority to hold custody of customer funds and securities, and whether credit unions engage in any of the types of transactions enumerated in the bank safekeeping and custody exception. Do credit unions hold custody of customer funds and securities in connection with transactions other than the networking, sweep accounts, or investment transactions described above? Credit union commenters are invited to discuss any legal authority on which they currently rely to engage in any of these additional activities.[374]

Because we have no evidence that credit unions require additional exemptions for the safekeeping and custody of customer funds and securities in connection with securities transactions, we are not proposing additional exemptions at this time. Commenters that believe additional exemptions are warranted should explain why an exemption is needed and discuss how such an exemption would be in the public interest, and whether any additional conditions should be added to protect investors. In addition, we specifically invite comment on how any credit unions that need additional exemptions are regulated, both under state and federal law.

6. Exemption for the Way in Which Banks Effect Transactions in Investment Company Securities

Exchange Act Section 3(a)(4)(C) requires a bank to execute through a registered broker-dealer (or internally cross) transactions executed in the United States in securities that are publicly traded in the United States that are effected pursuant to either the trust and fiduciary activities exception, the safekeeping and custody exception, or certain stock purchase plans exception.[375] Current Exchange Act Rule 3a4–6, however, exempts from this requirement banks that process transactions in shares of investment company securities through the National Securities Clearing Corporation's (''NSCC'') Mutual Fund Services,[376] including Fund/SERV.[377]

Banks that use NSCC's Mutual Fund Services to execute transactions in investment company securities advised us that they may not use a registered broker-dealer to execute these transactions, depending on whether NSCC's arrangement is with the principal underwriter or a transfer agent that acts as agent for the investment company. Therefore, some industry representatives indicated informally to the staff that banks needed an exemption from the trade execution requirements of Exchange Act Section 3(a)(4)(C) to continue to use the NSCC's Mutual Fund Services, while complying with exceptions and exemptions from the definition of broker. Exchange Act Rule 3a4–6 was designed to allow banks to continue to execute transactions in shares of open-end investment companies through NSCC's Mutual Fund Services because NSCC's Mutual Fund Services simplify and automate the process for purchasing and redeeming investment company securities.[378] This exemption is a limited one and is only available to banks that process orders through a service of a registered clearing agency subject to the supervision and regulation of the Commission.

Commenters generally supported this exemption. However, some urged the Commission to expand the exemption to include mutual fund purchases and redemptions directed to the fund's transfer agent.[379] These commenters indicated that such an exemption would reflect banks' current practices.[380]

We, therefore, propose to expand this exemption to permit banks to process purchases and redemptions of shares of open-end investment companies directly with transfer agents that act as agents for these investment companies, provided that the transfer agents do not

[370] We also request comment on whether there are other issues or restrictions that we should consider in connection with this exemption for these three securities activities.

[371] In contrast to credit unions, all banks and savings associations have a federal regulator.

[372] 15 U.S.C. 78c(a)(4)(B)(viii).

[373] Exchange Act Section 3(a)(4)(B)(viii)(aa–ee). This exception is discussed in greater detail in Section III.E. *supra.*

[374] As part of transactions covered by the proposed exemptions for networking, sweep accounts, and investment, trustee and fiduciary transactions, a credit union would be permitted to hold customer funds and securities in connection with the securities transactions that fall within the exemptions.

[375] 15 U.S.C. 78c(a)(4)(B)(ii), (iv), and (viii).

[376] NSCC is a clearing agency registered pursuant to Exchange Act Section 17A. 15 U.S.C. 78q–1. A ''clearing agency'' is a person that acts as an intermediary in making payments or deliveries (or both) in connection with transactions in securities, or that provides facilities for comparing data with respect to the terms of securities transactions to reduce the number of settlements or the allocation of securities settlement responsibilities. *See* 15 U.S.C. 78c(a)(23)(A). A clearing agency is an SRO, and its rules of operation are subject to approval by the appropriate federal regulatory agency. *See* 15 U.S.C. 78c(a)(26), 78s(b). *See also* Investment Company Act Release No. 26288 (Dec. 11, 2003), 68 FR 70388, 70395 at n. 11 (Dec. 17, 2003).

[377] NSCC's Mutual Fund Services provide an automated system to participants to process transactions in investment company securities. Fund/SERV centralizes order entry, confirmation, registration, and settlement of purchases and redemptions of investment company securities. NSCC's Mutual Fund Services are available to investment companies, broker-dealers, banks, trust companies, and other financial institutions that have been accepted for membership in the NSCC.

[378] In light of the recent scandals involving the market timing of shares issued by certain registered open-end investment companies, this exemption could potentially allow further abuses to go undetected. Current Exchange Act Rule 3a4–6 is not an exemption from other provisions of the federal securities laws such as sections 206(1) and 206(2) of the Investment Advisers Act (15 U.S.C. 80b–6(1) and (2)) or Section 34(b) of the Investment Company Act (15 U.S.C. 80a–33(b)).

[379] *See* ABA/ABASA letters; Mellon Bank letter; BONY letter; Wilmington Trust letter; NYCH letter; PNC Bank letter; Northern Trust letter; Shaw Pittman letter; and Wells Fargo letter.

[380] In 2002, Fund/SERV processed approximately 83 million fund transactions, half of all such transactions processed that year. Transfer agents processed the others. *See* Investment Company Act Release No. 26288, *supra* note 376 at n. 64.

accept compensation paid for the distribution of the securities, including any compensation paid pursuant to any revenue-sharing arrangement or pursuant to Rule 12b–1 of the Investment Company Act.[381] The proposed exemption would only be available for securities that are distributed by registered broker-dealers or otherwise sold for sales loads that do not exceed the NASD limits for broker-distributed funds. This condition is intended to ensure that mutual fund investors will not incur higher loads for the same funds if they choose to purchase through banks, rather than through registered broker-dealers.

We propose to limit this exemption to transactions in securities of open-end investment companies that are not traded on a national securities exchange, through the facilities of a national securities association, or through an interdealer quotation system.[382] This exemption would not be necessary with regard to these securities because investors purchase or sell such shares through broker-dealers at market prices throughout the day.

We solicit comment on the proposed amendments to this exemption. We invite comment with regard to the use of omnibus accounts in the context of this proposal. In particular, we request comment about the issues raised, especially those arising from conflicts of interest associated with 12b–1 fees, and how they are disclosed by banks to custody account customers. We also seek comment regarding the number and percentage of fund share orders submitted directly to designated transfer agents.

While not specifically addressing Exchange Act Rule 3a4–6, one commenter requested guidance on the meaning of the term ''publicly traded security [in the United States]'' within the context of Exchange Act Section 3(a)(4)(C).[383] Exchange Act Section 3(a)(4)(C)(i) requires a bank to direct trades in publicly traded securities in the United States to a registered broker-dealer for execution. However, a U.S. registered broker-dealer would not necessarily provide the most liquid markets and the best prices for foreign securities, because the primary trading markets for foreign securities are located outside of the United States. Thus, if a bank customer requests a security listed or traded primarily outside of the United States, Exchange Act Section 3(a)(4)(C) gives banks the flexibility to seek the best markets for that security. In other words, Exchange Act Section 3(a)(4)(C) encourages banks to obtain best execution for securities by directing them to registered broker-dealers for U.S. transactions, but not for foreign transactions.

Publicly traded securities[384] include all securities in which at least two registered broker-dealers have indicated a willingness to quote a price, securities that are registered under Exchange Act Section 12,[385] or those from an investment company that is required to file reports under Exchange Act Section 15(d).[386] The term includes equity securities, regardless of whether they are traded through a national securities exchange, an automated quotation system sponsored by a registered national securities association, an alternative trading system, an electronic communications network, Nasdaq's Over-the Counter Bulletin Board service, or an interdealer quotation system such as the one operated by Pink Sheets LLC.[387] The term also includes debt securities and hybrid securities.[388] We solicit comment about whether the term ''publicly traded securities'' should be defined by rule.

*G. Temporary Exemptions*

1. Extension of Time and Transition Period

Commenters have indicated that banks may need as much as a year to develop compliance systems to adapt to the more limited Exchange Act bank exceptions from the definition of broker. The Commission has also stated that it does not expect banks to develop compliance systems for the broker exceptions until the Commission has adopted any amendments to the Interim Rules.

We recognize that when the bank broker exceptions are fully effective, some banks may need a transition period as they move toward statutory compliance.[389] Exchange Act Rule 15a–7 provides such a transition period, and we propose to amend that rule, which would be redesignated as Exchange Act Rule 781, to extend the transition period to one year after any amended rules are adopted. We expect banks to use this time to develop compliance systems.[390]

We request comment on the proposed amendment to this temporary exemption, and, in particular, on whether banks would need a full year to develop compliance systems. We also request comment on whether the transition period should cease at the end of a calendar year.

2. Temporary Exemption for Contracts Entered Into by Banks From Being Considered Void or Voidable

Current Exchange Act Rule 15a–8 recognizes that banks may have inadvertent, technical violations as they become accustomed to any new regulatory requirements. This exemption mitigates the unique compliance problems that banks may

[381] *See* 17 CFR 270.12b–1. Transfer agents that are not registered as broker-dealers need to consider whether the securities activities that they are undertaking are brokerage activities that require them to register as broker-dealers. Exchange Act Section 3(a)(4) defines a ''broker'' as a person engaged in the business of effecting transactions in securities for the account of others. It includes several exceptions for certain bank activities. *See* 15 U.S.C. 78c(a)(4). Exchange Act Section 15 essentially makes it unlawful for a broker or dealer ''to effect any transactions in, or induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills)'' unless the broker or dealer is registered with the Commission. *See* 15 U.S.C. 78o(a)(1). *See also* Investment Company Act Release No. 26288, *supra* note 376 at n. 7.

[382] For example, this exemption from executing trades through a registered broker-dealer would not be available for exchange-traded funds, which are investment companies that are registered under the Investment Company Act as open-end funds or unit investment trusts. Section 5(a)(1) of that Act defines an open-end fund as an investment company that is a management company, which offers, or has outstanding, any redeemable security of which it is the issuer. 15 U.S.C. 80a–5(a)(1). Section 4(2) of the Investment Company Act defines a unit investment trust as an investment company that is organized under a trust indenture or similar instrument, that does not have a board of directors, and that issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities. 15 U.S.C. 80a–4(2). *See* Investment Company Act Release No. 25258 (Nov. 8, 2001).

[383] *See* Compass letter. In that letter, the commenter asked the Commission to clarify that shares of open-end investment companies are not ''publicly traded securities'' within the meaning of Exchange Act Section 3(a)(4)(C) unless the shares are, in fact, traded on a recognized exchange.

[384] While the term ''publicly traded security'' is used in other sections of the Exchange Act for specific purposes, *see, e.g,* 15 U.S.C. 78m(h) and 78u–3(c)(3)(A)(i), the term is commonly understood to encompass a broader range of securities than these other particular uses would indicate.

[385] 15 U.S.C. 78*l*.

[386] 15 U.S.C. 78*o*(d).

[387] Pink Sheets LLC is a privately owned company that provides pricing and financial information for equity securities that are not listed on a national securities exchange or quoted on Nasdaq.

[388] Hybrid securities are securities with features common to both equity and debt securities.

[389] 17 CFR 240.15a–7.

[390] For example, if the bank broker rules were adopted by year-end 2004, then the bank broker exceptions would apply one year later, beginning January 1, 2006. Thus, banks would not have to be in compliance with the terms of the exception or exemption during 2005, but should develop compliance systems to be used beginning in 2006.

With respect to the ''chiefly compensated'' requirements, banks would need to be in compliance with the terms of the account-by-account calculation, or one of the exemptions by the end of 2006. Demonstrated compliance during 2006 would exempt a bank from risk of noncompliance with these requirements during 2007. *See* proposed Exchange Act Rule 722(a)(2).

have by eliminating the possibility that any inadvertent failures by banks could trigger rescission under Exchange Act Section 29 during this transitional period.[391] The Commission amended this exemption in the rules addressing the exceptions from the definition of ''dealer'' under the Exchange Act to provide a transitional period from rescission liability under Exchange Act Section 29 on contracts entered into by banks in a dealer capacity for a finite period until March 31, 2005.[392]

We received a few comments on Exchange Act Rule 15a–8.[393] All of these commenters supported this temporary exemption for banks. One commenter said that liability for any violation of the broker-dealer registration requirements should be limited to customers or groups of customers that received the services or were parties to the transactions.[394]

Once we adopt any final rules, or amendments to the bank broker rules, we anticipate extending the compliance date for the broker statutory exceptions and rules to provide banks with an appropriate transition period. We therefore propose to extend the exemption from rescission liability under Exchange Act Section 29 to contracts entered into by banks acting in a broker capacity until 18 months after the delayed effective date of the broker rules.

This proposed exemption, which would be codified in proposed Exchange Act Rule 780, would be limited to bank contracts being considered void or voidable by reason of Exchange Act Section 29 because a bank that is a party to the contract violated the registration requirements of Section 15(a) of the Exchange Act or any applicable provision of this Act and the rules and regulations thereunder, based solely on a bank's status as a broker or dealer when the contract was created.

We note that this proposed exemption would not relieve banks of the obligation to register as a broker or dealer if their securities activities do not fit within a specific functional exception or exemption. We also note that banks' securities activities continue to be subject to the antifraud provisions of the federal securities laws, irrespective of the bank's lack of registration or failure to comply with the provisions of the Exchange Act and the related rules that otherwise apply to banks based on their status as broker-dealers. We request comment on extending the temporary exemption from Exchange Act Section 29(b).

*H. Amendment to Exchange Act Rule 15a–6*

Exchange Act Rule 15a–6 provides a conditional exemption from U.S. broker-dealer registration for certain foreign broker-dealers.[395] Exchange Act Rule 15a–6 (a)(4)(i) allows a foreign broker-dealer, without registering in the United States, to effect transactions in securities with or for a U.S.-registered broker-dealer or bank acting ''in a broker-dealer capacity as permitted by U.S. law.'' [396] Thus, in transactions between a U.S. bank and its foreign broker-dealer affiliate, acting as principal, the U.S. bank could rely on the affiliate transactions exception in the GLBA,[397] and the foreign affiliate could rely on Rule 15a–6(a)(4)(i). As discussed in the release adopting the Interim Rules, Exchange Act Rule 15a–6(a)(4)(i), however, does not permit a foreign broker-dealer or bank to have direct contact with customers of the U.S. bank.[398] Moreover, the affiliate transactions exception would not permit the U.S. bank to effect transactions with its foreign affiliate's customers.[399] We received no comments on our discussion of the interplay between Exchange Act Rule 15a–6 and the affiliate transactions exemption and we are not proposing to change that analysis in the current proposal.

We do, however, propose a technical amendment to Exchange Act Rule 15a–6 in light of the amended definitions of ''broker'' and ''dealer.'' Currently, Exchange Act Rule 15a–6(a)(4)(i) refers to ''a bank acting in a broker or dealer capacity as permitted by U.S. law.'' As amended, however, the definitions of ''broker'' and ''dealer'' in Exchange Act Section 3(a)(4) and 3(a)(5) respectively, provide that banks engaging in the conditional exceptions in those definitions ''shall not be considered to be'' brokers or dealers. To reflect this change, we propose to amend Exchange Act Rule 15a–6(a)(4)(i) by replacing the phrase ''in a broker or dealer capacity as permitted by U.S. law'' with the phrase ''pursuant to an exception or exemption from the definition of 'broker' or 'dealer' in Sections 3(a)(4)(B) or 3(a)(5)(C) of the Act.'' [400] We request comment on this proposed amendment to Exchange Act Rule 15a–6(a)(4)(i).

## IV. Administrative Law Matters

*A. General Request for Comments*

We are soliciting comments on all aspects of these proposed new rules and rule amendments. We also request comment on the portions of the Interim Rules pertaining to banks' broker activities that we are not proposing to amend, including Exchange Act Rule15a–9,[401] which provides an exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks. In addition, we encourage comment on the other provisions of Exchange Act Section 3(a)(4)(B) that we did not discuss in connection with these proposals. We plan to address issues regarding issuer plans separately.[402]

Commenters should, when possible, provide us with empirical data to support their views. Commenters suggesting alternative approaches should provide comprehensive proposals, including any conditions or limitations they believe should apply. We also specifically request comment on when any final rules should become effective. Should particular rules be implemented on a more delayed schedule? If so, why? With respect to proposed exemptions that contain a grandfather clause, have we proposed the most appropriate date for such purposes? If not, why not? Commenters suggesting an alternative date should

[391] Exchange Act Section 29(b) provides, in pertinent part, that every contract made in violation of the Exchange Act or of any rule or regulation thereunder shall be void.

[392] *See* Exchange Act Release No. 47364, *supra* note 34, 68 FR 8686.

[393] *See* ABA/ABASA letters; Banking Agencies letter; NYCH letter; NASAA letter; and Regions letter.

[394] *See* NYCH letter.

[395] 17 CFR 240.15a–6. Even when the GLBA permits a bank to engage in securities-related activities without itself registering as a broker-dealer, a broker-dealer engaged in the business of effecting transactions for such bank still must register—absent an exemption or other exclusion from the broker-dealer registration requirements of the Exchange Act. For instance, a foreign broker-dealer that executes trades for a bank under Exchange Act Section 3(a)(4)(C) would need to register as a U.S. broker-dealer if it does not meet the conditions of Exchange Act Rule 15a–6, or it does not otherwise qualify for an exemption from registration. Foreign banks cannot rely on the GLBA bank exceptions because they do not fall within the definition of ''bank'' in Exchange Act Section 3(a)(6). *Cf.* U.S. branches and agencies of foreign banks can rely on the bank exceptions to the extent described in 54 FR 30013 at 30015, n. 16.

[396] 17 CFR 240.15a–6(a)(4)(i).

[397] Exchange Act Section 3(a)(4)(B)(vi).

[398] 66 FR at 27783.

[399] *Id.* A bank would, however, be permitted to sell Regulation S securities to non-U.S. persons, including customers of a foreign affiliate, as provided in the Regulation S exemption discussed at section III.F.3, *supra.*

[400] Nothing in this release should be construed as modifying the Exchange Act Section 3(a)(6) definition of ''bank'' as it applies to foreign banks. Currently, foreign banks generally would not meet this definition and would be considered broker-dealers under the U.S. securities laws. As such, foreign banks generally would be required to register as U.S. broker-dealers unless they qualify for an exemption from registration under Exchange Act Rule 15a–6.

[401] 17 CFR 240.15a–9.

[402] Exchange Act Section 3(a)(4)(B)(iv)(III).

provide reasons why they believe the alternative date would be more appropriate.

Finally, individual banks that anticipate the need for additional time to implement compliance systems for particular rules or statutory provisions are encouraged to explain their specific needs.

*B. Paperwork Reduction Act Analysis*

Certain provisions of proposed Exchange Act Rules 776, 722, and 770 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[403] The Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The collections of information under proposed Exchange Act Rules 776, 722, and 770 are new. The title for the new collection of information under proposed Exchange Act Rule 776 is ''Rule 776: Exemption for banks effecting transactions for certain investors in money market funds.'' The title for the new collection of information under proposed Exchange Act Rule 722 is ''Rule 722: Exemption for banks from determining whether they are 'chiefly compensated' on an account-by-account basis.'' The title for the new collection of information under proposed Exchange Act Rule 770 is ''Rule 770: Exemption from the definition of 'broker' for banks that effect transactions in securities in certain employee benefit plans.'' OMB has not yet assigned a control number to the new collections of information contained in proposed Exchange Act Rules 776, 722, and 770. 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.[404]

1. Proposed Exchange Act Rule 776

*a. Collection of Information*

Proposed Exchange Act Rule 776(a)(2)(ii)(B) would require a bank relying on this proposed exemption to provide customers that are not qualified investors or persons that direct the purchase of securities from any cash flows relating to asset-backed issues of at least $25,000,000 with a prospectus for the securities bought or sold pursuant to the proposed exemption and a clear and conspicuous notice containing the information required by this proposed rule.[405]

*b. Proposed Use of Information*

The purpose of the collection of information in proposed Exchange Act Rule 776 is to assure that a customer of a bank relying on the exemption would have sufficient information upon which to make an informed investment decision and to learn of any potential conflicts of interest that the bank may have.

*c. Respondents*

The proposed collection of information in Exchange Act Rule 776 would apply to banks relying on the exemption provided in the proposed rule.

*d. Reporting and Recordkeeping Burden*

The Commission estimates that approximately 500 banks annually would use the exemption in proposed Exchange Act Rule 776 and each bank would deliver the prospectus and notice required by the proposed rule to approximately 1,000 customers annually. Therefore, the Commission estimates that proposed Exchange Act Rule 776 would result in approximately 500,000 responses per year. The Commission estimates further that a bank would spend approximately .10 hour per response to comply with the delivery requirement of proposed Exchange Act Rule 776. Thus, the estimated total annual reporting and recordkeeping burden for proposed Exchange Act Rule 776 is 50,000 hours. The Commission estimates that the initial reporting and recordkeeping burden for this proposed rule would be insubstantial, but we solicit comment on this point.

*e. Collection of Information Is Mandatory*

This collection of information would be mandatory.

*f. Confidentiality*

The collection of information delivered pursuant to proposed Exchange Act Rule 776 would be provided by banks relying on the exemption in this rule to customers that are not ''qualified investors,'' as defined in proposed Exchange Act Rule 776(b)(6).

*g. Record Retention Period*

Proposed Exchange Act Rule 776 would not include a record retention requirement. Banks are subject to record retention requirements promulgated by banking regulators.

2. Proposed Exchange Act Rule 722

*a. Collection of Information*

Proposed Exchange Act Rule 722(c)(2) would require banks relying on the exemption in this rule to document the reason that an account has continued not to meet the ''chiefly compensated'' condition and link the reason to its exercise of fiduciary responsibility.

*b. Proposed Use of Information*

Proposed Exchange Act Rule 722 is intended to provide banks that determine compliance with the ''chiefly compensated'' condition through an account-by-account calculation with legal certainty for one year based on their demonstrated compliance for the previous year. The purpose of the collection of information in proposed Exchange Act Rule 722 is to document the reason a bank has not met the ''chiefly compensated'' condition while still being able to rely on the exemption provided in paragraph (c) of the rule.

*c. Respondents*

The proposed collection of information in proposed Exchange Act Rule 722 would apply to banks that wish to utilize the exemption provided in this proposed rule.

*d. Reporting and Recordkeeping Burden*

Based on information available to the Commission at this time, the Commission estimates that approximately ten banks per year would use the exemption provided by proposed Exchange Act Rule 722(c) for approximately ten accounts per bank for a total of 100 responses annually. The Commission estimates that it will take each bank approximately .25 hour per response. Thus, the Commission estimates the annual reporting and recordkeeping burden for proposed Exchange Act Rule 722 to be 25 hours.

*e. Collection of Information Is Mandatory*

This collection of information would be mandatory.

*f. Confidentiality*

Banks relying on the exemption provided in proposed Exchange Act Rule 722(c) would not be required to provide the documentation required by the proposed rule to the Commission. Rather, banks would be required to make the proper documentation and maintain such documentation in compliance with existing recordkeeping requirements of banking regulators.

[403] 44 U.S.C. 3501, *et seq.*

[404] 44 U.S.C. 3512.

[405] *See* proposed Exchange Act Rule 776(a)(2)(ii)(B) which would require, among other things, that a bank would have to disclose any payments it may receive in connection with transactions effected pursuant to the proposed rule from the fund complex to which the issuer of the securities belongs.

*g. Record Retention Period*

Proposed Exchange Act Rule 722 would not include a record retention requirement. Banks are subject to the record retention requirements promulgated by banking regulators.

3. Proposed Exchange Act Rule 770

*a. Collection of Information*

Proposed Exchange Act Rule 770(a)(2)(ii) would require banks that wish to utilize the exemption provided in this proposed rule to disclose clearly and conspicuously to plan sponsors or their designated fiduciaries all fees and expenses assessed for services provided to the plan and all compensation received or to be received from a fund complex.

*b. Proposed Use of Information*

The purpose of the collection of information in proposed Exchange Act Rule 770 is to provide information to plan sponsors or their designated fiduciaries to enable them to determine that a bank has offset or credited any fees or expenses received from a fund complex related to securities in which plan assets are invested against the fees and expenses that the plan owes to the bank.

*c. Respondents*

The collection of information in proposed Exchange Act Rule 770 would apply to banks that administer employer-sponsored retirement plans that wish to utilize the exemption provided in the proposed rule.

*d. Reporting and Recordkeeping Burden*

Based on the information available to the Commission at this time regarding which banks might utilize the exemption in proposed Exchange Act Rule 770, the Commission estimates that approximately 100 banks would rely on proposed Exchange Act Rule 770 annually, and each bank would provide the notice required by the proposed rule to approximately 100 plan sponsors. Thus, the Commission estimates that there would be approximately 10,000 annual responses for proposed Exchange Act Rule 770. Based on discussions between Commission staff and industry participants, the Commission believes that disclosure requirements of proposed Exchange Act Rule 770 reflect current business practices of banks, and as such, banks utilizing the exemption provided in proposed Exchange Act Rule 770 would already have in place the systems and procedures to make the disclosure required by the proposed Rule. Therefore, the Commission believes that the time required for a bank to comply with the clear and conspicuous notice requirement of the proposed rule would require .10 hour per response. Thus, the Commission estimates the total annual reporting and recordkeeping burden imposed by proposed Exchange Act Rule 770 would be 1,000 hours.

*e. Collection of Information Is Mandatory*

This collection of information would be mandatory.

*f. Confidentiality*

The collection of information delivered pursuant to proposed Exchange Act Rule 770 would be provided by banks to plan sponsors or their designated fiduciaries.

*g. Record Retention Period*

Proposed Exchange Act Rule 770 would not include a record retention requirement. Banks are subject to the record retention requirements promulgated by banking regulators.

4. Request For Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;

(ii) Evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information and provide the Commission with data on proposed Exchange Act Rules 770, 772, and 776;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collections of information on those required to respond, including through the use of automated collection techniques or other forms of information technology.

In addition to the general solicitation of comments above regarding the collections of information contained in the proposed rules, the Commission also solicits comments regarding how many banks would rely on the exemptions provided in proposed Exchange Act Rules 776, 722, and 770, and whether banks relying on such exemptions would be able to use existing systems, programs, and procedures to comply with the collections of information requirements contained in the proposed rules. Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, and refer to File No. S7–26–04. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**. Therefore, comments to OMB are best assured of having full effect if OMB receives them within 30 days of this publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–26–04, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

*C. Consideration of Benefits and Costs*

1. Introduction

Prior to enactment of the GLBA, banks were exempted from the definitions of ''broker'' and ''dealer'' in Sections 3(a)(4) and 3(a)(5) of the Exchange Act, respectively. As a result, notwithstanding the fact that banks may have conducted activities that would have brought them within the scope of the broker or dealer definitions, they were not required by the Exchange Act to register as such.[406] The GLBA replaced banks' historic exemption from the definitions of ''broker'' and ''dealer'' with fifteen functional exceptions. Eleven of these exceptions apply to broker activities and are the subject of this release.[407]

In May 2001, when the Commission adopted the Interim Rules, it analyzed their costs and benefits and noted:

> [w]hile these rules may affect how the banks' restructuring occurs, we believe that most of the restructuring will stem from the statute and not from the rules themselves. Moreover, the extent to which banks need to restructure may be limited by the way they already do business. The majority of banks conduct most of their securities activities through registered broker-dealers that are already regulated by the Commission.[408]

Given that the costs and benefits of the Interim Rules were discussed at the time they were adopted, this discussion will focus on the costs and benefits that could result from the changes the

[406] Exchange Act Release No. 44291, *supra* note 13, 66 FR at 27761.

[407] *See* Exchange Act Section 3(a)(4)(B)(i) ''(xi).

[408] 66 FR at 27790.

Commission is proposing to make through Regulation B.

2. Discussion of Proposed Regulation B

Proposed Regulation B responds to commenters' concerns that the Interim Rules are overly complex, do not provide banks with sufficient flexibility, and would be too costly to implement. The potential benefits and costs of the principal amendments the Commission is proposing are discussed below.

*a. Networking Exception*

Exchange Act Section 3(a)(4)(B)(i) excepts banks from the definition of ''broker'' if they enter into a contractual or other written arrangement with a registered broker-dealer to share revenue when the broker-dealer offers brokerage services to bank customers. This ''networking'' exception is subject to several conditions.

The section also permits banks to motivate unregistered bank employees—such as tellers, loan officers, and private bankers—to refer bank customers to their broker-dealer networking partners, through the payment of nominal referral fees.[409]

Commenters complained that provisions of the Interim Rules defining how these referral fees could be paid would impose unnecessary limits on bank networking arrangements and administrative burdens on banks.[410] As a result, the Commission is proposing to amend these provisions to allow banks to pay referral fees that do not exceed: (1) the referring employee's base hourly rate of pay; (2) $15 plus an adjustment for inflation; or (3) $25 without adjustment for inflation. Moreover, the Commission is proposing to permit banks to pay their employees non-cash referral fees under certain conditions.[411]

The Commission believes that banks will benefit in a number of ways from the proposed amendments. For example, establishing a flat fee or inflation-adjusted fee could benefit the over 8,000 smaller banks—the entities that the Commission anticipates will be most likely to take advantage of this exemption—by permitting them to pay their employees for referrals in a manner that is easy to understand and requires no complicated calculations. In addition, permitting banks to pay referral fees based on an employee's base hourly rate of pay will give banks objective and easily calculable approaches to paying their employees referrals while remaining consistent with the requirements of the GLBA that such fees be ''nominal'' in relation to the overall compensation of the referring employees.

The Commission does not anticipate that the proposed changes to the networking exception rules will impose any material additional costs to banks other than those costs that banks already would incur as a result of the GLBA and the Interim Rules. The proposed amendments discussed above are designed to provide banks flexibility while being consistent with the statutory requirements. We believe that any cost of compliance would not be significant.

We request comments generally on the costs and benefits associated with the proposed changes to the networking exception rules. We also invite banks to provide us with additional information, including data, to assist us in further evaluating the costs and benefits associated with the proposed change to the networking exception. We invite banks to include estimates of their start-up costs for updating their systems, and their annual ongoing costs for complying with the proposed changes discussed above. We invite commenters to provide us with data to assist the Commission in further evaluating these proposed rules. We specifically invite comment regarding the costs associated with proposed Exchange Act Rule 710's alternative measures of nominal referral fee value based on $15 adjusted for inflation, $25 without an adjustment for inflation, and an unregistered employee's hourly rate of pay. We also request comment on any other costs banks would likely need to incur as a result of the proposal, and ask that commenters provide us with data to support their views.

*b. Trust and Fiduciary Activities Exception*

Exchange Act Section 3(a)(4)(B)(ii) permits a bank, under certain conditions, to effect transactions in a trustee or fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for fiduciary principles and standards without registering as a broker. To qualify for the trust and fiduciary activities exception, Exchange Act Section 3(a)(4)(B)(ii) requires that the bank be ''chiefly compensated'' for such transactions on the basis of the types of fees specified in the GLBA.

The Commission believes that the proposed amendments to the Interim Rules dealing with the trust and fiduciary activities exception should provide a number of benefits to banks and their customers without imposing significant costs on either group.[412] Indeed, virtually all of the proposed amendments, discussed above, are in response to commenters' concerns that certain aspects of the Interim Rules are overly costly or burdensome to banks.

The proposed amendments to the ''chiefly compensated'' test and related exemptions should reduce banks' compliance costs and make the trust and fiduciary activities exception more useful. For example, the proposed line-of-business test should provide banks with a less costly approach for determining compliance with the trust and fiduciary activities exception. Similarly, the Commission's proposal to grandfather living, testamentary, and charitable trust accounts opened prior to a certain date should reduce banks' compliance costs by allowing them not to analyze these older accounts. In addition, the proposed exemptions for money market accounts, employee benefit plan accounts, and Regulation S accounts for non-U.S. persons, the benefits and costs of which are discussed below, should provide banks with the option of excluding from the ''chiefly compensated'' analysis compensation a bank receives from these accounts provided the accounts are in lines of business that do not contain other accounts not subject to an exemption. The proposed safe harbors should provide banks with legal certainty with respect to their compliance with the trust and fiduciary activities exception. The Commission also is proposing to amend the small bank custody exemption so that it can be used by qualifying small banks in lieu of complying with the ''chiefly compensated'' condition and the other requirements of the trust and fiduciary activities exception.

Moreover, the Commission is proposing to remove a current requirement in the Interim Rules that banks provide ''continuous and regular'' investment advice to their customers' accounts.[413] This proposed amendment to the definition of ''investment adviser if the bank receives a fee for its investment advice'' could make it easier for banks to determine that they are acting in a fiduciary capacity with respect to those accounts and thereby make it easier for banks to rely on the trust and fiduciary activities exception

[409] Exchange Act Section 3(a)(4)(B)(i)(VI) limits such referral fees to a ''nominal one-time cash fee of a fixed dollar amount'' and requires that the payment of the fees not be contingent on whether the referral results in a transaction.

[410] Exchange Act Rule 3b–17(g)(1) defines the term ''nominal one-time cash fee of a fixed dollar amount.''

[411] *See* proposed Exchange Act Rule 710(b).

[412] The trust and fiduciary exception is addressed in proposed Exchange Act Rules 720–724.

[413] Compare Exchange Act Rule 3b-17(d)(1) with proposed Exchange Act Rule 724(d)(2).

in Exchange Act Section 3(a)(4)(B)(ii).[414] In particular, in the absence of the ''continuous and regular'' requirement, banks would not be required to monitor the frequency with which their employees provide advice to determine whether they are meeting a certain continuity standard. In addition, banks would not be required to impose on their employees arbitrary requirements that they take steps to demonstrate continuity of advice, such as contacting customers, merely to satisfy the ''continuous and regular'' standard.[415]

As the Commission noted in the release adopting the Interim Rules, banks are likely to incur costs to comply with the GLBA, but ''almost all of these costs will be necessary because of the statutory change and not because of the interim final rules.'' [416] The same is true with respect to the proposed amendments to the Interim Rules. None of the amendments discussed above with respect to the trust and fiduciary activities exception imposes additional requirements on banks. Indeed, for the most part, the proposed rules would increase the number of available exemptions.

Although the proposed exemptions to the ''chiefly compensated'' test should reduce banks' costs to comply with the trust and fiduciary activities exception, banks will incur costs in complying with the statutory ''chiefly compensated'' condition. The costs of compliance with the ''chiefly compensated'' condition, however, are already established by the GLBA and, to the extent they are not, they are established by current Exchange Act Rule 3a4–2. As a result, the Commission does not believe that banks would incur additional marginal costs to comply with the liberalized exemptions proposed in Exchange Act Rules 720 through 724.

We solicit comment on the costs and benefits banks expect to incur in complying with the ''chiefly compensated'' condition in the statute. We anticipate that most banks that are subject to the ''chiefly compensated'' condition will utilize the proposed line-of-business exemption, and other exemptions, such as the proposed money market account exemption, if available. To the extent that this is true, we ask that commenters attempt to provide us with data associated with complying with the ''chiefly compensated'' condition after excluding lines of business that are covered by an exemption.

In determining the costs associated with the ''chiefly compensated'' condition, we also seek comment on how banks track revenue from their trust and fiduciary business (*e.g.*, on a line-of-business basis or by type, such as assets under management fees), and whether their systems are able to distinguish revenue from various lines of business, including lines of business covered by an exemption. In addition, we seek comment on how banks track revenue they earn from mutual funds, and whether banks can separate 12b–1 fees between fiduciary and custody accounts and along lines of business in the fiduciary activity accounts.

We also seek comment on whether the ''chiefly compensated'' condition will require banks to track compensation in a manner that they have not done before, and if so, we would like information on the start-up and annual ongoing costs to update systems to track compensation in this manner. We have received preliminary estimates indicating that the costs associated with complying with the ''chiefly compensated'' condition would range from minimal to $100,000. Those banks that estimate the costs to be minimal have indicated that their systems currently are able to track compensation consistent with this condition. Other banks intend to stop receiving Rule 12b–1 fees. Those banks whose cost estimates on the high end of the range contend that their current systems would need to be reprogrammed to track compensation consistent with this condition. We solicit comment on these estimates.

*c. Safekeeping and Custody Exception*

The Interim Rules include two exemptions that permit banks to accept orders from investors for the purchase and sale of securities under limited circumstances in which the bank is acting in a safekeeping or custody capacity. These exemptions, which are in current Exchange Act Rules 3a4–4 and 3a4–5, supplement the ''safekeeping and custody activities'' exception in Exchange Act Section 3(a)(4)(B)(viii).

Current Exchange Act Rule 3a4–4 provides that small banks may effect transactions in investment company securities in customers' tax-deferred custody accounts, provided that the bank meets certain conditions. Current Exchange Act Rule 3a4–5 provides that banks may effect transactions in securities in an account for which the bank acts as custodian under Exchange Act Section 3(a)(4)(B)(viii), if, among other conditions, the bank does not receive any compensation for effecting such transactions.[417]

Commenters criticized both of these exemptions, arguing that the exemptions provide banks with less flexibility to effect securities transactions in a safekeeping or custody capacity than is provided under the GLBA.[418] In response, the Commission has decided both to simplify and expand the exemption in current Exchange Act Rule 3a4–4 (proposed to be redesignated as Exchange Act Rule 761) and to clarify and simplify current Exchange Act Rule 3a4–5 (proposed to be redesignated as Exchange Act Rule 760).

In proposed Exchange Act Rule 761, the Commission is proposing to expand the definition of ''small bank'' from the current $100 million asset limit to a $500 million asset limit, and replace the current three percent annual revenue limit with an annual sales compensation limit of $100,000. The proposed rule would also simplify the solicitation restrictions to permit small banks effecting securities transactions pursuant to this exemption to publicly solicit brokerage business as permitted by the trust and fiduciary activities exception. In addition, it would replace the broad restriction on networking with broker-dealers with a narrower restriction that only prohibits affiliation with broker-dealers. The rule would also permit dual employees and allow small banks to maintain a dedicated sales force. Moreover, the exemption would expand to include all custodial accounts not just tax-deferred accounts, and to permit transactions in all securities rather than just mutual funds. Finally, the proposed amendments would simplify the rule's restriction on payment of incentive compensation to permit banks to pay their employees incentive compensation pursuant to a networking arrangement that meets the conditions of Exchange Act Section 3(a)(4)(B)(i).

The Commission believes that the proposed amendments to the safekeeping and custody exemptions—in particular, the broadening of the exemption in current Exchange Act Rule 3a4–4—would benefit approximately 4,000 additional small banks and thrifts

[414] *See* Exchange Act Section 3(a)(4)(D) which defines ''fiduciary capacity'' for purposes of the trust and fiduciary exception to mean, among other things, ''as an investment adviser if the bank receives a fee for its investment advice.''

[415] From the perspective of the banks' customers, the removal of the ''continuous and regular'' requirement could reduce the number of unwanted contacts they receive from their banks. The removal could also decrease the likelihood that bank employees would make confusing or unnecessary securities recommendations to the banks' customers merely to ensure that the employees are providing ''continuous and regular'' investment advice.

[416] 66 FR at 27793.

[417] Exchange Act Rule 3a4–5(a)(1).

[418] *See, e.g.*, Banking Agencies letter.

by raising the asset limit for this exemption from $100 million to $500 million. As a result, many more banks would be able to rely on this exemption.

To help the Commission better assess the costs and benefits of these proposed amendments to current Exchange Act Rule 3a4–4, we invite comment from small banks. Banks should indicate their the asset size, the approximate number of their custody relationships, and the annual dollar amount of revenue that the bank receives from effecting securities transactions for custodial accounts. Small banks are also invited to estimate their start-up costs and annual ongoing costs to update their systems to track revenue that the bank receives from effecting securities transactions for its custodial accounts.

The other proposed amendments to this exemption, including permitting small banks to enter into networking arrangements with broker-dealers, have dual employees, and to expand the types of accounts and the types of securities that are covered by the exemption—will permit smaller banks to continue to perform many of the same securities activities that they perform today. As a result, up to 85 percent of small banks may not need to make material changes to their current operations, which should lower their overall costs of compliance with the GLBA. We believe that costs of compliance for qualifying small banks will not be significant. We request comment on the costs that will be incurred by qualifying small banks to comply with this proposed amended rule.

The Commission believes that the small bank exemption should provide a very useful exemption to small banks that is not also available to small broker-dealers. This may give small banks a competitive advantage over broker-dealers that might compete with those banks. That being said, the Commission believes that small banks currently provide the services that would be encompassed by proposed Exchange Act Rule 761 and, given its limited scope, should not materially impact the competitive environment between small banks and broker-dealers. Nevertheless, the Commission seeks comment on whether the proposed amendments to the small bank custody exemption as set forth in proposed Exchange Act Rule 761 place small broker-dealers at a competitive disadvantage vis-à-vis small banks. We note, however, that, according to the NASD, there are 5,304 active registered broker-dealers and that 1,284 firms, or 24.21 percent, have annual revenue of $100,000 or less. The Commission requests comment on whether the proposed amendments to the small bank custody exemption would have a cost to small broker-dealers. The Commission is particularly interested in hearing from those active registered broker-dealers that have annual revenue of $100,000 or less and whether the existence of any of the proposed bank exemptions will have a negative impact on competition. Please provide detailed information on exactly how banks and broker-dealers compete and how the particular exemptions would impact broker-dealers' business. We are also interested in the relative cost structure of these small broker-dealers as compared to banks that qualify as ''small'' under the proposed amendments to the small bank custody exemption. In these comments, please provide us with specific information on any differences in costs between banks that could use this exemption and small registered broker-dealers that could have a hidden cost that we should consider in our analysis.

We also request comment from small banks about whether they have affiliated broker-dealers or if they are affiliated with a bank holding company. Those affiliated with a bank holding company should indicate the holding company's approximate consolidated assets. Small banks are also invited to discuss whether they have a networking relationship with a registered broker-dealer, and if so, whether they have dual employees. Those with dual employees should indicate how many.

The Commission also is proposing to amend the general custody exemption, which would be codified in Exchange Act Rule 760, to permit a bank to be compensated for effecting a securities transaction for a person with an existing custody account or for a ''qualified investor'' so long as the compensation that the bank receives for its custody services (*e.g.*, securities movement fees, annual fees, asset based fees, and processing fees) does not directly or indirectly vary based on whether the bank accepts an order to purchase or sell a security. In other words, the proposed amendment would conditionally permit a custodian bank to be compensated for the movement of funds and securities for ''grandfathered'' custody accounts or accounts of ''qualified investors'' when that movement results from the bank's acceptance of a securities order. The proposed exemption also would remove limitations in the Interim Rules that prohibited custody department employees from being compensated for securities-related custody activities, including gathering assets and moving funds and securities, if the bank accepts customer orders.

We solicit comment about the costs and benefits that would be imposed by proposed Exchange Act Rule 760. In particular, we invite commenters to discuss whether banks charge their custody customers when they accept an order to purchase or sell securities, and if so, how. Banks should note whether that charge varies when they accept an order to move funds or securities without purchasing or selling securities. If the charge varies depending on the type of customer, banks should also explain the range of charges and the proportion of customers within each range.

We expect these proposed changes to ease the compliance burden on those banks that qualify for the exemption because they would permit a bank to continue to receive Rule 12b–1 shareholder servicing fees for existing custody accounts as well as for new accounts with qualified investors. While the proposed amendment to the general custody exemption could impose some limited marginal costs on banks to ensure that the compensation they receive is consistent with the exemption, we believe that, on balance, the benefits of the exemption should justify the costs of complying with it. We believe that the costs of compliance for individual banks with respect to individual accounts will not be significant. We solicit comment on the costs that individual banks will incur to comply with this proposed rule on an account basis and we ask that banks tell us how many accounts will be affected by these proposed amendments to the rule.

We solicit comment on the percentage of a bank's customers' orders to move funds and securities that also include orders to purchase or sell a security. We also solicit comment about which segment or type of customers' account for these orders, such as custody IRAs. Banks are also invited to discuss the percentage of the securities transactions they effect for custody accounts that involve the purchase or sale of mutual fund shares. In addition, we request comment on whether banks wanting to use the modified general bank custody exemption would need to code their new accounts (other than those for qualified investors) to distinguish them from old accounts and to identify qualified investors. If so, we also invite estimates of the costs associated with coding new accounts.

*d. Other Proposed Changes*

In addition to those exemptions discussed above, the Commission is

proposing a number of special purpose exemptions. For example, in response to commenters' recommendations that the Commission provide more flexibility with respect to the services banks could offer to customers that utilize money market funds for cash management purposes, we are proposing a new exemption that would, subject to certain conditions, allow a bank (without registering as a broker-dealer) to effect transactions for ''qualified investors,'' trust and fiduciary activity accounts and certain agency accounts. These transactions in money market funds would not be limited to no-load funds or to transactions that are part of a sweeps program.

The proposal should benefit banks by permitting them to offer a cash management service to these customers under an exemption that has few conditions. This proposed exemption should give banks additional flexibility in structuring their business models and in accommodating the needs of their customers when the bank acts as an indenture trustee or escrow agent. Moreover, the proposed exemption should benefit the customers within the scope of the exemption by allowing them to use more financial instruments to meet their cash management needs, including money market funds, which are diversified, highly liquid, and have low transactions costs.

We do not expect banks or investors to incur any costs related to this proposed exemption. We request comment from banks on whether they will incur any costs related to this proposed exemption.

The Commission also is proposing to permit banks that are relying on the trust and fiduciary activities, safekeeping and custody, or certain stock purchase plans exceptions under the GLBA to process transactions in investment company shares through a mutual fund's transfer agent, (in addition to using a broker-dealer or Fund/SERV, which the Interim Rules currently permit), provided the banks meet certain conditions.[419] We do not expect banks to incur any costs from complying with this proposed exemption. We invite comment from banks on whether they will incur any costs related to the proposed amendments to this exemption.

The Commission is proposing a new exemption for bank trustees and non-fiduciary administrators that effect transactions in securities of open-end investment companies for participants in employee benefit plans. This proposed exemption would allow a bank to accept compensation from a fund complex as long as the bank offsets or credits any such compensation against fees and expenses that the plan owes to the bank. Since banks have advised the Commission staff that they offset or credit any compensation received from mutual funds against plan expenses, there should be no cost to banks from utilizing this proposed new exemption. We request comment on whether any banks will incur any costs as a result of this exemption. We invite any bank that believes it will incur costs as a result of this proposed exemption specifically to delineate the nature of the costs that the bank will incur.

The Commission also is proposing a new exemption that would permit banks to effect transactions pursuant to Regulation S with non-U.S. persons. We do not expect banks to incur any significant costs in connection with utilizing this proposed exemption. We request comment on whether banks will incur any costs related to this proposed exemption. The Commission is proposing to extend the cash management exemption and the exemptions from the definition of ''chiefly compensated'' relating to trust and fiduciary activity accounts to savings banks and savings and loan associations, and to extend certain GLBA bank exceptions to credit unions.[420] We do not expect savings associations, savings banks, or credit unions to incur any costs as a result of the proposed amendments to the exemptions and proposed new exemptions. We invite comment on any costs that these entities may incur related to these proposed changes. The Commission also is proposing to extend the exemption from rescission liability under Exchange Act Section 29 to contracts entered into by banks acting in a broker capacity until a date that would be 18 months after the effective date of the proposed amendments to the Interim Rules.[421] We do not expect banks to incur any costs due to the proposed amendments to this exemption. We request comment on any costs banks may incur.

The Commission believes these proposed changes could offer a number of benefits to banks, credit unions, and to their respective customers. In particular, extending the Fund/SERV exemption to mutual fund purchases and redemptions directed to the fund's transfer agent would give banks more flexibility in processing their customers' mutual fund transactions without losing a broker registration exemption.

Moreover, the proposed Regulation S exemption could help to ensure that U.S. banks that effect transactions in Regulation S securities with non-U.S. customers will be more competitive with foreign banks that offer those services. In addition, the proposed credit union exemptions should help to level the competitive playing field between banks, savings banks, savings and loan associations, and credit unions while remaining consistent with the principles of the Exchange Act. Finally, the proposed extension of the exemption from rescission liability under Exchange Act Section 29 should provide banks some legal certainty for a reasonable period of time while they become accustomed to the proposed amendments to the Interim Rules.

We estimate that the costs of the proposed exemptions would be minimal and would be justified by the benefits. For example, the Regulation S exemption could impose certain costs on banks to ensure that they remain in compliance with the conditions under the exemption. In particular, the proposed exemption would require banks to expend certain administrative costs to ensure that the proposed exemption is used only for ''eligible securities'' and for a purchaser who is outside of the U.S. within the meaning of section 903 of Regulation S. Nevertheless, the proposed exemption is an accommodation to banks that wish to effect transactions in Regulation S securities and, as a result, the compliance costs will only be imposed on those banks that believe that it is in their best business interests to take advantage of the proposed exemption. The same is true with respect to the proposed cash management exemption and the proposed exemption for credit unions. Given that Exchange Act Section 29 is rarely used as a remedy, the Commission does not anticipate that this proposed exemption will impose any costs on the industry or on investors. We request comment on whether any bank will incur any costs or will benefit as a result of this proposed exemption. Please provide any

[419] Exchange Act Section 3(a)(4)(C) requires a bank to execute through a registered broker-dealer (or internally cross) transactions executed in the United States in securities that are publicly traded in the United States that are effected pursuant to either the trust and fiduciary activities exception, the safekeeping and custody exception, or certain stock purchase plans exception. 15 U.S.C. 78c(a)(4)(B)(ii), (iv), and (viii). Current Exchange Act Rule 3a4–6 exempts from this requirement banks that process transactions in investment company securities through NSCC's Mutual Fund Services, including Fund/SERV.

[420] *See* proposed Exchange Act Rules 771 and 774, respectively.

[421] *See* proposed Exchange Act Rule 780.

supporting data with respect to such costs or benefits.

*D. Consideration of Burden on Competition, and on Promotion of Efficiency, Competition, and Capital Formation*

Exchange Act Section 3(f) requires the Commission, whenever it engages in rulemaking, to consider or determine if an action is necessary or appropriate in the public interest, and to consider whether the action will promote efficiency, competition, and capital formation.[422] Exchange Act Section 23(a)(2) requires the Commission, in adopting rules under that Act, to consider the impact that any such rule would have on competition. This section also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[423]

The Commission has considered the proposed amendments to the Interim Rules in light of these standards and preliminarily believes that they will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Indeed, the Commission believes that by providing legal certainty to banks that conduct securities activities, by clarifying the GLBA requirements, and by exempting a number of activities from those requirements, the proposed amendments should allow banks to continue to conduct many of the securities activities they already conduct consistent with the GLBA. As a result, the Commission believes that the proposed amendments will permit banks to continue to compete with broker-dealers in providing a wide range of securities activities, which should preserve competition and help to keep transaction costs low for investors and for companies. We note, however, that, according to the NASD, there are 5,304 active registered broker-dealers and that 1,284 firms, or 24.21 percent, have annual revenue of $100,000 or less. The Commission requests comment on whether the proposed amendments would promote efficiency, competition, and capital formation. The Commission is particularly interested in hearing from those active registered broker-dealers that have annual revenue of $100,000 or less and whether the existence of any of the proposed bank exemptions will have a negative impact on competition. Please provide detailed information and data on exactly how banks and broker-dealers compete and how the particular exemptions would impact broker-dealers' business.

*E. Consideration of Impact on the Economy*

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[424] the Commission must advise the Office of Management and Budget as to whether the proposed amendments to the Interim Rules constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease);

A major increase in costs or prices for consumers or individual industries; or

A significant adverse effect on competition, investment, or innovation.

If a rule is ''major,'' its effectiveness will generally be delayed for 60 days pending Congressional review. We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

*F. Initial Regulatory Flexibility Analysis*

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA''), in accordance with the provisions of the Regulatory Flexibility Act (''RFA''),[425] regarding the proposed amendments to the Interim Rules.

1. Reasons for the Proposed Action

The Commission is proposing the amendments to the Interim Rules to respond to a number of concerns commenters raised about the Interim Rules and generally to make the guidance and exemptions provided in those rules more useful to the industry while preserving the investor protection principles of the GLBA.

2. Objectives

The proposed amendments are intended to improve the usefulness and clarity of the principles addressed by the Interim Rules. The Commission intends for the proposed amendments to the Interim Rules to provide legal certainty to the industry with respect to the GLBA requirements. The Commission also seeks to make the restrictions imposed by the GLBA more accommodating of current securities activities carried out by banks while preserving investor protection principles.

3. Legal Basis

Pursuant to the Exchange Act and, particularly, Sections 3, 23(a), and 36 thereof, the Commission proposes to adopt amendments to the Interim Rules.

4. Small Entities Subject to the Rule

Congress did not exempt small entity banks from the application of the GLBA. Moreover, because the Interim Rules are intended to provide guidance to all banks that are subject to the GBLA, the Commission determined that it would not be appropriate to exempt small entity banks from the operation of those Rules. Therefore, the Interim Rules generally applied to banks that would be considered small entities.

Nevertheless, in adopting the Interim Rules, the Commission recognized that small banks' customers often use banks to effect transactions in IRAs. To allow small banks to continue to offer this service, the Commission adopted Exchange Act Rule 3a4–4 (which we are proposing to amend and redesignate as Exchange Act Rule 761), which provides a limited exemption from broker-dealer registration for small banks that effect transactions in investment company securities in tax-deferred accounts.[426]

In response to comments that the scope of this exemption is too limited to be useful to small banks and their customers, as discussed above, the Commission is proposing to expand the small bank exemption. A proposed amendment to this rule would raise the limit on this exemption from $100 million to $500 million in assets. The proposed amount could greatly expand the number of banks that qualify for the exemption.[427] The Commission seeks comment on the number of banks that would qualify for the small bank custody exemption.

Moreover, the proposed amendment would expand the scope of the exemption to increase the types of securities that could be bought or sold under the exemption and the types of accounts. It would also permit a small bank to use a dedicated bank sales force

[422] 15 U.S.C. 78c(f).

[423] 15 U.S.C. 78w(a)(2).

[424] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[425] 5 U.S.C. 603.

[426] 66 FR at 27781.

[427] A $500 million asset limit could greatly expand the availability of this exemption from broker registration, increasing the number of eligible entities from over 4,000 FDIC-insured banks and thrifts, or approximately 48 percent of all such entities, to over 8,000 FDIC-insured banks and thrifts, or almost 88 percent of all such entities. Given that some of these entities may be affiliated with larger holding companies or may be affiliated with registered broker-dealers, however, some of these entities presumably would not meet the proposed definition of small bank. *See* proposed Exchange Act Rules 761(a) and 762(h).

to effect transactions in securities that may consist of either unregistered personnel or registered representatives employed by both a broker-dealer and the small bank seeking to qualify for the exemption.

5. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would not impose any new reporting, recordkeeping, or other compliance requirements on banks that are small entities.

6. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed amendments.

7. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[428] the Commission must consider the following types of alternatives: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the proposed rule, or any part thereof, for small entities.

As discussed above, the GLBA does not exempt small banks from the Exchange Act broker-dealer registration requirements, and the Commission does not believe that an unconditional exemption would be consistent with the investor protection principles of the GLBA. Moreover, such an exemption could place broker-dealers at a competitive disadvantage versus small banks.

The proposed amendments to the Interim Rules (which would be codified in Regulation B) are intended to clarify and simplify compliance with the GLBA by expanding exemptions in the Interim Rules and by adding additional exemptions. As such, the proposed amendments should ease compliance on banks of all sizes, including smaller entities.

The Commission does not believe that it is necessary to consider whether small entities should be permitted to use performance rather than design standards to comply with the proposed amendments because they already propose performance standards and do not dictate for entities of any size any particular design standards (*e.g.*, technology) that must be employed to achieve the objectives of the proposed amendments.

Nevertheless, as discussed above, the Commission is proposing to expand the exemption for small banks in current Exchange Act Rule 3a4–4 (which we are proposing to redesignate as Exchange Act Rule 761) by increasing the asset limit from $100 million to $500 million, as well as expanding the types of securities included under the exemption. These proposed changes should further ease the compliance burden on those small banks that qualify for the exemption.

8. Request for Comments

The Commission encourages written comments on matters discussed in the IRFA. In particular, the Commission requests comments on (a) the number of small entities that would be affected by the proposed amendments; (b) the nature of any impact the proposed amendments would have on small entities and empirical data supporting the extent of the impact; and (c) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the proposed amendments. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rule is adopted, and will be placed in the same public file as comments on the proposed rule itself. Persons wishing to submit written comments should refer to the instructions for submitting comments in the front of this release.

## V. Statutory Authority

Pursuant to authority set forth in the Exchange Act and particularly Sections 3(b), 15, 23(a), and 36 thereof (15 U.S.C. 78c(b), 78o, 78w(a), and 78mm, respectively) the Commission proposes to (1) amend current Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, 15a–8, and 15a–9 (§§ 240.3a4–2, 240.3a4–3, 240.3a4–4, 240.3a4–5, 240.3a4–6, 240.15a–8, and 240.15a–9, respectively) and redesignate them as Rules 721, 723, 761, 760, 775, 780, and 773 (§§ 242.721, 242.723, 242.761, 242.760, 242.775, 242.780, and 242.773, respectively) (2) amend Exchange Act Rule 15a–6 (§ 240.15a–6); (3) repeal Rule 3b–17 (§ 240.3b–17); and redesignate Exchange Act Rules 15a–10, and 15a–11 as 15a–7 (§ 240.15a–7), and 772 (§ 242.772).

## VI. Text of Proposed Rules and Rule Amendments

### List of Subjects

*17 CFR Part 240*

Broker-dealers, Reporting and recordkeeping requirements, Securities.

*17 CFR Part 242*

Banks, banking, Brokers, Broker-dealers, Credit unions, Savings associations, Securities.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

### §§ 240.3a4–2 through 240.3a4–6 [Removed]

2. Sections 240.3a4–2 through 240.3a4–6 are removed.

* * * * *

### § 240.3b–17 [Removed and Reserved]

3. Section 240.3b–17 is removed and reserved.

* * * * *

4. Section 240.15a–6 is amended by revising paragraph (a)(4)(i) to read as follows:

### § 240.15a–6 Exemption of certain foreign brokers or dealers.

(a) * * *

(4) * * *

(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting pursuant to an exception or exemption from the definition of ''broker'' or ''dealer'' in sections 3(a)(4)(B) or 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(4)(B) or 15 U.S.C. 78c(a)(5)(C)).

* * * * *

### §§ 240.15a–7 through 240.15a–9 [Removed]

5. Sections 240.15a–7 through 240.15a–9 are removed.

### § 240.15a–10 [Redesignated]

6–7. Section 240.15a–10 is redesignated as § 240.15a–7.

[428] 5 U.S.C. 603(c).

## PART 242—REGULATIONS M, ATS, AC AND B AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

8. The part heading for part 242 is revised as set forth above.

9. The authority citation for Part 242 is revised to read as follows:

**Authority:** 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l*, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

10. Part 242 is amended by adding Regulation B, §§ 242.710 through 242.781, to read as follows:

**Regulation B—Securities Activities of Banks and Other Financial Institutions**

**Subpart A—Networking Exception: Defined Terms**

Sec.

242.710 Defined terms relating to the networking exception from the definition of ''broker.''

**Subpart B—Trust and Fiduciary Activities Exception: Exemptions and Defined Terms**

242.720 Exemption from the ''chiefly compensated'' condition for banks with existing personal trust accounts.
242.721 Exemption for banks from determining whether they are ''chiefly compensated'' on a line of business.
242.722 Exemption for banks from determining whether they are ''chiefly compensated'' on an account-by-account basis.
242.723 Exemption from the definition of ''broker'' for banks effecting transactions as an indenture trustee in a no-load money market fund.
242.724 Defined terms relating to the trust and fiduciary activities exception from the definition of ''broker.''

**Subpart C—[Reserved]**

**Subpart D—Sweep Accounts Exception: Defined Terms**

242.740 Defined terms relating to the sweep accounts exception from the definition of ''broker.''

**Subpart E—Affiliate Transactions Exception: Defined Terms**

242.750 Defined terms relating to the affiliate transactions exception from the definition of ''broker.''

**Subpart F—Safekeeping and Custody Activities Exception: Exemptions**

242.760 Exemption from the definition of ''broker'' for banks effecting transactions in securities in a custody account.
242.761 Exemption from the definition of ''broker'' for small banks effecting securities transactions in a custody account.
242.762 Defined terms relating to the safekeeping and custody activities exception from the definition of ''broker.''

**Subpart G—Special Purpose Exemptions**

242.770 Exemption from the definition of ''broker'' for banks effecting transactions in securities in certain employee benefit plans.
242.771 Exemption from the definitions of ''broker'' and ''dealer'' for banks effecting transactions in securities issued pursuant to Regulation S.
242.772 [Reserved]
242.773 Exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks.
242.774 Exemption from the definitions of ''broker'' and ''dealer'' for credit unions.
242.775 Exemption from the definition of ''broker'' for the way banks effect excepted or exempted transactions in investment company securities.
242.776 Exemption for banks effecting transactions for certain investors in money market funds.

**Subpart H—Temporary Exemptions**

242.780 Exemption for banks from liability under section 29 of the Securities Exchange Act of 1934.
242.781 Exemption from the definition of ''broker'' for banks for a limited period of time.

## Regulation B—Securities Activities of Banks and Other Financial Institutions

## Subpart A—Networking Exception: Defined Terms

### § 242.710 Defined terms relating to the networking exception from the definition of ''broker.''

When used with respect to the Third Party Brokerage Arrangements (''Networking'') Exception from the definition of the term ''broker'' in section 3(a)(4)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(i)), the following terms shall have the meaning provided:

(a) *Contingent on whether the referral results in a transaction* means contingent on any factor related to whether the referral results in a securities transaction, including whether it is likely to result in a transaction, whether it results in a particular type of transaction, or whether it results in multiple transactions, *provided, however,* that a referral fee may be contingent on whether a customer:

(1) Contacts or keeps an appointment with a registered broker or dealer as a result of the referral; or

(2) Has assets, a net worth, or income meeting any minimum requirement that the registered broker or dealer, or the bank, may have established generally for referrals for securities brokerage accounts.

(b) *Nominal one-time cash fee of a fixed dollar amount* means a payment:

(1) Having a value that does not exceed the greater of:

(i) The employee's base hourly rate of pay;

(ii) Twenty five dollars; or

(iii) A dollar amount that does not exceed the whole dollar amount nearest to fifteen dollars in 1999 dollars adjusted by the cumulative annual percentage change in the Consumer Price Index All Urban Consumers—(CPI–U) published by the Department of Labor that was reported on June 1 of the preceding year;

(2) Paid to a bank employee no more than one time for each customer referred by that employee;

(3) That, to the extent any portion of the fee is paid other than in cash:

(i) Is paid in units of value with a readily ascertainable cash equivalent;

(ii) Has, together with any portion of the fee paid in cash, a total cash value that meets the conditions of paragraph (b)(1) of this section; and

(iii) Is paid under an incentive program that covers a broad range of products and that is designed primarily to reward activities unrelated to securities; and

(4) Having a set value that a particular employee making a referral would receive for any referral to a registered broker or dealer, and that does not vary based on factors such as the financial status of a customer the employee refers, the identity of the registered broker or dealer to which the customer is referred, the number of referrals the employee makes, or whether the customer expresses an interest in a particular type of securities product.

(c) *Referral* means the action taken by a bank employee to direct a customer of the bank to a registered broker or dealer for the purchase or sale of securities for the customer's account.

## Subpart B—Trust and Fiduciary Activities Exception: Exemptions and Defined Terms

### § 242.720 Exemption from the ''chiefly compensated'' condition for banks with existing living, testamentary, or charitable trust accounts.

(a) A bank relying on the exception from the definition of the term ''broker'' under section 3(a)(4)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)) is exempt from meeting the ''chiefly compensated'' condition in section 3(a)(4)(B)(ii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)(I)) to the extent that it effects transactions in securities for a living, testamentary, or charitable trust account opened, or established before July 30, 2004, in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Securities

Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)), if the bank:

(1) Meets the other conditions for the exception from the definition of the term ''broker'' under sections 3(a)(4)(B)(ii) and 3(a)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii) and 15 U.S.C. 78c(a)(4)(C)); and

(2) Does not individually negotiate with the accountholder or beneficiary of such account to increase the proportion of sales compensation as compared to relationship compensation after July 30, 2004.

(b) For purposes of this section, a testamentary trust may be deemed to be established as of the date of the will that directed that the trust be established.

**§ 242.721 Exemption for banks from determining whether they are ''chiefly compensated'' on a line of business basis.**

(a) A bank relying on the exception from the definition of the term ''broker'' under section 3(a)(4)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)) is exempt from meeting the ''chiefly compensated'' condition in section 3(a)(4)(B)(ii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)(I)) to the extent that it effects transactions in securities for any account in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)) in any year in which the bank:

(1) Meets the other conditions for the exception from the definition of the term ''broker'' under sections 3(a)(4)(B)(ii) and 3(a)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii) and 15 U.S.C. 78c(a)(4)(C));

(2) Can demonstrate that during the preceding year its ratio of sales compensation to relationship compensation was no more than one to nine;

(3) Maintains procedures reasonably designed to ensure that, before opening or establishing an account for which it will act in a trustee or fiduciary capacity, the bank reviews the account to ensure that the bank is likely to receive more relationship compensation than sales compensation with respect to that account; and

(4) Maintains procedures reasonably designed to ensure that, after opening or establishing an account for which it will act in a trustee or fiduciary capacity, at such time as the bank individually negotiates with the accountholder or beneficiary of that account to increase the proportion of sales compensation as compared to relationship compensation, the bank reviews the account to ensure that the bank is likely to receive more relationship compensation than sales compensation with respect to that account.

(b) A bank that fails to meet the ratio requirement in paragraph (a)(2) of this section may nonetheless continue to rely on the exemption in paragraph (a) of this section for one year if it:

(1) Meets the other requirements in paragraph (a) of this section;

(2) Can demonstrate that during the preceding year its ratio of sales compensation to relationship compensation was no more than one to seven; and

(3) Did not rely on the safe harbor in paragraph (b) of this section during any of the five preceding years.

(c) A bank may use this section for all accounts for which the bank acts in a trustee or fiduciary capacity on a bank-wide basis, or a bank may use this section for one or more individual lines of business provided that the sales compensation and relationship compensation from all accounts for which the bank acts in a trustee or fiduciary capacity, or all accounts established before a single date certain for which the bank acts in a trustee or fiduciary capacity, within a particular line of business is used to determine whether the bank meets the requirement in paragraph (a)(2) or (b)(2) of this section.

**§ 242.722 Exemption for banks from determining whether they are ''chiefly compensated'' on an account-by-account basis.**

(a) A bank relying on the exception from the definition of the term ''broker'' under section 3(a)(4)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)) is exempt from meeting the ''chiefly compensated'' condition in section 3(a)(4)(B)(ii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)(I)) to the extent that it effects transactions in securities for an account in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)) in any year in which the bank:

(1) Meets the other conditions for the exception from the definition of the term ''broker'' under sections 3(a)(4)(B)(ii) and 3(a)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii) and 15 U.S.C. 78c(a)(4)(C));

(2) Can demonstrate that it met the ''chiefly compensated'' condition with respect to such account during the preceding year;

(3) Maintains procedures reasonably designed to ensure that, before opening or establishing an account for which it will act in a trustee or fiduciary capacity, the bank reviews the account to ensure that the bank is likely to receive more relationship compensation than sales compensation with respect to that account; and

(4) Maintains procedures reasonably designed to ensure that, after opening or establishing an account for which it will act in a trustee or fiduciary capacity, at such time as the bank individually negotiates with the accountholder or beneficiary of that account to increase the proportion of sales compensation as compared to relationship compensation, the bank reviews the account to ensure that the bank is likely to receive more relationship compensation than sales compensation with respect to that account.

(b) Except as provided in paragraph (d) of this section, a bank that fails to meet the requirement in paragraph (a)(2) of this section with respect to an account may nonetheless continue to rely on the exemption in paragraph (a) of this section with respect to such account for one year if it:

(1) Meets the other requirements in paragraph (a) of this section; and

(2) Did not rely on the safe harbor in paragraph (b) of this section with respect to such account during any of the five preceding years.

(c) Except as provided in paragraph (d) of this section, a bank that fails to meet the requirements in paragraphs (a)(2) and (b)(2) of this section with respect to an account may nonetheless continue to rely on the exemption in paragraph (b) of this section with respect to such account if it:

(1) Meets the other requirements in paragraph (a) of this section;

(2) Has documented the reason that such account continued not to meet the ''chiefly compensated'' condition and linked that reason to its exercise of fiduciary responsibility; and

(3) Has no more than the lesser of 500 or one percent of the total number of accounts for which it acts in a trustee or fiduciary capacity that did not meet the requirement in paragraph (b)(2) of this section.

(d) A bank may not rely on the safe harbors in paragraphs (b) and (c) of this section if more than ten percent of the total number of accounts for which it acts in a trustee or fiduciary capacity did not meet the ''chiefly compensated'' condition.

**§ 242.723 Exemption from the definition of ''broker'' for banks effecting transactions as an indenture trustee in a no-load money market fund.**

A bank that meets the conditions for the exception from the definition of the

term ''broker'' under section 3(a)(4)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)), except for the ''chiefly compensated'' condition in section 3(a)(4)(B)(ii)(I) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)(I)), is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) to the extent that it effects transactions as an indenture trustee in a no-load money market fund.

**§ 242.724 Defined terms relating to the trust and fiduciary activities exception from the definition of ''broker.''**

For purposes of this subpart and sections 3(a)(4)(B)(ii) and 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii) and 15 U.S.C. 78c(a)(4)(D)), the following terms shall have the meaning provided:

(a) *Chiefly compensated* means that during the preceding year, the bank received more relationship compensation than sales compensation from an account for which the bank acts in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)).

(b) *Flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers* means a fee that is no more than the amount a broker-dealer charged an account for which the bank acts in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)) for executing the transaction, plus the direct marginal cost of any resources of the bank that are used for transaction execution, comparison, or settlement for accounts for which the bank acts in a trustee or fiduciary capacity if the bank makes a precise and verifiable allocation of these resources according to their use.

(c) *Indenture trustee* means any trustee for an indenture to which the definition in section 303 of the Trust Indenture Act of 1939 (15 U.S.C. 77ccc) applies, and any trustee for an indenture to which the definition in section 303 of that Act would apply but for an exemption from qualification pursuant to section 304 of that Act.

(d) *Investment adviser if the bank receives a fee for its investment advice* in section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)) means a bank that has a fiduciary relationship with the advised customer in which the bank:

(1) Owes the customer duty of loyalty, including an affirmative duty to make full and fair disclosure of all material facts and conflicts of interest; and

(2) Has an ongoing responsibility to provide investment advice based upon the customer's individual needs that includes selecting or making recommendations regarding specific securities and, if the customer accepts such selections or recommendations, a responsibility to direct the purchases or sales to a registered broker or dealer for execution.

(e) *Line of business* means an identifiable department, unit, or division of a bank organized and operated on an ongoing basis for business reasons with similar types of accounts and for which the bank acts in a similar type of fiduciary capacity as listed in section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)).

(f) *Money market fund* has the same meaning as in § 242.740.

(g) *No-load* has the same meaning as in § 242.740.

(h) *Relationship compensation* means any compensation a bank receives directly from a customer or beneficiary, or directly from the assets of an account for which the bank acts in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)), that consists solely of:

(1) An administration or annual fee (payable on a monthly, quarterly, or other basis);

(2) A fee based on a percentage of assets under management;

(3) A flat or capped per order processing fee equal to not more than the cost incurred by the bank in connection with executing securities transactions for trustee and fiduciary customers; or

(4) Any combination of such fees.

(i) *Sales compensation* means any compensation a bank receives in connection with activities for which it relies on an exception under section 3(a)(4)(B)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)) that is:

(1) A fee for effecting a securities transaction that exceeds the fee defined in paragraph (b) of this section;

(2) Compensation that if paid to a broker or dealer would be payment for order flow, as defined in 17 CFR 240.10b-10;

(3) A finders' fee received in connection with a securities transaction or account, except a fee received pursuant to section 3(a)(4)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(i));

(4) A fee paid for an offering of securities that the bank does not receive directly from a customer or beneficiary, or directly from the assets of an account for which the bank acts in a trustee or fiduciary capacity, which fee may be allocated to each account by dividing the number of shares of each class of an investment company's securities (or class of a series of an investment company's securities) held in each account on the last business day of the preceding year by the aggregate number of shares of the same class held by the bank in a trustee or fiduciary capacity on the same day, and multiplying the resulting number by the aggregate dollar amount of these fees the bank received in connection with that class during the preceding year, or by using another method of allocation that fairly and consistently measures the amount of sales compensation attributable to each account during the preceding year;

(5) A fee paid pursuant to a plan under 17 CFR 270.12b–1, which fee may be calculated for each account by multiplying the number of shares of each class of a registered investment company's securities (or class of a series of an investment company's securities) held in each account on the last business day of the preceding year by the net asset value per share for that class of securities for such day by the annual Rule 12b–1 fee rate applicable to that class of securities, or by using another method of allocation that fairly and consistently measures the amount of sales compensation attributable to each account during the preceding year; or

(6) A fee paid by an investment company, other than pursuant to a plan under 17 CFR 270.12b–1, for personal service or the maintenance of shareholder accounts, which fee may be allocated to each account by dividing the number of shares of each class of an investment company's securities (or class of a series of an investment company's securities) held in each account on the last business day of the preceding year by the aggregate number of shares of the same class held by the bank in a trustee or fiduciary capacity on the same day, and multiplying the resulting number by the aggregate dollar amount of these fees the bank received in connection with that class during the preceding year, or by using another method of allocation that fairly and consistently measures the amount of sales compensation attributable to each account during the preceding year. For purposes of this section, charges for the following will not be considered charges for personal service or for the maintenance of shareholder accounts:

(i) Providing transfer agent or sub-transfer agent services for beneficial owners of investment company shares;

(ii) Aggregating and processing purchase and redemption orders for investment company shares;

(iii) Providing beneficial owners with account statements showing their purchases, sales, and positions in the investment company;

(iv) Processing dividend payments for the investment company;

(v) Providing sub-accounting services to the investment company for shares held beneficially;

(vi) Forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses; or

(vii) Receiving, tabulating, and transmitting proxies executed by beneficial owners of investment company shares.

(j) *Year* means a calendar year or other fiscal year consistently used by the bank for recordkeeping and reporting purposes.

## Subpart C—[Reserved]

## Subpart D—Sweep Accounts Exception: Defined Terms

### § 242.740 Defined terms relating to the sweep accounts exception from the definition of ''broker.''

For purposes of section 3(a)(4)(B)(v) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(v)), the following terms shall have the meaning provided:

(a) *Deferred sales load* has the same meaning as in 17 CFR 270.6c–10.

(b) *Money market fund* means an open-end company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that is regulated as a money market fund pursuant to 17 CFR 270.2a–7.

(c)(1) *No-load,* in the context of an investment company or the securities issued by an investment company, means, for securities of the class or series in which a bank effects transactions, that:

(i) That class or series is not subject to a sales load or a deferred sales load; and

(ii) Total charges against net assets of that class or series of the investment company's securities for sales or sales promotion expenses, for personal service, or for the maintenance of shareholder accounts do not exceed 0.25 of 1% of average net assets annually and are disclosed in the investment company's prospectus.

(2) For purposes of this definition, charges for the following will not be considered charges against net assets of a class or series of an investment company's securities for sales or sales promotion expenses, for personal service, or for the maintenance of shareholder accounts:

(i) Providing transfer agent or sub-transfer agent services for beneficial owners of investment company shares;

(ii) Aggregating and processing purchase and redemption orders for investment company shares;

(iii) Providing beneficial owners with account statements showing their purchases, sales, and positions in the investment company;

(iv) Processing dividend payments for the investment company;

(v) Providing sub-accounting services to the investment company for shares held beneficially;

(vi) Forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses; or

(vii) Receiving, tabulating, and transmitting proxies executed by beneficial owners of investment company shares.

(d) *Open-end company* has the same meaning as in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)).

(e) *Sales load* has the same meaning as in section 2(a)(35) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(35)).

## Subpart E—Affiliate Transactions Exception: Defined Terms

### § 242.750 Defined terms relating to the affiliate transactions exception from the definition of ''broker.''

For purposes of section 3(a)(4)(B)(vi) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(vi)), the term *effects transactions for the account of any affiliate* means effecting a securities transaction as agent for an affiliate of the bank as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k)), provided that:

(a) The affiliate is:

(1) Acting as a principal; or

(2) Acting as a trustee or fiduciary purchasing or selling for investment purposes; and

(b) The affiliate is not:

(1) Acting as a riskless principal for another person;

(2) Registered as a broker or dealer; or

(3) Engaged in merchant banking as described in section 4(k)(4)(H) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)(4)(H)); and

(c) The bank obtains the security or securities to complete the transaction from a registered broker or dealer, from a person that is acting in the capacity of a broker or dealer that is not required to register as such, or pursuant to another exception or exemption from section 3(a)(4)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)).

## Subpart F—Safekeeping and Custody Activities Exception: Exemptions

### § 242.760 Exemption from the definition of ''broker'' for banks effecting transactions in securities in a custody account.

(a) A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) to the extent that it accepts orders to effect transactions in securities in an account for which the bank acts as a custodian under section 3(a)(4)(B)(viii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(viii) for a person with an account that was opened before July 30, 2004, or for a qualified investor if:

(1) The bank can demonstrate that it does not charge for or receive any compensation for effecting such transactions that directly or indirectly varies based on whether the bank accepts an order to purchase or sell a security other than:

(i) A fee paid pursuant to a plan under 17 CFR 270.12b–1; or

(ii) A fee paid by a registered investment company, other than pursuant to a plan under 17 CFR 270.12b–1, for personal service or the maintenance of shareholder accounts;

(2) Any bank employee effecting such transactions does not receive compensation from the bank, the executing broker or dealer, or any other person related to the size, value, or completion of any securities transaction effected pursuant to this exemption;

(3) The bank does not directly or indirectly solicit such securities transactions except through responding to inquiries of a potential purchaser in a communication initiated by the potential purchaser of the security; *provided, however,* that the content of such responses is limited to:

(A) Information contained in a registration statement for the security filed under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); and

(B) Sales literature prepared by the principal underwriter that is a registered broker or dealer or prepared by a registered investment company that is not an affiliated person of the bank;

(4) The bank does not effect securities transactions in reliance on this section for an account for which the bank acts in a trustee or fiduciary capacity within

the scope of section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D));

(5) The bank does not effect securities transactions in reliance on this section for an account described in § 242.770(a)(1);

(6) The bank does not effect transactions in reliance on § 242.761;

(7) The bank complies with section 3(a)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(C)); and

(8) If the bank accepts an order to effect transactions in securities of a registered investment company for compensation as described in paragraph (a)(1)(i) or (a)(1)(ii) of this section, the bank does so on the same terms for any class or series of securities of such registered investment company that can reasonably be obtained by the bank for purchase or sale by bank customers.

(b) A bank may demonstrate that it does not receive compensation for effecting securities transactions that varies based on whether the bank accepts an order to purchase or sell a security by:

(1) Utilizing fee schedules that specify charges for the movement of funds and securities; and

(2) Identifying similarly situated customers who pay the same price for such movements and who do not utilize the bank or its affiliates to effect securities transactions.

(c) For purposes of this section, the term *qualified investor* has the same meaning as in section 3(a)(54)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(54)(A)).

**§ 242.761 Exemption from the definition of ''broker'' for small banks effecting securities transactions in a custody account.**

A small bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) to the extent that it accepts orders to effect transactions in securities in an account for which the bank acts as custodian under section 3(a)(4)(B)(viii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(viii)) if:

(a) The bank is not a person associated with a broker or dealer;

(b) The bank does not publicly solicit such securities transactions except by soliciting brokerage business as permitted under section 3(a)(4)(B)(ii)(II) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(ii)(II));

(c) The annual sales compensation the bank receives for effecting transactions in securities pursuant to this exemption does not exceed $100,000 in 2004 dollars adjusted by the cumulative annual percentage change in the Consumer Price Index All Urban Consumers—(CPI–U) published by the Department of Labor that was reported on June 1 of the preceding year;

(d) The bank does not effect securities transactions in reliance on this section for an account for which the bank acts in a capacity described in section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)) unless it does not rely on any exemption under § 242.720, § 242.721, or § 242.722 in the year following the year in which this exemption is utilized in connection with such an account;

(e) The bank does not pay its employees any incentive compensation related to any brokerage transaction effected under this section except pursuant to a networking arrangement that meets the conditions of section 3(a)(4)(B)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(i)); and

(f) The bank complies with section 3(a)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(C)).

**§ 242.762 Defined terms relating to the safekeeping and custody activities exception from the definition of ''broker.''**

For purposes of this subpart, the following terms shall have the meaning provided:

(a) *Account for which the bank acts as a custodian* means an account established by a written agreement between the bank and the customer, which at a minimum provides for the terms that will govern the fees payable, rights, and obligations of the bank regarding:

(1)(i) Safekeeping of securities;

(ii) Settling trades;

(iii) Investing cash balances as directed;

(iv) Collecting income;

(v) Processing corporate actions;

(vi) Pricing securities positions; and

(vii) Providing recordkeeping and reporting services; or

(2) An individual retirement account for which the bank acts as a custodian.

(b) *Affiliate* has the same meaning as in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(c) *Affiliated person* has the same meaning as in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)).

(d) *Bank holding company* has the same meaning as in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(e) *Principal underwriter* has the same meaning as in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29)).

(f) *Sales compensation* has the same meaning as in § 242.724.

(g) *Savings and loan holding company* has the same meaning as in section 10(a)(1)(D) of the Home Owners' Loan Act (12 U.S.C. 1467(a)(1)(D)).

(h) *Small bank* means a bank that:

(1) Had less than $500 million in assets as of December 31 of both of the prior two calendar years; and

(2) Is not, and since December 31 of the third prior calendar year has not been, an affiliate of a bank holding company or a savings and loan holding company that as of December 31 of both of the prior two calendar years had consolidated assets of more than $1 billion.

## Subpart G—Special Purpose Exemptions

**§ 242.770 Exemption from the definition of ''broker'' for banks effecting transactions in securities in certain employee benefit plans.**

(a) A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) to the extent that it effects transactions in securities of an open-end company in an account for a plan that is qualified under section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. 401(a)) or a plan described in sections 403(b) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. 403(b) or 26 U.S.C. 457) for which the bank acts as a trustee or a custodian; or offers participants a participant-directed brokerage account, if:

(1) The bank offsets or credits any compensation that it receives from a fund complex related to securities in which plan assets are invested against fees and expenses that the plan owes to the bank;

(2) The bank provides a clear and conspicuous disclosure to the plan sponsor or its designated fiduciary, if any, that includes all fees and expenses assessed for services provided to the plan and all compensation received or to be received from a fund complex in a manner that permits the plan sponsor or its designated fiduciary, if any, to determine that the bank has offset or credited any compensation received from a fund complex related to securities in which plan assets are invested or to be invested against the fees and expenses that the plan owes to the bank;

(3) The bank offers the participant-directed brokerage account through a registered broker or dealer;

(4) The bank does not pay any incentive compensation to a natural person that is not qualified pursuant to

the rules of a self-regulatory organization that differs based on the value of a security or the type of security purchased or sold by an account or a person who exercises control over the assets of such account; and

(5) The bank complies with section 3(a)(4)(C) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(C)).

(b) *Definitions.* For purposes of this section:

(1) *Fund complex* means the issuer of the security (including the sponsor, depositor or trustee), the issuer of any other security that holds itself out to investors as a related company for purposes of investment or investor services, any agent of such issuer, any investment adviser of such issuer, and any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3)) of such issuer or any such investment adviser.

(2) *Open-end company* has the same meaning as in § 242.740.

(3) *Participant-directed brokerage account* means an account that is carried by a broker or dealer on a basis in which each participant that receives any brokerage services is fully disclosed to the broker or dealer.

**§ 242.771 Exemption from the definitions of ''broker'' and ''dealer'' for banks effecting transactions in securities issued pursuant to Regulation S.**

(a) A bank is exempt from the definitions of the terms ''broker'' and ''dealer'' under sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)), to the extent that, as agent or as a riskless principal, the bank:

(1) Effects a sale of an eligible security to a purchaser who is outside of the United States within the meaning of and in compliance with the requirements of 17 CFR 230.903;

(2) Effects a resale of an eligible security after its initial sale within the meaning of and in compliance with the requirements of 17 CFR 230.903, by or on behalf of a person who is not a U.S. person under 17 CFR 230.902(k) to a purchaser or a registered broker or dealer, provided that if the sale is made prior to the expiration of the distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the sale is made in compliance with the requirements of 17 CFR 230.904; or

(3) Effects a resale of an eligible security after its initial sale within the meaning of and in compliance with the requirements of 17 CFR 230.903, by or on behalf of a registered broker or dealer to a purchaser, provided that if the sale is made prior to the expiration of the distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the sale is made in compliance with the requirements of 17 CFR 230.904.

(b) *Definitions.* For purposes of this section:

(1) *Distributor* has the same meaning as in 17 CFR 230.902(d).

(2) *Eligible security* means a security that:

(i) Is not being sold from the inventory of the bank or an affiliate of the bank; and

(ii) Is not being underwritten by the bank or an affiliate of the bank on a firm-commitment basis, unless the bank acquired the security from an unaffiliated distributor that did not purchase the security from the bank or an affiliate of the bank.

(3) *Purchaser* means a person who purchases an eligible security and who is not a U.S. person under 17 CFR 230.902(k).

(4) *Riskless principal transaction* means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

**§ 242.772 [Reserved]**

**§ 242.773 Exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks.**

(a) Any savings association or savings bank that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et. seq.*), and is not operated for the purpose of evading the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), is exempt from the definitions of the terms ''broker'' and ''dealer'' under sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)), to the extent that the savings association or savings bank acts as a broker or dealer on the same terms and under the same conditions that banks are excepted, provided that if a savings association or savings bank acts as a municipal securities dealer, it shall be considered a bank municipal securities dealer for purposes of the Securities Exchange Act of 1934 and the rules thereunder, including the rules of the Municipal Securities Rulemaking Board.

(b) Any savings association or savings bank that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), and is not operated for the purpose of evading the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), is exempt from the definitions of the terms ''broker'' and ''dealer'' under sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4) and 15 U.S.C. 78c(a)(5)) to the extent that the savings association or savings bank acts as a broker or dealer on the same terms and under the same conditions that banks are exempted pursuant to §§ 242.720 through 242.723, § 242.761, § 242.772, § 242.775, § 242.776, § 242.780 and § 242.781.

**§ 242.774 Exemption from the definitions of ''broker'' and ''dealer'' for credit unions.**

Any federal or state-chartered credit union that is not operated for the purpose of evading the provisions of the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) is exempt from the definitions of the terms ''broker'' and ''dealer'' under sections 3(a)(4)(B)(i) and (v) and 3(a)(5)(C)(ii) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(i) and (v) and 15 U.S.C. 78c(a)(5)(C)(ii)), to the extent that the credit union acts as a broker or dealer on the same terms and under the same conditions that banks are excepted under those sections of the Securities Exchange Act of 1934.

**§ 242.775 Exemption from the definition of ''broker'' for the way banks effect excepted or exempted transactions in investment company securities.**

(a) A bank that meets the conditions for an exception or exemption from the definition of the term ''broker'' except for the condition in section 3(a)(4)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(C)(i)), is exempt from such condition to the extent that it effects transactions in securities issued by an open-end company that is neither traded on a national securities exchange nor through the facilities of a national securities association or an interdealer quotation system, provided that:

(1) Such transactions are effected through the National Securities Clearing Corporation's Mutual Fund Services or directly with a transfer agent acting for the open-end company; and

(2) With respect to such transactions:

(i) The transfer agent, if any, does not accept compensation paid for the distribution of the securities, including any compensation paid pursuant to any revenue-sharing arrangement and

compensation paid pursuant to a plan under 17 CFR 270.12b–1; and

(ii)(A) The securities are distributed by a registered broker or dealer; or

(B) The sales charge is no more than the amount a registered broker or dealer may charge pursuant to the rules of a securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) adopted pursuant to section 22(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–22(b)(1)).

(b) *Definitions.* For purposes of this section:

(1) *Interdealer quotation system* has the same meaning as in 17 CFR 240.15c2–11.

(2) *Open-end company* has the same meaning as in § 242.740.

**§ 242.776 Exemption for banks effecting transactions for certain investors in money market funds.**

(a) A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) to the extent that it effects transactions on behalf of a customer in securities issued by a money market fund, provided that:

(1)(i) The customer has obtained from the bank a financial product or service not involving securities and is a qualified investor as defined in section 3(a)(54)(A) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(54)(A)), or a person that directs the purchase of securities from any cash flows that relate to an asset-backed security as defined in proposed 17 CFR 229.1101(c)(1) of Regulation AB, which has a minimum original asset amount of $25,000,000;

(ii) The bank effects the transactions in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(D)); or

(iii) The bank effects the transactions as escrow agent, collateral agent, depository agent, or paying agent; and

(2)(i) The class or series of securities is no-load; or

(ii)(A) The class or series of securities is not no-load, and the bank does not characterize or refer to the class or series of securities as no-load; and

(B) If the customer is not a person described in paragraph (a)(1)(i) of this section, the bank provides the customer, not later than at the time the customer authorizes the bank to effect the transactions, a prospectus for the securities and a clear and conspicuous notice that:

(*1*) Discloses any payments the bank may receive in connection with the transactions from the fund complex to which the issuer of the securities belongs;

(*2*) Separately identifies any such payments that are sales loads, deferred sales loads, or fees paid pursuant to a plan under 17 CFR 270.12b–1; and

(*3*) Indicates that the customer should carefully review the prospectus for the securities for additional information regarding expenses.

(b) *Definitions.* For purposes of this section:

(1) *Deferred sales load* has the same meaning as in § 242.740.

(2) *Fund complex* has the same meaning as in § 242.770.

(3) *Money market fund* has the same meaning as in § 242.740.

(4) *No-load* has the same meaning as in § 242.740.

(5) *Open-end company* has the same meaning as in § 242.740.

(6) *Sales load* has the same meaning as in § 242.740.

## Subpart H—Temporary Exemptions

**§ 242.780 Exemption for banks from liability under section 29 of the Securities Exchange Act of 1934.**

(a) No contract entered into before January 1, 2003, shall be void or considered voidable by reason of section 29 of the Securities Exchange Act of 1934 (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)), any other applicable provision of that Act, or the rules and regulations thereunder based solely on the bank's status as a broker or dealer when the contract was created.

(b) No contract entered into before March 31, 2005, shall be void or considered voidable by reason of section 29 of the Securities Exchange Act of 1934 (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)), any other applicable provision of that Act, or the rules and regulations thereunder based solely on the bank's status as a dealer when the contract was created.

(c) No contract entered into before [insert date 18 months after effective date of the final rule], shall be void or considered voidable by reason of section 29 of the Securities Exchange Act of 1934 (15 U.S.C. 78cc) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(a)), any other applicable provision of that Act, or the rules and regulations thereunder based solely on the bank's status as a broker when the contract was created.

**§ 242.781 Exemption from the definition of ''broker'' for banks for a limited period of time.**

A bank is exempt from the definition of the term ''broker'' under Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) until January 1, 2006.

Dated: June 17, 2004.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 04–14138 Filed 6–29–04; 8:45 am]

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June 30, 2004

# Part IV

# Department of Homeland Security

## Coast Guard

**46 CFR Part 32 et al.**

**Review and Update of Standards for Marine Equipment; Proposed Rule**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Parts 32, 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, 76, 92, 110, 111, 113, 162, 170, 175, 182, and 183

**[USCG–2003–16630]**

**RIN 1625–AA83**

## Review and Update of Standards for Marine Equipment

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to make certain technical amendments to its rules relating to standards for marine equipment, and to update the incorporation in those rules of references to national and international safety standards. This rulemaking is part of an ongoing effort for regulatory review and reform that increases the focus on results, decreases the focus on process, and expands compliance options for the regulated public.

**DATES:** Comments and related material must reach the Docket Management Facility on or before September 28, 2004.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2003–16630 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility (USCG–2003–16630), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: (202) 493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

You may inspect the material proposed for incorporation by reference at room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1181. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Thane Gilman, Project Manager, Office of Design and Engineering Standards (G–MSE), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–2206. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone (202) 366–0271.

**SUPPLEMENTARY INFORMATION:**

### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

*Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2003–16630), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

*Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Coast Guard has actively participated in the development of industry standards of safety for marine equipment at the International Maritime Organization (IMO), the International Organization for Standardization (ISO), the American Society for Testing and Materials (ASTM), and other standards-setting bodies that belong to the American National Standards Institute (ANSI).

This rulemaking is part of an ongoing effort for regulatory review and reform, with the goals of: (1) Updating the references to incorporated standards that have been modified; (2) removing obsolete rules; (3) focusing on results instead of process; and (4) expanding efforts to promote consensual rulemaking.

### Discussion of Proposed Rule

A number of comprehensive regulatory projects have already aligned many Coast Guard rules with national and international standards. This proposed rule would affect only inspected commercial vessels. No phase-in period is necessary, as this proposed rule would not be imposing new requirements.

In general, the proposed rule would make the following changes:

*Authority cite revisions*—we would amend the ''authority'' information given in the Code of Federal Regulations (CFR) for affected parts, in order to reflect new statutory authority and the transfer of the Coast Guard to the new Department of Homeland Security.

*Corrections*—we would amend several sections to correct prior inadvertent errors or deletions.

*Deletion of obsolete or superfluous material*—we would remove material that is obsolete or superfluous to a modern regulatory scheme.

*International System measurements*—we would amend several sections to give metric (International System)

measurements rather than English measurements. Where both a metric and an English measurement appear, but one is given in parentheses, the measure we intend to enforce is given first and the parenthetical measurement is an approximation intended only for the convenience of the reader.

*Lowered thresholds*—we would lower regulatory thresholds in some sections.

*Stylistic revisions*—we would revise the language of some sections, primarily for greater clarity.

*Updated cross references*—we would update cross references to reflect the relocation, within the CFR, of pertinent provisions.

*Updated industry standards*—we would update references to industry standards by adding new references, replacing references to superseded standards or editions, and by conforming text accordingly.

The following tables indicate the sections we propose to amend, and why. Table 1 lists each affected section, and gives the reason or reasons why we propose to amend it. Table 2 groups the reasons for change, as discussed above, and shows which sections are affected by each reason.

TABLE 1.—CFR PART OR SECTION AFFECTED—REASON FOR CHANGE

| Part or section | Reason for change |
|---|---|
| Part 32 | Authority cite revision. |
| 32.53–30 | Corrections. |
| Part 50 | Authority cite revision. |
| 50.20–33 | Deletion of obsolete or superfluous material. |
| 50.25–1(e) | Corrections. |
| Part 52 | Authority cite revision. |
| 52.01–1(b) | Updated industry standards. |
| 52.01–90(d) | Updated industry standards. |
| 52.01–90(e) | Deletion of obsolete or superfluous material. |
| 52.01–105(b)(2) | Updated cross references. |
| 52.01–120(a)(6) | Updated industry standards. |
| 52.05–20 | Updated industry standards. |
| Part 53 | Authority cite revision. |
| 53.01–1(b) | Updated industry standards. |
| 53.12–1 | Updated industry standards. |
| Part 54 | Authority cite revision. |
| 54.01–1(b) | Updated industry standards. |
| 54.01–2 | Deletion of obsolete or superfluous material, Updated industry standards. |
| 54.01–5 Table 5(b) | Stylistic revisions. |
| 54.01–10 | Updated industry standards. |
| 54.01–15 | International System measurements. |
| 54.10–5 | Corrections, Updated industry standards. |
| 54.10–10(b) | Lowered thresholds. |
| 54.10–15(c) | Lowered thresholds. |
| 54.10–20(a)(6) | Updated industry standards. |
| 54.15–1 | Updated industry standards. |
| 54.15–3 | Updated industry standards. |
| 54.15–25(c) | Corrections. |
| 54.25–3 | Updated industry standards. |
| 54.25–5 | Updated industry standards. |
| 54.25–15 | International System measurements, Updated industry standards. |
| 54.25–20(c) | Updated industry standards. |
| Part 56 | Authority cite revision |
| 56.01 note | Deletion of obsolete or superfluous material. |
| 56.01–2 | Updated industry standards. |
| 56.01–3 | Updated industry standards. |
| 56.01–5 | Updated industry standards. |
| 56.07–5 | Corrections, Updated industry standards. |
| 56.07–10 | Updated industry standards. |
| 56.10–1 | Updated industry standards. |
| 56.10–5 | Updated industry standards. |
| 56.15–1 | Updated industry standards. |
| 56.15–5 | Updated industry standards. |
| 56.20–1 | Updated industry standards. |
| 56.20–5 | Updated industry standards. |
| 56.20–9 | Stylistic revisions. |
| 56.20–15 | Updated industry standards. |
| 56.25–5 | Corrections. |
| 56.25–7 | Corrections, Updated industry standards. |
| 56.25–15 | Corrections. |
| 56.25–20 | Updated industry standards. |
| 56.30–1 | Updated industry standards. |
| 56.30–5 | Updated industry standards. |
| 56.30–10 | Updated industry standards. |
| 56.30–20 | Updated industry standards. |
| 56.35–1 | Updated industry standards. |
| 56.50–1 | Updated industry standards. |
| 56.50–10 | Deletion of obsolete or superfluous material. |
| 56.50–15 | Updated industry standards. |

TABLE 1.—CFR PART OR SECTION AFFECTED—REASON FOR CHANGE—Continued

| Part or section | Reason for change |
|---|---|
| 56.50–30 | Updated industry standards. |
| 56.50–40 | Updated industry standards. |
| 56.50–65 | Updated industry standards. |
| 56.50–70 | Stylistic revisions, Updated cross references, Updated industry standards. |
| 56.50–97 | Updated industry standards. |
| 56.60–1 | Updated industry standards. |
| 56.60–3 | Stylistic revisions. |
| 56.60–5 | International System measurements. |
| 56.60–25 | Corrections, International System measurements, Updated industry standards. |
| 56.65–1 | Updated industry standards. |
| 56.70–10 | Updated industry standards. |
| 56.70–15 | Updated industry standards. |
| 56.75–5 | Updated industry standards. |
| 56.75–10 | Updated industry standards. |
| 56.75–15 | Updated industry standards. |
| 56.75–25 | Updated industry standards. |
| 56.80–5 | Updated industry standards. |
| 56.80–15 | Updated industry standards. |
| 56.85–5 | Updated industry standards. |
| 56.85–10 | Updated industry standards. |
| 56.85–15 | Updated industry standards. |
| 56.90–5 | Updated industry standards. |
| 56.90–10 | Updated industry standards. |
| 56.95–1 | Updated industry standards. |
| 56.95–10 | Updated industry standards. |
| 56.97–1 | Updated industry standards. |
| 56.97–25 | Updated industry standards. |
| 56.97–30 | Updated industry standards. |
| Part 58 | Authority cite revision. |
| 58.01–10 | International System measurements. |
| 58.03–1 | Updated industry standards. |
| 58.16–10 | Stylistic revisions. |
| Part 59 | Authority cite revision. |
| 59.01–2 | Updated industry standards. |
| 59.01–5 | Updated industry standards. |
| Part 61 | Authority cite revision. |
| 61.15–10 | Corrections. |
| Part 62 | Authority cite revision. |
| 62.05–1 | Stylistic revisions, Updated industry standards. |
| 62.25–1 | Deletion of obsolete or superfluous material. |
| 62.25–5 | Deletion of obsolete or superfluous material. |
| 62.25–30 | Updated industry standards. |
| 62.35–5 | Updated industry standards. |
| 62.35–35 | Updated industry standards. |
| 62.35–40 | Updated industry standards. |
| 62.35–50 | Updated industry standards. |
| 62.50–30 | Updated industry standards. |
| Part 63 | Authority cite revision. |
| 63.01–3 | Deletion of obsolete or superfluous material. |
| 63.05–1 | Updated industry standards. |
| 63.25–1 | Deletion of obsolete or superfluous material. |
| 63.25–9 | Updated industry standards. |
| Part 76 | Authority cite revision. |
| 76.50–5 | International System measurements. |
| Part 92 | Authority cite revision. |
| 92.15–10 | Deletion of obsolete or superfluous material. |
| Part 110 | Authority cite revision. |
| 110.10–1 | Updated industry standards. |
| 110.15–1 | Updated industry standards. |
| Part 111 | Authority cite revision. |
| 111.01–9 | Updated industry standards. |
| 111.05–7 | Updated industry standards. |
| 111.05–9 | Updated industry standards. |
| 111.05–33 | Updated industry standards. |
| 111.12–1 | Updated industry standards. |
| 111.12–3 | Updated industry standards. |
| 111.12–5 | Updated industry standards. |
| 111.12–7 | Updated industry standards. |
| 111.15–2 | Updated industry standards. |
| 111.20–15 | Updated industry standards. |
| 111.25–5 | Updated industry standards. |
| 111.30–1 | Updated industry standards. |

TABLE 1.—CFR PART OR SECTION AFFECTED—REASON FOR CHANGE—Continued

| Part or section | Reason for change |
|---|---|
| 111.30–5 | Updated industry standards. |
| 111.30–19 | Updated industry standards. |
| 111.33–3 | Updated industry standards. |
| 111.33–5 | Updated industry standards. |
| 111.33–11 | Updated industry standards. |
| 111.35–1 | Updated industry standards. |
| 111.40–1 | Updated industry standards. |
| 111.50–3 | Updated industry standards. |
| 111.50–9 | Updated industry standards. |
| 111.52–5 | Updated industry standards. |
| 111.53–1 | Updated industry standards. |
| 111.54–1 | Updated industry standards. |
| 111.55–1 | Updated industry standards. |
| 111.59–1 | Updated industry standards. |
| 111.60–1 | Updated industry standards. |
| 111.60–2 | Updated industry standards. |
| 111.60–3 | Updated industry standards. |
| 111.60–5 | Updated industry standards. |
| 111.60–6 | Updated industry standards. |
| 111.60–11 | Updated industry standards. |
| 111.60–13 | Updated industry standards. |
| 111.60–19 | Updated industry standards. |
| 111.60–21 | Updated industry standards. |
| 111.60–23 | Updated industry standards. |
| 111.70–1 | Updated industry standards. |
| 111.70–3 | Updated industry standards. |
| 111.75–5 | Updated industry standards. |
| 111.75–20 | Updated industry standards. |
| 111.81–1 | Updated industry standards. |
| 111.91–1 | Updated industry standards. |
| 111.101–1 | Updated cross references. |
| 111.105–1 | Updated industry standards. |
| 111.105–3 | Updated industry standards. |
| 111.105–5 | Updated industry standards. |
| 111.105–7 | Updated industry standards. |
| 111.105–9 | Updated industry standards. |
| 111.105–11 | Updated industry standards. |
| 111.105–15 | Updated industry standards. |
| 111.105–17 | Updated industry standards. |
| 111.105–31 | Updated industry standards. |
| 111.105–39 | Updated industry standards. |
| 111.105–40 | Updated industry standards. |
| 111.107–1 | Updated industry standards. |
| Part 113 | Authority cite revision. |
| 113.05–7 | Updated industry standards. |
| 113.25–12 | Deletion of obsolete or superfluous material. |
| 113.25–6 | Updated industry standards. |
| 113.30–3 | Deletion of obsolete or superfluous material. |
| 113.30–20 | Updated cross references. |
| 113.30–25 | Updated industry standards. |
| 113.65–5 | Updated industry standards. |
| Part 162 | Authority cite revision. |
| 162.017–1 | Updated industry standards. |
| 162.017–3 | Updated industry standards. |
| Part 170 | Authority cite revision. |
| 170.015 | Updated industry standards. |
| Part 175 | Authority cite revision. |
| 175.600 | Updated industry standards. |
| Part 182 | Authority cite revision. |
| 182.455 | Corrections. |
| 182.500 | Updated industry standards. |
| 182.520 | Updated industry standards. |
| Part 183 | Authority cite revision. |
| 183.230 | Corrections. |

TABLE 2.—REASON FOR CHANGE—CFR PART OR SECTION AFFECTED

| Reason for change | Section |
|---|---|
| Authority cite revision | 32, 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, 76, 92, 110, 111, 113, 162, 170, 175, 182, 183 |
| Corrections | 32.53–30, 50.20–7, 50.25–1(e), 54.10–5, 54.15–25(c), 56.07–5, 56.25–5, 56.25–7, 56.25–15, 56.60–25, 61.15–10, 182.455, 183.230 |

TABLE 2.—REASON FOR CHANGE—CFR PART OR SECTION AFFECTED—Continued

| Reason for change | Section |
|---|---|
| Deletion of obsolete or superfluous material. | 50.20–33, 52.01–90(e), 54.01–2, 56.01 note, 56.50–10, 62.25–1, 62.25–5, 63.01–3, 63.25–1, 92.15–10, 113.25–12, 113.30–3 |
| International System measurements | 54.01–15, 54.25–15, 56.60–5, 56.60–25, 58.01–10, 76.50–5 |
| Lowered thresholds | 54.10–10(b), 54.10–15(c), 56.01–10 |
| Stylistic revisions | 54.01–5 Table 5(b), 56.20–9, 56.50–70, 56.60–3, 58.16–10, 62.05–1 |
| Updated cross references | 52.01–105(b)(2), 56.50–70, 111.101–1, 113.30–20 |
| Updated industry standards | 52.01–1(b), 52.01–90(d), 52.01–120(a)(6), 52.05–20, 53.01–1(b), 53.12–1, 54.01–1(b), 54.01–2, 54.01–10, 54.10–5, 54.10–20(a)(6), 54.15–1, 54.15–3, 54.25–3, 54.25–5, 54.25–15(b), 54.25–20(c), 56.01–2, 56.01–3, 56.01–5, 56.07–5, 56.07–10, 56.10–1, 56.10–5, 56.15–1, 56.15–5, 56.20–1, 56.20–5, 56.25–7, 56.25–20, 56.30–1, 56.30–5, 56.30–10, 56.30–20, 56.35–1, 56.50–1, 56.50–15, 56.50–30, 56.50–40, 56.50–65, 56.50–70, 56.50–97, 56.60–1, 56.65–1, 56.70–10, 56.70–15, 56.75–5, 56.75–10, 56.75–15, 56.75–25, 56.80–5, 56.80–15, 56.85–5, 56.85–10, 56.85–15, 56.90–5, 56.90–10, 56.95–1, 56.95–10, 56.97–1, 56.97–25, 56.97–30, 58.03–1, 59.01–2, 59.01–5, 62.05–1, 62.25–30, 62.35–5, 62.35–35, 62.35–40, 62.35–50, 62.50–30, 63.05–1, 63.25–9, 111.01–9, 111.05–7, 111.05–9, 111.05–33, 110.10–1, 110.15–1, 111.12–1, 111.12–3, 111.12–5, 111.12–7, 111.15–2, 111.20–15, 111.25–5, 111.30–1, 111.30–5, 111.30–19, 111.33–3, 111.33–5, 111.33–11, 111.35–1, 111.40–1, 111.50–3, 111.50–9, 111.52–5, 111.53–1, 111.54–1, 111.55–1, 111.59–1, 111.60–1, 111.60–2, 111.60–3, 111.60–5, 111.60–6, 111.60–11, 111.60–13, 111.60–19, 111.60–21, 111.60–23, 111.70–1, 111.70–3, 111.75–20, 111.75–5, 111.81–1, 111.91–1, 111.105–1, 111.105–3, 111.105–5, 111.105–7, 111.105–9, 111.105–11, 111.105–15, 111.105–17, 111.105–31, 111.105–39, 111.105–40, 111.107–1, 113.05–7, 113.30–25, 113.65–5, 170.015, 175.600, 182.500, 182.520 |

**Incorporation by Reference**

Material proposed for incorporation by reference appears in the regulatory text proposed for 46 CFR 52.01–1, 53.01–1, 54.01–1, 56.01–2, 58.03–1, 59.01–2, 62.05–1, 63.05–1, 110.10–1, 162.017–1, 170.015, and 175.600. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in the regulatory text proposed for 46 CFR 52.01–1, 53.01–1, 54.01–1, 56.01–2, 58.03–1, 59.01–2, 62.05–1, 63.05–1, 110.10–1, 162.017–1, 170.015, and 175.600.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS would be unnecessary.

Most of the provisions and standards being incorporated are already being used by industry, while those being deleted may have become outdated because of changes in technology or fleet composition. Further, compliance with them would not be retroactive and would apply to new vessel construction. We did estimate costs for two new system requirements that we assume most of the existing fleet do not meet. If any owner or operator of an existing vessel of the current fleet chooses to upgrade, then it is a voluntary upgrade. Consequently, the economic impact of this proposed rule is expected to be minimal.

Moreover, the Coast Guard believes that aligning its regulations with current international and national standards would benefit the maritime industry by easing confusion and simplifying the requirements to which commercial vessels are subject. If you believe this proposed rule would have a significant economic impact on industry owners and operators, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, specifically explain why you think the rulemaking would be significant.

The following is a summary of the assumptions, costs, and benefits of this proposed rule:

**General Assumptions**

The cost analysis of this proposed rule covers a 10-year period beginning in 2003 and ending in 2012.

In accordance with current guidelines from OMB, estimated costs and benefits are discounted at seven percent present value in year 2003 dollars.

The annual affected populations in §§ 62.25–1 and 62.35–50 are based on the average vessel population increase from 1996 through 2001 as estimated from currently available data from the Coast Guard Marine Safety Management System (MSMS).

Affected vessels include newly constructed, self-propelled, certificated, U.S.-flag commercial and passenger vessels meeting large tonnage threshold restrictions. The affected commercial vessels are 500 gross tons and over. The affected commercial vessels are certificated under a single subchapter to include D, I, and U, or certificated under two subchapters for multiple operations to include I and A, O and I, and O and D (generally referred to as IA, OI, and OD certificated vessels). The affected passenger vessels are 100 gross tons and over that are certificated under Subchapter H.

Operators, owners, and manufacturers of vessels affected by this proposed rule currently practice and adhere to national and international standards developed by organizations composed of representatives from a cross section of interest groups affected by these standards.

**Costs**

This proposed rule would not impose any additional costs to owners and operators of existing vessels because it would not be retroactive. Furthermore, new vessels currently coming into service and those built in the future will have already been equipped and built under these standards.

There are some quantifiable voluntary costs associated with the proposed rule

detailed below. These costs however, are for additional marine safety equipment and testing options that are not mandatory for the current fleet of vessels and are currently being practiced by industry. The 10-year total accumulated present value of the voluntary costs for this proposed rule would range between $285,579 and $488,490. Nevertheless, this proposed rule would not be retroactive, and we assume that future vessels would meet these requirements with no additional costs attributed to the requirements of this proposed rule. The present value of voluntary costs are distributed as follows:

(1) Section 62.25–1, Backup means of cooling computer consoles: The approximate 10-year present value cost to industry would range between $263,033 and $420,853.

This requirement would affect approximately seven new self-propelled U.S-flag vessels per year, if vessel manufacturers and owners were not following established ABS guidelines. The one-time parts and installation costs would range between $5,000 and $8,000 per new vessel. However, we believe it would be unlikely that manufacturers would not provide backup computer-cooling systems given current demands for computer system performance and current industry standards.

(2) Section 62.35–50, Additional fire alarms: The approximate 10-year present value cost to industry would range between $22,546 and $67,637.

This proposed requirement would affect approximately six new self-propelled (diesel) U.S.-flag vessels per year. The one-time costs for parts and installation of the additional fire alarms and sensor devices would range between $500 and $1,500 per new vessel. However, most new vessels would meet these additional fire alarm requirements because they have been in effect since 1986 when ABS added them to their Rules for Building and Classing Steel Vessels.

**Benefits**

This proposed rule would eliminate confusion caused by outdated and conflicting rules on safety of marine engineering for owners, operators, and manufacturers of vessels. The proposed changes would update and harmonize outdated rules to meet current national and international standards. In addition, this proposed rule would give the maritime industry clear instructions and descriptions of how to comply with various rules.

**Small Entities**

Under the Regulatory Flexibility Act [5 U.S.C. 601–612], we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because it is not retroactive and because it imposes no mandatory costs on owners or operators of vessels.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES.** In your comment, explain why you think it qualifies and how and to what degree this proposed rule would economically affect it.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism. This proposed rule would revise outdated standards on safety of marine equipment with international and national standards created and approved in part by State and local governments that participate in organizations that develop national standards for marine operation and safety.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100 million or more in any one year. This proposed rule would not result in Unfunded Mandates because it does not require regulatory actions that result in such expenditures.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.lD (the ''Instruction''), which

guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this proposed rule should be categorically excluded, under Figure 2–1, paragraph (34)(d) of the Instruction, from further environmental documentation. This proposed rule would replace outdated safety standards for marine equipment with current national and international standards, and therefore would not have any impact on the environment and might even provide future benefits by preventing future environmental casualties. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of the preamble. Comments on this section will be considered before we make the final decision on whether this rule should be categorically excluded from further environmental review.

**List of Subjects**

*46 CFR Part 32*

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

*46 CFR Parts 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, and 110*

Reporting and recordkeeping requirements, Vessels.

*46 CFR Part 76*

Fire prevention, Marine safety, Passenger vessels.

*46 CFR Part 92*

Cargo vessels, Fire prevention, Marine safety, Occupational safety and health, Seamen.

*46 CFR Part 111*

Vessels.

*46 CFR Part 113*

Communications equipment, Fire prevention, Vessels.

*46 CFR Part 162*

Fire prevention, Marine safety, Oil pollution, Reporting and recordkeeping requirements.

*46 CFR Part 170*

Marine safety, Reporting and recordkeeping requirements, Vessels.

*46 CFR Parts 175 and 177*

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

*46 CFR Parts 182 and 183*

Marine safety, Passenger vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR parts 32, 50, 52, 53, 54, 56, 58, 59, 61, 62, 63, 76, 92, 110, 111, 113, 162, 170, 175, 182, and 183 as follows:

## PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIREMENTS

1. Revise the authority citation for part 32 to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703, 3719; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Subpart 32.59 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

2. Add § 32.53–30, under Subpart 32.53—Inert-Gas System, to read as follows:

**§ 32.53–30 Positive pressure—T/ALL.**

Each inert-gas system must be designed to enable the operator to maintain a gas pressure of 100 millimeters (4 inches) of water on filled cargo tanks and during loading and unloading of cargo tanks.

## PART 50—GENERAL PROVISIONS

3. Revise the authority citation for part 50 to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1; Section 50.01–20 also issued under the authority of 44 U.S.C. 3507.

**§ 50.20–33 [Removed and Reserved]**

4. Remove and reserve § 50.20–33.

**§ 50.25–1 [Revised]**

5. In § 50.25–1(e), remove the term ''58.30–17'' and add, in its place, the term ''58.30–15''.

## PART 52—POWER BOILERS

6. Revise the authority citation for part 52 to read as follows:

**Authority:** 46 U.S.C. 3306, 3307, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

7. In § 52.01–1(b), revise the entry ''American Society of Mechanical Engineers (ASME) International'' to read as follows:

**§ 52.01–1 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *American Society of Mechanical Engineers (ASME) International*, Three Park Avenue, New York, NY 10016–5990 | |
| Boiler and Pressure Vessel Code, Section I, Power Boilers, 2001 ..... | 52.01–2; 52.01–5; 52.01–50; 52.01–90; 52.01–95; 52.01–100; 52.01–105; 52.01–110; 52.01–115; 52.01–120; 52.01–135; 52.01–140; 52.01–145; 52.05–1; 52.05–15; 52.05–20; 52.05–30; 52.05–45; 52.15–1; 52.15–5; 52.20–1; 52.20–17; 52.20–25; 52.25–3; 52.25–5; 52.25–7; 52.25–10. |

**§ 52.01–90 [Revised]**

8. In § 52.01–90, in paragraph (d), remove the words ''(modifies PG–8.2.2.)'' and add in their place, the words ''(modifies PG–2.2.)''; and remove paragraph (e).

**§ 52.01–105 [Revised]**

9. In § 52.01–105(b)(2), remove the cross-reference ''§ 56.31–1'' and add, in its place, the cross-reference ''§ 56.35–1''.

10. Revise § 52.01–120(a)(6) to read as follows:

**§ 52.01–120 Safety valves and safety relief valves (modifies PG–67 through PG–73).**

(a) * * *

(6) (Modifies PG–67). Drum safety valves must be set to relieve at a pressure not in excess of that allowed by the Certificate of Inspection. Where for any reason this is lower than the pressure for which the boiler was originally designed and the revised capacity of the safety valve cannot be recomputed and certified by the valve manufacturer, one of the tests described in PG–69 of the ASME Code must be conducted in the presence of the Inspector to ensure that the relieving

capacity is sufficient at the lower pressure.

* * * * *

11. Revise § 52.05–20 to read as follows:

**§ 52.05–20 Radiographic and ultrasonic examination (modifies PW–11 and PW–41.1).**

Radiographic and ultrasonic examination of welded joints must be as described in PW–11 of the ASME Code, except that parts of boilers fabricated of pipe material such as drums, shells, downcomers, risers, cross pipes, headers, and tubes containing only circumferentially welded butt joints, must be nondestructively examined as required by § 56.95–10 of this subchapter even though they may be exempted by the limits on size specified in Table PW–11 and PW–41.1 of the ASME Code.

## PART 53—HEATING BOILERS

12. Revise the authority citation for part 53 to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

13. In § 53.01–1(b), revise the entry ''American Society of Mechanical Engineers (ASME) International'' to read as follows:

**§ 53.01–1 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *American Society of Mechanical Engineers (ASME) International*, Three Park Avenue, New York, NY 10016–5990 | |
| Boiler and Pressure Vessel Code, Section IV, Heating Boilers, July 2001 | 53.01–5; 53.01–10; 53.05–1; 53.05–3; 53.05–5; 53.10–1; 53.10–3; 53.10–10; 53.10–15; 53.12–1. |

14. Revise the heading for Subpart 53.12–1 to read as follows:

### Subpart 53.12—Instruments, fittings, and controls (Article 6)

## PART 54—PRESSURE VESSELS

15. Revise the authority citation for part 54 to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

16. In § 54.01–1(b), revise the entries ''American Society of Mechanical Engineers (ASME) International'' and ''Manufacturers Standardization Society (MSS)'' to read as follows:

**§ 54.01–1 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *American Society of Mechanical Engineers (ASME) International*, Three Park Avenue, New York, NY 10016–5990 | |
| Boiler and Pressure Vessel Code, Section VIII, Division 1, Pressure Vessels, July 2001. | 54.01–2; 54.01–5; 54.01–15; 54.01–18; 54.01–25; 54.01–30; 54.01–35; 54.03–1; 54.03–5; 54.05–1; 54.10–1; 54.10–3; 54.10–5; 54.10–10; 54.10–15; 54.15–1; 54.15–5; 54.15–10; 54.15–13; 54.20–1; 54.20–3; 54.25–1; 54.25–3; 54.25–5; 54.25–8; 54.25–10; 54.25–15; 54.25–20; 54.25–25; 54.30–3; 54.30–5; 54.30–10 |
| * * | * * * * * |
| *Manufacturers Standardization Society (MSS)* 127 Park Street NE, Vienna, VA 22180. | |
| SP–25, Standard Marking System for Valves, Fittings, Flanges, and Unions, 1998. | 54.01–25 |

17. In §54.01–2, revise Table 54.01–1(a) to read as follows:

**§ 54.01–2 Adoption of Division 1 of section VIII of the ASME Code.**

(a) * * *

TABLE 54.01–1(A).—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF DIVISION 1 OF SECTION VIII, ASME CODE

| Paragraphs in Section VIII, ASME Code[1] and disposition | Unit of this part |
|---|---|
| U–1 and U–2 modified by | 54.01–5 through 54.01–15. |
| U–1(c) replaced by | 54.01–5. |
| U–1(d) replaced by | 54.01–5(a) and 54.01–15. |
| U–1(g) modified by | 54.01–10. |
| U–1(c)(2) modified by | 54.01–15. |
| UG–11 modified by | 54.01–25. |
| UG–22 modified by | 54.01–30. |
| UG–25 modified by | 54.01–35. |
| UG–28 modified by | 54.01–40. |
| UG–84 replaced by | 54.05–1. |
| UG–90 and UG–91 replaced by | 54.10–3. |

TABLE 54.01–1(A).—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF DIVISION 1 OF SECTION VIII, ASME CODE—Continued

| Paragraphs in Section VIII, ASME Code[1] and disposition | Unit of this part |
|---|---|
| UG–92 through UG–103 modified by | 54.10–1 through 54.10–15. |
| UG–98 reproduced by | 54.10–5. |
| UG–115 through UG–120 modified by | 54.10–1. |
| UG–116, except (k), replaced by | 54.10–20(a). |
| UG–116(k) replaced by | 54.10–20(b). |
| UG–117 replaced by | 54.10–20(c). |
| UG–118 replaced by | 54.10–20(a). |
| UG–119 modified by | 54.10–20(d). |
| UG–120 modified by | 54.10–25. |
| UG–125 through UG–137 modified by | 54.15–1 through 54.15–15. |
| UW–1 through UW–65 modified by | 54.20–1. |
| UW–2(a) replaced by | 54.01–5(b) and 54.20–2. |
| UW–2(b) replaced by | 54.01–5(b) and 54.20–2. |
| UW–9, UW–11(a), UW–13, and UW–16 modified by | 54.20–3. |
| UW–11(a) modified by | 54.25–8. |
| UW–26, UW–27, UW–28, UW–29, UW–47, and UW–48 Modified by | 54.20–5. |
| UB–1 modified by | 54.23–1 |
| UB–2 modified by | 52.01–95(d) and 56.30–30(b)(1). |
| UCS–6 modified by | 54.25–3. |
| UCS–56 modified by | 54.25–7. |
| UCS–57, UNF–57, UHA–33, and UHT–57 modified by | 54.25–8. |
| UCS–65 through UCS–67 replaced by | 54.25–10. |
| UHA–23(b) and UHA–51 modified by | 54.25–15. |
| UHT–5(c), UHT–6, and UHT–23 modified by | 54.25–20. |
| UHT–82 modified by | 54.25–20 and 54.25–25. |
| Appendix 3 modified by | 54.15–3. |

[1] The references to specific provisions in the ASME Code are coded. The first letter "U" refers to division 1 of section VIII. The second letter, such as "G," refers to a subsection within section VIII. The number refers to the paragraph within the subsection.

* * * * *

18. In § 54.01–5, revise Table § 54.01–5(b) to read as follows:

**§ 54.01–5 Scope (modifies U–1 and U–2).**

* * * * *

TABLE 54.01–5(B)—PRESSURE VESSEL CLASSIFICATION

[NOTE TO TABLE 54.01–5(B): All Classes of pressure vessels are subject to shop inspection and plan approval.][4]

| Class | Service contents | Class limits on pressure and temperature | Joint requirements[1 6 7] | Radiography requirements, section VIII, ASME Code[3 7] | Post-weld heat treatment requirements[5 7] |
|---|---|---|---|---|---|
| I | (a) Vapor or gas<br>(b) Liquid<br>(c) Hazardous Materials[2] | Vapor or gas: Over 600 p.s.i. or 700 °F.<br>Liquid: Over 600 p.s.i. or 400 °F. | (1) For category A; (1) or (2) for category B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall. | Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of ASME Code do not apply. | For carbon- or low-alloy steel, in accordance with Table UCS–56, regardless of thickness. For other materials, in accordance with section VIII, ASME Code. |
| I–L Low Temperature. | (a) Vapor or gas, or liquid<br>(b) Hazardous Materials[2] | Over 250 p.s.i. and service temp. below 0 °F. | (1) For categories A and B. All categories C and D must have full penetration welds extending through the entire thickness of the vessel wall or nozzle wall. No backing rings or strips left in place. | Full on all butt joints regardless of thickness. Exceptions listed in Table UCS–57 of ASME Code do not apply. | For carbon- or low-alloy steel, in accordance with Table UCS–56, regardless of thickness. For other materials, in accordance with section VIII, ASME Code. |

TABLE 54.01–5(B)—PRESSURE VESSEL CLASSIFICATION—Continued

[NOTE TO TABLE 54.01–5(B): All Classes of pressure vessels are subject to shop inspection and plan approval.][4]

| Class | Service contents | Class limits on pressure and temperature | Joint requirements[1 6 7] | Radiography requirements, section VIII, ASME Code[3 7] | Post-weld heat treatment requirements[5 7] |
|---|---|---|---|---|---|
| II | (a) Vapor or gas<br>(b) Liquid<br>(c) Hazardous Materials[2 3 6] | Vapor or gas: 30 through 600 p.s.i. or 275 through 700 °F.<br>Liquid: 200 through 600 p.s.i. or 250 through 400 °F. | (1) or (2) For category A. (1), (2), or (3) for category B. Categories C and D in accordance with UW–16 of ASME Code. | Spot, unless exempted by UW–11(c) of ASME Code. | In accordance with section VIII, ASME Code. |
| II–L Low Temperature. | (a) Vapor or gas, or liquid<br>(b) Hazardous Materials[2] | 0 through 250 p.s.i. and service temp. below 0 °F. | (1) For category A; (1) or (2) for category B. All categories C and D must have full-penetration welds extending through the entire thickness of the vessel wall or nozzle wall. | Spot. The exemption of UW–11(c) of ASME Code does not apply. | Same as for I–L except that mechanical stress relief may be substituted if allowed under Subpart 54.30 of this chapter. |
| III | (a) Vapor or gas<br>(b) Liquid<br>(c) Hazardous Materials[2 3 6] | Vapor or gas: Under 30 p.s.i. and 0 through 275 °F.<br>Liquid: Under 200 p.s.i. and 0 through 250 °F. | In accordance with Section VIII of ASME Code. | Spot, unless exempted by UW–11(c) of ASME Code. | In accordance with section VIII, ASME Code. |

[1] Welded joint categories are defined under UW–3 of the ASME Code. Joint types are described in Table UW–12 of the ASME Code, and numbered (1), (2), etc.
[2] See § 54.20–2.
[3] See §§ 54.25–8(c) and 54.25–10(d).
[4] See §§ 54.01–15 and 54.10–3 for exemptions.
[5] Specific requirements modifying Table UCS–56 of the ASME Code appear in § 54.25–7.
[6] See § 54.20–3(c) and (f).
[7] Applies only to welded pressure vessels.

19. In § 54.01–10, revise the section heading to read as follows:

**§ 54.01–10 Steam-generating pressure vessels (modifies U–1(g)).**

20. In § 54.01–15, revise the section heading, and paragraphs (a)(1), (a)(2)(i) thru (iv), (a)(3)(i), and (a)(5) to read as follows:

**§ 54.01–15 Exemptions from shop inspection and plan approval (modifies U–1(c)(2)).**

(a) * * *

(1) Vessels containing water at a pressure not greater than 689 kPa (100 pounds per square inch gage, psig) and at a temperature not above 93 °C (200 °F) including those containing air, the compression of which serves only as a cushion. Air-charging lines may be permanently attached if the air pressure does not exceed 103 kPa (15 psig).

(2) * * *

(i) A heat input of 58 kW (200,000 B.t.u. per hour);

(ii) A water temperature of 93 °C (200 °F);

(iii) A nominal water-containing capacity of 454 liters (120 gallons); or

(iv) A pressure of 689 kPa (100 psig).

* * * * *

(3)(i) Vessels having an internal operating pressure not exceeding 103 kPa (15 psig) with no limitation on size. (See UG–28(f) of the ASME Code.)

* * * * *

(5) Condensers and heat exchangers, regardless of size, when the design is such that the liquid phase is not greater than 689 kPa (100 psig) and 200 °F (93 °C) and the vapor phase is not greater than 103 kPa (15 psig) provided that the OCMI is satisfied that system overpressure conditions are addressed by the owner or operator.

* * * * *

21. In § 54.10–5, revise paragraph (a), and Table 54.10–5 to read as follows:

**§ 54.10–5 Maximum allowable working pressure (reproduces UG–98).**

(a) The maximum allowable working pressure for a vessel is the maximum pressure permissible at the top of the vessel in its normal operating position at the designated coincident temperature specified for that pressure. It is the least of the values found for maximum allowable working pressure for any of the essential parts of the vessel by the principles given in paragraph (b) of this section and adjusted for any difference in static head that may exist between the part considered and the top of the vessel. (*See* appendix 3 of the ASME Code.)

* * * * *

TABLE 54.10–5.—PICTORIAL INTER-RELATION AMONG VARIOUS PRESSURE LEVELS WITH REFERENCES TO SPECIFIC REQUIREMENTS[1]

| Pressure differential[2] | Test pressures | Relief device pressure settings | Pressures upon which flow capacity of relief devices is based |
|---|---|---|---|
| Increasing Pressure ..... | Burst-proof test (UG–101(m) of ASME Code).<br>Yield-proof test (UG–101(j) of ASME Code).<br>Standard hydrostatic test (UG–99 of ASME Code). | ..... | Fire exposure, 120% MAWP. |
| | Pneumatic test (UG–100 of ASME Code).<br>.....<br>.....<br>Maximum allowable working pressure (MAWP), UG–98 of ASME Code. | Rupture disk burst (§ 54.15–13).<br>.....<br>Maximum allowable working pressure (MAWP), UG–98 of ASME Code. | Normal, 110% MAWP.<br>Maximum allowable working pressure (MAWP), UG–98 of ASME Code. |
| Increasing Pressure ..... | Design pressure, UG–21 and Appendix 3 of ASME Code.<br>Operating Pressure (Appendix 3 of ASME Code). | Design pressure, UG–21 and Appendix 3 of ASME Code.<br>Safety or relief valve setting (UG–133 of ASME Code).<br>Operating Pressure (Appendix 3 of ASME Code). | Design pressure, UG–21 and Appendix 3 of ASME Code.<br>Operating Pressure (Appendix 3 of ASME Code). |

[1] For basic pressure definitions see § 52.01–3(g) of this subchapter.
[2] For pressure differentials above 3,000 pounds per square inch (p.s.i.), special requirements may apply. Arrow of increasing pressure in left column signifies that, for example, the standard hydrostatic-test pressure is higher than the MAWP, which in turn is higher than the design pressure and the operating pressure, and so forth.

22. In § 54.10–10, in paragraph (b), revise the first sentence to read as follows:

**§ 54.10–10 Standard hydrostatic test (modifies UG–99).**

* * * * *

(b) The hydrostatic-test pressure must be at least one and three-tenths (1.30) times the maximum allowable working pressure stamped on the pressure vessel, multiplied by the ratio of the stress value ''S'' at the test temperature to the stress value ''S'' at the design temperature for the materials of which the pressure vessel is constructed.

* * *

* * * * *

**§ 54.10–15 [Amended]**

23. In § 54.10–15(c), remove the words ''1.25 times'' wherever they appear and add, in their place, the words ''one and one-tenth (1.10) times''.

24. Revise § 54.10–20(a)(6) to read as follows:

**§ 54.10–20 Marking and stamping.**

(a) * * *

(6) Minimum design metal temperature, if below −18 °C (0 °F).

* * * * *

25. In § 54.15–1, revise the section heading and paragraph (a) to read as follows:

**§ 54.15–1 General (modifies UG–125 through UG–137).**

(a) All pressure vessels built in accordance with applicable requirements in Division 1 of section VIII of the ASME Code must be provided with protective devices as indicated in UG–125 through UG–137 except as noted otherwise in this subpart.

* * * * *

26. In § 54.15–3, revise the section heading to read as follows:

**§ 54.15–3 Definitions (modify Appendix 3).**

**§ 54.15–25 [Revised]**

27. In § 54.15–25(c), remove the terms ''0°C and 1.03 kp/cm$^2$'' and add, in their place, the terms ''15°C and 103 kPa''.

28. Revise § 54.25–3 to read as follows:

**§ 54.25–3 Steel plates (modifies UCS–6).**

The steels listed in UCS–6(b) of the ASME Code will be allowed only in Class III pressure vessels (see Table 54.01–5(b)).

29. Revise § 54.25–5 to read as follows:

**§ 54.25–5 Corrosion allowance.**

The corrosion allowance must be as required in § 54.01–35.

30. Revise § 54.25–15(b) to read as follows:

**§ 54.25–15 Low-temperature operation—high-alloy steels (modifies UHA–23(b) and UHA–51).**

* * * * *

(b) Materials for pressure vessels with service temperatures below −320 °F (−195 °C) must be of the stabilized or low carbon (less than 0.10 percent) austenitic stainless steel type, produced according to the applicable specifications of Table UHA–23 of the ASME Code. These materials and their weldments must be tested for toughness according to the requirements of Subpart 54.05 except that the acceptance criteria for Charpy V-notch testing must be in accordance with UHT–6(a)(4) of the ASME Code.

* * * * *

31. Revise § 54.25–20(c), to read as follows:

**§ 54.25–20 Low temperature operation—ferritic steels with properties enhanced by heat treatment (modifies UHT–5(c), UHT–6, UHT–23, and UHT–82).**

* * * * *

(c) The qualification of welding procedures, welders and weld-production testing for the steels of Table 54.25–20(a) must conform to the requirements of part 57 of this subchapter and to those of Subpart 54.05 of this part except that the acceptance criteria for Charpy V-notch testing must be in accordance with UHT–6(a)(4) of the ASME Code.

* * * * *

32. Revise § 54.25–25(a) to read as follows:

**§ 54.25–25 Welding of quenched and tempered steels (modifies UHT–82).**

(a) The qualification of welding procedures, welders, and weld-production testing must conform to the requirements of Part 57 of this subchapter. The requirements of § 57.03–1(d) of this subchapter apply to welded pressure vessels and non-pressure vessel type tanks of quenched and tempered steels other than 9-percent nickel.

* * * * *

## PART 56—PIPING SYSTEMS AND APPURTENANCES

33. Revise the authority citation for part 56 to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1509; 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

**Subpart 56.01 [Amended]**

34. In Subpart 56.01, remove the Note in its entirety.

35. In § 56.01–2, in paragraph (b), revise the entries for ''American National Standards Institute (ANSI)'', ''American Society of Mechanical Engineers (ASME)'', ''Manufacturers Standardization Society of the Valve and Fitting Industry, Inc. (MSS)'', and ''Society of Automotive Engineers (SAE)'', and add, in alphabetical order, the entries ''American Petroleum Institute (API)'', ''Instrument Society of America (ISA)'', and ''International Organization for Standardization (ISO)'', to read as follows:

**§ 56.01–2 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI),* 25 West 43rd Street, New York, NY 10036 | |
| ANSI B1.20.1–83 (Reaffirmed 2001) Pipe Threads, General Purpose (Inch) | 56.60–1 |
| ANSI B1.20.3–76 (Reaffirmed 1998) Dryseal Threads (Inch) | 56.60–1 |
| ANSI B16.5–96 Pipe Flanges and Flanged Fittings | 56.25–20; 56.30–10; 56.60–1 |
| ANSI B16.15–85 (Reaffirmed 1994) Cast Bronze Threaded Fittings, Classes 125 and 250 | 56.60–1 |
| ANSI B16.18–84 (Reaffirmed 1994) Cast Copper Alloy Solder Joint Pressure Fittings | 56.60–1 |
| ANSI B16.20–00 Metallic Gaskets for Pipe Flanges—Ring-Joint, Spiral-Wound, and Jacketed. | 56.60–1 |
| ANSI B16.24–91 (Reaffirmed 1998) Bronze Pipe Flanges and Flanged Fittings, Class 150 and 300. | 56.60–1 |
| ANSI B16.25–97 Buttwelding Ends | 56.60–1; 56.30–5; 56.70–10 |
| ANSI B16.28–94 Wrought Steel Buttwelding Short Radius Elbows and Returns | 56.60–1 |
| ANSI B16.29–94 Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings DWV. | 56.60–1 |
| ANSI B16.34–96 Valves—Flanged, Threaded and Welding End | 56.20–1; 56.60–1 |
| ANSI B18.2.1–96 Square and Hex Bolts and Screws, Inch Series | 56.25–20; 56.60–1 |
| ANSI B18.2.2–87 (Reaffirmed 1999) Square and Hex Nuts | 56.25–20; 56.60–1 |
| ANSI B36.19M–85 (Reaffirmed 1994) Stainless Steel Pipe | 56.07–5; 56.60–1. |
| *AMERICAN PETROLEUM INSTITUTE (API),* 1220 L Street NW., Washington, DC 20005–4070 | |
| API Standard 607, Fire Test for Soft-Seated Quarter-Turn Valves, Fourth Edition, 1993 | 56.20–15 |
| *AMERICAN SOCIETY OF MECHANICAL ENGINEERS (ASME), INTERNATIONAL,* Three Park Avenue, New York, NY 10016–5990 | |
| Boiler and Pressure Vessel Code: | |
| Section I, Power Boilers, 2001 | 56.15–5; 56.15–10; 56.60–1; 56.60–1; 56.70–15; 56.95–10; 56.15–1 |
| Section VIII, Division 1, Pressure Vessels, 2001 | 56.15–1; 56.15–5; 56.15–10; 56.25–5; 56.30–10; 56.30–30; 56.60–15; 56.60–1; 56.95–10 |
| Section IX, Welding and Brazing Qualifications, 1986, with addenda | 56.70–5; 56.70–20; 56.75–20; 56.85–10 |
| ASME B1.1–89 (Reaffirmed 2001) Unified Inch Screw Threads (UN and UNR Thread Form). | 56.60–1; 56.25–20 |
| ASME B16.1–98 Cast Iron Flanges and Flanged Fittings, Classes 25, 125, 250, and 800 | 56.60–1; 56.60–10 |
| ASME B16.3–99 Malleable Iron Threaded Fittings, Classes 150 and 300 | 56.60–1 |
| ASME B16.4–98 Cast Iron Threaded Fittings, Classes 125 and 250 | 56.60–1 |
| ASME B16.9–01 Factory-Made Wrought Steel Buttwelding Fittings | 56.60–1 |
| ASME B16.10–00 Face-to-Face and End-to-End Dimensions of Ferrous Valves | 56.60–1 |
| ASME B16.11–01 Forged Steel Fittings, Socket-Welding and Threaded | 56.30–5; 56.60–1 |
| ASME B16.14–91 Ferrous Pipe Plugs, Bushings, and Locknuts with Pipe Threads | 56.60–1 |
| ASME B16.42–98 Ductile Iron Pipe Flanges and Flanged Fittings, Classes 150 and 300 | 56.60–1 |
| ASME B31.1–2001 Power Piping | 56.01–5 |
| ASME B36.10M–2001 Welded and Seamless Wrought Steel Pipe | 56.07–5; 56.30–20; 56.60–1 |
| * * * * * | * * |
| *INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO),* Case Postal 56, CH–1211 Geneva 20 Switzerland | |
| ISO 15540 (1999) Ships and marine technology—Fire resistance of hose assemblies—test methods. | 56.60–25 |
| *INSTRUMENT SOCIETY OF AMERICA (ISA),* 67 Alexander Drive, Research Triangle Park, NC 27709. | |

| | |
|---|---|
| ISA–S75.02 Control Valve Capacity Test Procedures, 1996 | 56.20–15 |
| *MANUFACTURERS STANDARDIZATION SOCIETY OF THE VALVE AND FITTINGS INDUSTRY, INC. (MSS),* 127 Park Street NE, Vienna, VA 22180 | |
| SP–6–01 Standard Finishes for Contact Faces of Pipe Flanges and Connecting-End Flanges of Valves and Fittings. | 56.25–10; 56.60–1 |
| SP–9–01 Spot Facing for Bronze, Iron and Steel Flanges | 56.60–1 |
| SP–25–98 Standard Marking System for Valves, Fittings, Flanges and Unions | 56.15–1; 56.20–5; 56.60–1 |
| SP–44–96 Steel Pipe Line Flanges | 56.60–1 |
| SP–45–98 Bypass and Drain Connection Standard | 56.20–20; 56.60–1 |
| SP–51–00 Class 150LW Corrosion Resistant Cast Flanges and Flanged Fittings | 56.60–1 |
| SP–53–99 Quality Standard for Steel Castings and Forgings for Valves, Flanges and Fittings and Other Piping Components—Magnetic Particle Examination Method. | 56.60–1 |
| SP–55–01 Quality Standard for Steel Castings for Valves, Flanges and Fittings and Other Piping Components—Visual Method. | 56.60–1 |
| SP–58–93 Pipe Hangers and Supports—Materials, Design and Manufacture | 56.60–1 |
| SP–61–99 Pressure Testing of Steel Valves | 56.60–1 |
| SP–67–95 Butterfly Valves | 56.60–1 |
| SP–69–96 Pipe Hangers and Supports—Selection and Application | 56.60–1 |
| SP–72–99 Ball Valves with Flanged or Butt-Welding Ends for General Service | 56.60–1 |
| SP–73–91 (R 96) Brazing Joints for Wrought and Cast Copper Alloy Solder Joint Pressure Fittings. | 56.60–1 |
| SP–83–92 Steel Pipe Unions, Socket-Welding and Threaded | 56.60–1 |
| *SOCIETY OF AUTOMOTIVE ENGINEERS (SAE),* 400 Commonwealth Drive, Warrendale, PA 15096 | |
| J1475–96 Hydraulic Hose Fittings for Marine Applications | 56.60–25 |
| J1942–97 Hose and Hose Assemblies for Marine Applications | 56.60–25 |

36. In § 56.01–3, revise the section heading and paragraph (b) to read as follows:

**§ 56.01–3 Power boilers, external piping and appurtenances (Replaces 100.1.1, 100.1.2, 122.1, 132 and 133).**

* * * * *

(b) Specific requirements for external piping and appurtenances of power boilers, as defined in §§ 100.1.1 and 100.1.2, appearing in the various paragraphs of ASME–B31.1, are not adopted unless specifically indicated elsewhere in this part.

37. In § 56.01–5, revise the section heading, paragraphs (a), (b), (c), and Table 56.01–5(a), to read as follows:

**§ 56.01–5 Adoption of Code B31.1 of the American Society of Mechanical Engineers (ASME) for power piping, and other standards.**

(a) Piping systems for ships and barges must be designed, constructed, and inspected in accordance with Code B31.1, ''Power Piping'', of ASME, as limited, modified, or replaced by specific requirements in this part. The provisions in the appendices to Code B31.1 are adopted and must be followed when the requirements of Code B31.1 or the rules in this part make them mandatory. For general information, Table 56.01–5(a) lists the various paragraphs and sections in Code B31.1 that are limited, modified, replaced, or reproduced by rules in this part.

TABLE 56.01–5(a).—LIMITATIONS AND MODIFICATIONS IN THE ADOPTION OF CODE B31.1 OF ASME FOR PRESSURE AND POWER PIPING

| Section or paragraph in ASME—B31.1, and disposition | Unit in this part |
|---|---|
| 100.1 replaced by | 56.01–1 |
| 100.2 modified by | 56.07–5 |
| 101 through 104.7 modified by | 56.07–10 |
| 101.2 modified by | 56.07–10(a), (b) |
| 101.5 replaced by | 56.07–10(c) |
| 102.2 modified by | 56.07–10(d) |
| 102.3 and 104.1.2 modified by | 56.07–10(e) |
| 104.3 modified by | 56.07–10(f) |
| 104.4 modified by | 56.07–10(e) |
| 104.5.1 modified by | 56.30–10 |
| 105 through 108 replaced by | 56.10–1 through 56.25–20 |
| 110 through 118 replaced by | 56.30–1 through 56.30–35 |
| 119.5.1 replaced by | 56.35–10, 56.35–15 |
| 119.7 replaced by | 56.35–1 |
| 122.1.4 replaced by | 56.50–40 |
| 122.3 modified by | 56.50–97 |
| 122.6 through 122.10 replaced by | 56.50–1 through 56.50–80 |
| 123 replaced by | 56.60–1 |
| Table 126.1 is replaced by | 56.30–5(c)(3), 56.60–1 |
| 127 through 135 replaced by | 56.65–1, 56.70–10 through 56.90–10 |
| 136 replaced by | 56.95–1 through 56.95–10 |
| 137 replaced by | 56.97–1 through 56.97–40 |

(b) When a section or paragraph of the regulations in this part relates to material in Code B31.1 of ASME (ASME–B31.1), the relationship with Code will appear immediately after the

heading of the section or at the beginning of the paragraph as follows:

(1) (Modifies _____.) This indicates that the material in ASME–B31.1 so numbered for identification is generally applicable but is being altered, amplified, or augmented.

(2) (Replaces _____.) This indicates that the material in ASME–B31.1 so numbered for identification does not apply.

(3) (Reproduces _____.) This indicates that the material in ASME–B31.1 so numbered for identification is being identically reproduced for convenience, not for emphasis.

(c) As stated in § 56.01–2 of this chapter, the standards of the American National Standards Institute (ANSI) and the ASME specifically referred to in this part must be the governing requirements for the matters covered unless specifically limited, modified, or replaced by other rules in this subchapter. See § 56.60–1(b) of this part for the other adopted commercial standards applicable to piping systems that also constitute this subchapter.

38. In § 56.07–5, revise paragraph (a) introductory text, and revise paragraph (f) to read as follows:

**§ 56.07–5 Definitions (modifies 100.2).**

(a) *Piping.* The definitions contained in 100.2 of ASME–B31.1 apply, as well as the following:

* * * * *

(f) *Vital systems.*

(1) Vital systems are those systems that are vital to a vessel's survivability and safety. For the purpose of this subchapter, the following are vital systems:

(i) Systems for fill, transfer, and service of fuel oil;

(ii) Fire-main systems;

(iii) Fixed gaseous fire-extinguishing systems;

(iv) Bilge systems;

(v) Ballast systems;

(vi) Steering systems and steering-control systems;

(vii) Propulsion systems and their necessary auxiliaries and control systems;

(viii) Ship's service and emergency electrical-generation systems and their auxiliaries vital to the vessel's survivability and safety;

(ix) Any other marine-engineering system identified by the cognizant OCMI as crucial to the survival of the vessel or to the protection of the personnel aboard.

(2) For the purpose of this subchapter, a system not identified by paragraph (1) of this section is a non-vital system.

* * * * *

39. In § 56.07–10—

a. In paragraph (a), revise the introductory text and paragraph (a)(1) to read as set out below;

b. In paragraph (b), revise the introductory text to read as set out below;

c. In paragraph (d), revise the introductory text and paragraph (d)(1) to read as set out below;

d. In paragraph (e), revise the introductory text and paragraph (e)(1) to read as set out below; and

e. In paragraph (f), revise the introductory text to read as follows:

**§ 56.07–10 Design conditions and criteria (modifies 101–104.7).**

(a) *Maximum allowable working pressure.* (1) The maximum allowable working pressure of a piping system must not be greater than the internal design pressure defined in 104.1.2 of ASME–B31.1.

* * * * *

(b) *Relief valves.*

* * * * *

(d) *Ratings for pressure and temperature (modifies 102.2).* The material in 102.2 of ASME–B31.1 applies, with the following exceptions:

(1) The details of components not having specific ratings as described in 102.2.2 of ASME–B31.1 must be furnished to the Marine Safety Center for approval.

* * * * *

(e) *Pressure design (modifies 102.3, 104.1.2, and 104.4).* (1) Materials for use in piping must be selected as described in § 56.60–1(a) of this part. Tabulated values of allowable stress for these materials must be measured as indicated in 102.3.1 of Code B31.1 of ASME and in tables 56.60–1 and 56.60–2(a) of this part.

* * * * *

(f) *Intersections (modifies 104.3).* The material in 104.3 of ASME–B31.1 is applicable with the following additions:

* * * * *

40. Revise § 56.10–1(b), to read as follows:

**§ 56.10–1 Selection and limitations of piping components (replaces 105 through 108).**

* * * * *

(b) You must meet the requirements in this subpart and in subparts 56.15 through 56.25 instead of those in 105 through 108 in ASME–B31.1; however, certain requirements are marked ''reproduced.''

41. In § 56.10–5, redesignate paragraphs (c)(2–a) through (5) as (c)(3) through (6) respectively, and revise newly designated paragraphs (c)(3) and (c)(6) to read as follows:

**§ 56.10–5 Pipe.**

* * * * *

(c) * * *

(3) Copper-nickel alloys may be used for water and steam service within the design limits of stress and temperature indicated in ASME–B31.1.

* * * * *

(6) Aluminum-alloy pipe or tube may be used within the limitation stated in 124.7 of ASME–B31.1 and paragraph (5) of this section.

* * * * *

**§ 56.15–1 [Amended]**

42. In § 56.15–1(c)(2)(i), remove the text ''ANSI B31.1'' and add, in its place, the text ''ASME–B31.1''.

**§ 56.15–5 [Amended]**

43. In § 56.15–5(c)(2)(ii)(A), remove the text ''ANSI B31.1'' and add, in its place, the text ''ASME–B31.1''.

**§ 56.20–1 [Amended]**

44. In § 56.20–1(c)(2)(i), remove the text ''ANSI B31.1'' and add, in its place, the text ''ASME–B31.1''.

45. In § 56.20–5, revise the section heading to read as follows:

**§ 56.20–5 Marking (modifies 107.2).**

46. Revise § 56.20–9(a) to read as follows:

**§ 56.20–9 Valve construction.**

(a) Each valve must close with a right-hand (clockwise) motion of the handwheel or operating lever as seen by one facing the end of the valve stem. Each gate, globe, and angle valve must generally be of the rising-stem type, preferably with the stem threads external to the valve body. Where operating conditions will not permit such installations, the use of a nonrising-stem valve will be acceptable. Each nonrising-stem valve, lever-operated valve, or other valve where, because of design, the position of the disc or closure mechanism is not obvious must be fitted with an indicator to show whether the valve is opened or closed, except as provided for in § 56.50–1(g)(2)(iii) of this part. No such indicator is required for any valve located in a tank or similar inaccessible space when indicators are available at accessible sites. The operating levers of each quarter-turn (rotary) valve must be parallel to the fluid flow when open and perpendicular to the fluid flow when closed.

* * * * *

47. Revise § 56.20–15(c) to read as follows:

**§ 56.20–15 Valves employing resilient material.**

* * * * *

(c) If a valve designer elects to use either a calculation or actual fire testing instead of material removal and pressure testing, the calculation must employ ANSI/ISA–S75.02 to determine the flow coefficient ($C_v$), or the fire testing must be conducted in accordance with Standard 607 of the American Petroleum Institute.

48. In § 56.25–5, revise the first sentence to read as follows:

**§ 56.25–5 Flanges.**

Each flange must conform to the design requirements either of the applicable standards of Table 56.60–1(b) of this part, or of those of Appendix 2 of section VIII of the ASME Code. * * *

49. Revise § 56.25–7 to read as follows:

**§ 56.25–7 Blanks.**

Each blank must conform to the design requirements of 104.5.3 of ASME–B31.1.

50. In § 56.25–15, revise the section heading, redesignate paragraphs (b) and (c) as paragraphs (c) and (d) respectively, and add new paragraph (b) to read as follows:

**§ 56.25–15 Gaskets (modifies 108.4).**

* * * * *

(b) Each gasket must conform to the design requirements of the applicable standards of Table 56.60–1(b) of this part.

* * * * *

51. In § 56.25–20, revise paragraphs (d) and (e) to read as follows:

**§ 56.25–20 Bolting.**

* * * * *

(d) All alloy bolts or studs and accompanying nuts are to be threaded in accordance with ASME–B1.1, Class 2A external threads, and Class 2B internal threads (8-thread series 8UN for one inch and larger).

(e) (Reproduces 108.5.1) Washers, when used under nuts, must be of forged or rolled material with steel washers being used under steel nuts and bronze washers under bronze nuts.

52. Revise § 56.30–1 to read as follows:

**§ 56.30–1 Scope (replaces 110 through 118).**

The selection and limitation of piping joints must be as required by this subpart rather than as required by 110 through 118 of ASME–B31.1; however, certain requirements are marked ''reproduced'' in this subpart.

53. In § 56.30–5, revise paragraphs (c)(1), (c)(3) and (d) to read as follows:

**§ 56.30–5 Welded joints.**

* * * * *

(c) * * *

(1) Each socket weld must conform to ASME B16.11, to applicable standards listed in Table 56.60–1(b) of this part, and to Figure 127.4.4C in ASME–B31.1 as modified by § 56.30–10(b)(4) of this part. A gap of approximately one-sixteenth inch between the end of the pipe and the bottom of the socket must be provided before welding. This may best be provided by bottoming the pipe and backing off slightly before tacking.

* * * * *

(3) (Reproduces 111.3.4.) Drains and bypasses may be attached to a fitting or valve by socket welding provided the socket depth, bore diameter and shoulder thickness conform to ASME–B16.11.

(d) *Fillet welds.* A fillet weld may vary from convex to concave. The size of a fillet weld is determined as shown in Figure 127.4.4A of ASME–B31.1. Fillet-weld details for socket-welding components must meet § 56.30–5(c). Fillet-weld details for flanges must meet § 56.30–10 of this part (see also § 56.70–15(d)(3) and (4) of this part for applications of fillet welds).

* * * * *

54. Revise § 56.30–10(b)(3) to read as follows:

**§ 56.30–10 Flanged joints (modifies 104.5.1(a)).**

* * * * *

(b) * * *

(3) *Figure 56.30–10(b), Method 3.* Slip on flanges meeting ASME B16.5 may be used in piping systems of Class I, Class II, or Class II–L not to exceed the service pressure-temperature ratings for flanges of class 300 and lower, within the temperature limitations of the material selected for use, and not to exceed 4-inch Nominal Pipe Size (NPS) in systems of Class I and Class II–L. If 100-percent radiography is required by § 56.95–10 of this part for the class, diameter, wall thickness, and material of the pipe being joined, then slip-on flanges are not permitted and butt-welding flanges are required. The configuration in Figure 127.4.4B(b) of ASME–B31.1, using a face and backweld, may be preferable where eliminating void spaces is desirable. For systems of Class II, the size of the strength fillet may be limited to a maximum of 0.525 inch instead of 1.4T, and the distance from the face of the flange to the end of the pipe may be a maximum of three-eighths inch. Restrictions on the use of slip-on flanges appear in § 56.50–105 of this part for low-temperature piping systems.

* * * * *

55. Revise § 56.30–20(d) to read as follows:

**§ 56.30–20 Threaded joints.**

* * * * *

(d) No pipe with a wall thickness less than that of standard weight of ANSI or ASME B36.10 steel pipe may be threaded regardless of service. For restrictions on the use of pipe in steam service more than 250 pounds per square inch or water service over 100 pounds per square inch and 200 °F (93 °C), see part 104.1.2(c)(1) of ASME–B31.1. Restrictions on the use of threaded joints apply for low-temperature piping and must be checked when designing for these systems.

56. Revise § 56.35–1(b) to read as follows:

**§ 56.35–1 Pipe-stress calculations (replaces 119.7).**

* * * * *

(b) The Marine Safety Center (MSC) will give special consideration to the use of the full tabulated value of ''S'' in computing $S_h$ and $S_c$ where all material used in the system is subjected to further nondestructive testing specified by the MSC, and where the calculations prescribed in 119.6.4 and 102.3.2 of ASME–B31.1 and § 56.07–10 are performed. The procedures for nondestructive testing and the method of stress analysis must be approved by the MSC before the submission of computations and drawings for approval.

57. In § 56.50–1, revise the section heading and the introductory text to read as follows:

**§ 56.50–1 General (replaces 122).**

The requirements in this subpart for piping systems apply instead of those in section 122 of ASME–B31.1. Installation requirements applicable to all systems:

* * * * *

58. Revise § 56.50–10(a) to read as follows:

**§ 56.50–10 Special gaging requirements.**

(a) Where pressure-reducing valves are employed, a pressure gage must be provided on the low-pressure side of the reducing station.

* * * * *

59. In § 56.50–15, in paragraph (b), remove the text, ''ANSI–B31.1'' and add, in its place, the text ''ASME–B31.1'', and revise paragraph (f) to read as follows:

**§ 56.50–15 Steam and exhaust piping.**

* * * * *

(f) The auxiliary steam piping of each vessel equipped with more than one boiler must be so arranged that steam for the whistle and other vital auxiliary systems, such as the electrical-

generation plant, may be supplied from any power boiler.

* * * * *

60. Revise § 56.50–30(b)(1) to read as follows:

**§ 56.50–30 Boiler feed piping.**

* * * * *

(b) * * *

(1) Stop and stop-check valves must be fitted in the main feed line and must be attached as close as possible to drum inlets or to the economizer inlet on boilers fitted with integral economizers.

* * * * *

61. In § 56.50–40, revise the section heading and paragraph (a)(1) to read as follows:

**§ 56.50–40 Blowoff piping (replaces 122.1.4).**

(a)(1) The owner or operator of a vessel must follow the requirements for blowoff piping in this section instead of the requirements in 122.1.4 of ASME–B31.1.

* * * * *

**§ 56.50–65 [Amended]**

62. In § 56.50–65(a), remove the text ''ANSI–B31.1'' and add, in its place, the text ''ASME–B31.1''.

63. In § 56.50–70, revise paragraphs (a)(2) and (b)(2) to read as follows:

**§ 56.50–70 Gasoline fuel systems.**

(a) * * *

(2) Thicknesses of tubing walls must not be less than the larger of that shown in Table 56.50–70(a) or that required by § 56.07–10(e) of this part and 104.1.2 of ASME–B31.1.

* * * * *

(b) * * *

(2) Either a short length of suitable metallic or nonmetallic flexible tubing or hose or a loop of annealed copper tubing must be installed in the fuel-supply line at or near the engine to prevent damage by vibration.

(i) If nonmetallic flexible hose is used, it must meet the requirements of § 56.60–25(b) of this part for fuel service.

(ii) Flexible hose connections should maintain metallic contact between the sections of the fuel-supply lines; however, if they do not, the fuel tank must be grounded.

* * * * *

64. In § 56.50–97, revise the section heading and the introductory text to paragraph (a) to read as follows:

**§ 56.50–97 Piping for instruments, control, and sampling (modifies 122.3).**

(a) Piping for instruments, control, and sampling must comply with paragraph 122.3 of ASME–B31.1 except that:

* * * * *

65. In § 56.60–1, in paragraphs (a)(1) and (a)(2), and Table 56.60–1(a), remove the terms ''ANSI–B31.1'' and ''ANSI B31.1'' wherever they appear and add, in their place, the term ''ASME–B31.1''; and revise Table 56.60–1(b) to read as follows:

**§ 56.60–1 Acceptable materials and specifications (replaces 123 and Table 126.1 in ASME–B31.1).**

* * * * *

TABLE 56.60–1(b).— ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS

[Replaces Table 126.1]

| ANSI Standards (American National Standards Institute), 11 West 42nd Street, New York, NY 10036 | |
|---|---|
| B1.20.1 | Pipe Threads, General Purpose. |
| B1.20.3 | Dryseal Pipe Threads. |
| B2.1 | Pipe Threads. |
| B2.2 | [Reserved] |
| B16.5 | Steel-Pipe Flanges and Flanged Fittings.[3] |
| B16.14 | Ferrous-Threaded Plugs, Bushings, and Locknuts. |
| B16.15 | Cast-Bronze Threaded Fittings—Classes 125 & 250. |
| B16.18 | Cast-Copper-Alloy Solder Joints.[4] |
| B16.20 | Ring Joint Gaskets-Steel Flanges. |
| B16.21 | Non-metallic Gaskets for Flanges. |
| B16.22 | Wrought-Copper and Copper-Alloy Solder-Joint Fittings.[4] |
| B16.23 | Cast-Copper-Alloy Solder-Joint Drainage Fittings.[4] |
| B16.24 | Bronze-Pipe Flanges and Flanged Fittings—Class 150 and 300.[3] |
| B16.25 | Butt-Welding Ends—Pipe, Valves, Flanges, & Fittings. |
| B16.28 | Wrought-Steel Buttwelding Short-Radius Elbows and Returns.[4] |
| B16.29 | Wrought-Copper and Wrought-Copper-Alloy Solder-Joint Drainage Fittings.[4] |
| B16.34 | Valves—Flanged, Threaded, and Welding End.[3] |
| B18.2 | [Reserved] |
| B18.2.1 | Square and Hex Bolts and Screws, Inch Series. |
| B18.2.2 | Square and Hex Nuts. |
| B36.19 | Stainless-Steel Pipe. |

| ASME Standards (American Society of Mechanical Engineers) Three Park Avenue, New York, NY 10016–5990 | |
|---|---|
| ASME B1.1–89 (Reaffirmed 2001). | Unified Inch Screw Threads. |
| ASME B16.1–98 | Cast-Iron Flanges and Flanged Fittings, Classes 25, 125, 250, and 800. |
| ASME B16.3–99 | Malleable-Iron Threaded Fittings, Classes 150 and 300. |
| ASME B16.4–98 | Cast-Iron Threaded Fittings, Classes 125 and 250. |
| ASME B16.9–01 | Factory-Made Wrought-Steel Buttwelding Fittings. |
| ASME B16.10–00 | Face-to-Face and End-to-End Dimensions of Ferrous Valves. |
| ASME B16.11–01 | Forged-Steel Fittings, Socket-Welding and Threaded. |
| ASME B16.14–91 | Ferrous-Pipe Plugs, Bushings, and Locknuts with Pipe Threads. |
| ASME B16.42–98 | Ductile-Iron Pipe Flanges and Flanged Fittings, Classes 150 and 300. |
| ASME B31.1–2001 | Power Piping. |
| ASME B36.10M–00 | Welded and Seamless Wrought-Steel Pipe. |

TABLE 56.60–1(b).— ADOPTED STANDARDS APPLICABLE TO PIPING SYSTEMS—Continued

[Replaces Table 126.1]

| | |
|---|---|
| **ASTM Standards (American Society for Testing and Materials), 100 Barr Harbor Drive, Conshohocken, PA 19428–2959.** | |
| F682 | Wrought-Carbon-Steel Sleeve-Type Couplings. |
| F1006 | Entrainment Separators for Use in Marine Piping Applications.[4] |
| F1007 | Pipe-Line Expansion Joints of the Packed-Slip Type for Marine. |
| F1020 | Line Blind Valves for Marine Applications. |
| F1120 | Circular-Metallic-Bellows-Type Expansion Joints.[4] |
| F1123 | Non-Metallic Expansion Joints. |
| F1139 | Steam Traps and Drains. |
| F1172 | Fuel-Oil Meters of the Volumetric-Positive-Displacement Type. |
| F1173 | Epoxy-Resin-Fiberglass Pipe and Fittings for Use in Marine Applications. |
| F1199 | Cast and Welded Pipe Line Strainers. |
| F1200 | Fabricated (Welded) Pipe-Line Strainers. |
| F1201 | Fluid-Conditioner Fittings in Piping Applications Above 0° F. |
| **EJMA Standards (Expansion Joint Manufacturers Association, Inc.), 25 North Broadway, Tarrytown, NY 10591** | |
| Standards of the Expansion Joint Manufacturers Association, Inc. | |
| FCI Standards (Fluid Controls Institute, Inc.), 31 South Street, Suite 303, Morristown, NJ 07960. | |
| FCI 69–1 Pressure-Rating Standard for Steam Traps. | |
| MSS Standards (Manufacturers' Standardization Society of the Valve and Fittings Industry), 1815 North Fort Myer Drive, Arlington, Va. 22209.[4] | |
| SP–6 | Finishes—On Flanges, Valves, and Fittings. |
| SP–9 | Spot-Facing. |
| SP–25 | Standard Marking System for Valves, Fittings, Flanges, and Unions. |
| SP–44 | Steel Pipe-Line Flanges.[4] |
| SP–45 | Bypasses and Drain Connections. |
| SP–51 | Class 150LW Corrosion-Resistant Cast Flanges and Flanged Fittings.[4] |
| SP–53 | Magnetic-Particle Inspection—Steel Castings. |
| SP–55 | Visual Inspection-Steel Castings. |
| SP–58 | Pipe Hangers and Supports. |
| SP–61 | Hydrostatic Testing Steel Valves. |
| SP–66 | [Reserved] |
| SP–67 | Butterfly Valves.[2, 4] |
| SP–69 | Pipe Hangers and Supports—Selection and Application. |
| SP–72 | Ball Valves with Flanged or Butt-Welding Ends for General Service.[4] |
| SP–73 | Silver-Brazing Joints for Wrought and Cast Solder-Joint Fittings. |
| SP–83 | Carbon-Steel Pipe Unions—Socket-Welded and Threaded. |

[1] [Reserved]

[2] In addition, for bronze valves, adequacy of body shell thickness shall be satisfactory to the Marine Safety Center. Refer to § 56.60–10 of this part for cast-iron valves.

[3] Mill or manufacturer's certification is not required, except where a needed portion of the required marking is deleted because of size or is absent because of age of existing stocks.

[4] Because this standard offers the option of several materials, some of which are not generally acceptable to the Coast Guard, compliance with the standard does not necessarily indicate compliance with these rules. The marking on the component or the manufacturer or mill certificate must indicate the specification or grade of the materials as necessary to fully identify the materials. The materials must comply with the requirements in this subchapter governing the particular application.

66. Revise § 56.60–3(b) to read as follows:

**§ 56.60–3 Ferrous materials.**

* * * * *

(b) (Reproduces 124.2.C) No one may use carbon or alloy steel having a carbon content of more than 0.35 percent in welded construction or shape it by oxygen-cutting or other thermal-cutting process.

67. In § 56.60–5, revise paragraphs (a) and (b) to read as follows:

**§ 56.60–5 Steel (High-temperature applications).**

(a) (Reproduces 124.2.A.) Upon prolonged exposure to temperatures above 775 °F (412 °C), the carbide phase of plain carbon steel, plain nickel-alloy steel, carbon-manganese-alloy steel, manganese-vanadium-alloy steel, and carbon-silicon steel may convert to graphite.

(b) (Reproduces 124.2.B.) Upon prolonged exposure to temperatures above 875 °F (468 °C), the carbide phase of alloy steels, such as carbon-molybdenum, manganese-molybdenum-vanadium, manganese-chromium-vanadium, and chromium-vanadium, may convert to graphite.

* * * * *

68. In § 56.60–25, revise paragraphs (b)(2) and (b)(3); and add paragraph (b)(6) to read as follows:

**§ 56.60–25 Nonmetallic materials.**

* * * * *

(b) * * *

(2) Nonmetallic flexible hose may be used in vital fresh- and salt-water systems at a maximum service pressure of 1034 kPa (150 psi). Nonmetallic flexible hose may be used in lengths not exceeding 76 cm (30 inches) where flexibility is required, subject to the limits in paragraphs (a)(1) through (4) of this section. Nonmetallic flexible hose may be used for plastic pipe in duplicate installations in accordance with paragraph (b) of this section.

(3) Nonmetallic flexible hose may be used for plastic pipe in non-vital fresh- and salt-water systems and non-vital pneumatic systems, subject to the limits of paragraphs (a)(1) through (4) of this section. Unreinforced hoses are limited to a maximum service pressure of 345 kPa (50 psi); reinforced hoses are

limited to a maximum service pressure of 1034 kPa (150 psi).

* * * * *

(6) The fire-test procedures of ISO 15540 are an acceptable alternative to those procedures of SAE J1942. All other tests of SAE J1942 are still required.

* * * * *

**§ 56.65–1 [Amended]**

69. In § 56.65–1, revise the section heading to read as set out below, and in paragraph (a) remove the term ''ANSI–B31.1'' and add, in its place, the term ''ASME–B31.1'':

**§ 56.65–1 General (replaces 127 through 135).**

70. In § 56.70–10—

a. In paragraph (a), revise the introductory text to read as set out below and, in paragraph (a)(3), remove the text ''(*see* Fig. 127.3.1)'' and add, in its place, the text ''(*see* Fig. 127.3)''; and

b. Revise, paragraph (b) to read as follows:

**§ 56.70–10 Preparation (modifies 127.3).**

(a) *Butt welds (reproduces 127.3)–(A.1) End preparation.*

* * * * *

(b) *Fillet welds (modifies 127.4.4).* In making fillet welds, the weld metal must be deposited in such a way as to obtain adequate penetration into the base metal at the root of the weld. Piping components that are to be joined utilizing fillet welds must be prepared in accordance with applicable provisions and requirements of this section. For typical details, *see* Figures 127.4.4A and 127.4.4C of ASME–B31.1 and Figure 56.30–10(b) of this part. *See* § 56.30–5(d) of this part for additional requirements.

71. In § 56.70–15—

a. In paragraph (c), (d)(1), and (g)(1) through (7), remove the terms ''ANSI–B31.1'' and ''ANSI B31.1'' and add, in their place, the term ''ASME–B31.1'';

b. Revise paragraphs (b)(1), (b)(5), and (b)(6) to read as set out below;

c. In paragraph (f), revise the introductory text to read as set out below; and

d. In paragraph (g), revise the introductory text and paragraph (g)(4) to read as follows:

**§ 56.70–15 Procedure.**

* * * * *

(b) * * *

(1) Girth butt welds must be complete penetration welds and may be made with a single vee, double vee, or other suitable type of groove, with or without backing rings or consumable inserts.

* * * * *

(5) When components of different outside diameters are welded together, the weld joint must be filled to the outside surface of the component having the larger diameter. There must be a gradual transition, not exceeding a slope of 1:3, in the weld between the two surfaces. To avoid unnecessary weld deposit, the outside surface of the component having the larger diameter must be tapered at an angle not to exceed thirty degrees with the axis of the pipe. (*See* Fig. 127.4.2 of ASME–B31.1)

(6) As-welded surfaces are permitted, however, the surface of the welds must be sufficiently free from coarse ripple, grooves, overlaps, abrupt ridges and valleys to meet the following:

* * * * *

(f) *Weld defect repairs.*

* * * * *

(g) *Welded branch connections.* * * *

* * * * *

(4) Branch connections (including specially made integrally reinforced branch connection fittings) which abut the outside surface of the run wall, or which are inserted through an opening cut in the run wall, shall have opening and branch contour to provide a good fit and shall be attached by means of full penetration groove welds except as otherwise permitted in paragraph (g)(7) of this section. The full penetration groove welds shall be finished with cover fillet welds having a minimum throat dimension not less than 2tc. The limitation as to imperfection of these groove welds shall be as set forth in 127.4.2(C) of ASME–B31.1 for girth welds.

* * * * *

72. Revise § 56.75–5(c) to read as follows:

**§ 56.75–5 Filler metal.**

* * * * *

(c) Fluxes that are fluid and chemically active at the brazing temperature must be used when necessary to prevent oxidation of the filler metal and of the surfaces to be joined and to promote free flowing of the filler metal.

73. In § 56.75–10, revise the section heading to read as follows:

**§ 56.75–10 Joint clearance.**

74. In § 56.75–15, revise the section heading to read as follows:

**§ 56.75–15 Heating.**

75. Revise § 56.75–25(b) to read as follows:

**§ 56.75–25 Detail requirements.**

* * * * *

(b) The surfaces to be brazed must be clean and free from grease, oxides, paint, scale, and dirt of any kind. Any suitable chemical or mechanical cleaning method may be used to provide a clean, wettable surface for brazing.

* * * * *

**§ 56.80–5 [Amended]**

76. In § 56.80–5, remove the term ''ANSI–B31.1'' and add, in its place, the term ''ASME–B31.1''.

77. In § 56.80–15, revise paragraphs (a), (c), (d), (e), and (g) to read as follows:

**§ 56.80–15 Heat treatment of bends and formed components.**

(a) Carbon-steel piping that has been heated to at least 1,650 °F (898 °C) for bending or other forming requires no subsequent heat treatment.

* * * * *

(c) Cold bending and forming of carbon steel having a wall thickness of three-fourths of an inch and heavier, and all ferritic-alloy pipe in nominal pipe sizes of 4 inches and larger, or one-half-inch wall thickness or heavier, will require a stress-relieving treatment.

(d) Cold bending of carbon-steel and ferritic-alloy steel pipe in sizes and wall thicknesses less than specified in 129.3.3 of ASME–B31.1 may be used without a postheat treatment.

(e) For other materials the heat treatment of bends and formed components must be such as to ensure pipe properties that are consistent with the original pipe specification.

* * * * *

(g) Austenitic stainless-steel pipe that has been heated for bending or other forming may be used in the ''as-bent'' condition unless the design specification requires post-bending heat treatment.

78. Revise § 56.85–5 to read as follows:

**§ 56.85–5 Heating and cooling method.**

Heat treatment may be accomplished by a suitable heating method that will provide the desired heating and cooling rates, the required metal temperature, metal temperature uniformity, and temperature control.

79. In § 56.85–10, revise paragraphs (b) and (c) to read as follows:

**§ 56.85–10 Preheating.**

* * * * *

(b) During the welding of dissimilar materials, the minimum preheat temperature may not be lower than either the highest temperature listed in Table 56.85–10 for any of the materials to be welded or the temperature established in the qualified welding procedure.

(c) The preheat temperature shall be checked by use of temperature-indicating crayons, thermocouples, pyrometers, or other suitable methods to ensure that the required preheat temperature is obtained before, and uniformly maintained during, the welding.

* * * * *

80. In § 56.85–15, revise paragraphs (d), (e), and (i) to read as follows:

**§ 56.85–15 Postheating treatment.**

* * * * *

(d) The postheating treatment selected for parts of an assembly must not adversely affect other components. Heating a fabricated assembly as a complete unit is usually desirable; however, the size or shape of the unit or the adverse effect of a desired treatment on one or more components where dissimilar materials are involved may dictate alternative procedures, such as heating a section of the assembly before the attachment of others or local circumferential-band heating of welded joints in accordance with § 56.85–15(j)(3) and Note (12) of Table 56.85–10 of this part.

(e) Postheating treatment of welded joints between dissimilar metals having different postheating requirements must be that established in the qualified welding procedure.

* * * * *

(i) For those materials listed under P–1, when the wall thickness of the thicker of the two abutting ends, after their preparation, is less than three-fourths inch, the weld needs no postheating treatment. In all cases, where the nominal wall thickness is three-fourths inch or less, postheating treatment is not required.

* * * * *

81. In § 56.90–5, revise paragraphs (b) and (d) to read as follows:

**§ 56.90–5 Bolting procedure.**

* * * * *

(b) When bolting gasketed flanged joints, the gasket must be properly compressed in accordance with the design principles applicable to the type of gasket used.

* * * * *

(d) All bolts must be engaged so that there is visible evidence of complete threading through the nut or threaded attachment.

82. In § 56.90–10, revise the section heading to read as follows:

**§ 56.90–10 Threaded piping (modifies 135.5).**

**§ 56.95–1 [Amended]**

83. In § 56.95–1, in paragraphs (a) and (b) remove the term ''ANSI–B31.1'' wherever it appears and add, in its place, the term ''ASME–B31.1''.

**§ 56.95–10 [Amended]**

84. In § 56.95–10(a), remove the term ''ANSI–B31.1'' and add in its place the term ''ASME–B31.1''.

**§ 56.97–1 [Amended]**

85. In § 56.97–1(a), remove the term ''ANSI–B31.1'' and add in its place the term ''ASME–B31.1''.

86. In § 56.97–25, revise the section heading to read as follows:

**§ 56.97–25 Preparation for Testing (reproduces 137.2).**

87. In § 56.97–30, revise the section heading to read as follows:

**§ 56.97–30 Hydrostatic tests (modifies 137.4)**

## PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

88. Revise the authority citation for part 58 to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

89. Revise § 58.01–10(a)(3) to read as follows:

**§ 58.01–10 Fuel oil.**

(a) * * *

(3) Subject to such further precautions as the Commanding Officer, Marine Safety Center, considers necessary, and provided that the ambient temperature of the space in which such fuel oil is stored or used does not rise to within 18°F (−7 °C) below the flashpoint of the fuel oil, fuel oil having a flashpoint of less than 140 °F (60 °C) but not less than 110 °F (43 °C) may be used.

* * * * *

90. In § 58.03–1(b), revise the entries for ''American Bureau of Shipping (ABS)'' and ''American Society of Mechanical Engineers (ASME)'' to read as follows:

**§ 58.03–1 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *American Bureau of Shipping (ABS)*, ABS Plaza, 16855 Northchase Drive, Houston, TX 77060: | |
| Rules for Building and Classing Steel Vessels, 2003 | 58.01–5; 58.05–1; 58.10–15; 58.20–5; 58.25–5 |
| * * * * * * * | |
| *American Society of Mechanical Engineers (ASME) International*, Three Park Avenue, New York, NY 10016–5990: | |
| Boiler and Pressure Vessel Code, Section I, Power Boilers, 2001 | 58.30–15 |
| Section VIII, Division 1, Pressure Vessels, 2001 | 58.30–15 |

91. In § 58.16–10, revise paragraphs (b)(1) and (c) to read as follows:

**§ 58.16–10 Approvals.**

* * * * *

(b) * * *

(1) Cylinders in which liquefied petroleum gas is stored and handled must be constructed, tested, marked, maintained, and retested in accordance with the regulations of the Department of Transportation. See Title 49, Code of Federal Regulations, Part 178.

* * * * *

(c) *Safety-relief devices.* All required safety-relief devices must be approved as to type, size, pressure setting, and location by the Commandant (G–MSE) as being in accordance with 49 CFR part 178.

* * * * *

## PART 59—REPAIRS TO BOILERS, PRESSURE VESSELS AND APPURTENANCES

92. Revise the authority citation for part 59 to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 227; Department of Homeland Security Delegation No. 0170.1.

93. In § 59.01–2(b), revise the entry for ''American Society of Mechanical Engineers (ASME) International'' to read as follows:

**§ 59.01–2 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| American Society of Mechanical Engineers (ASME) International, Three Park Avenue, New York, NY 10016–5900: | |
| Boiler and Pressure Vessel (B&PV), Code Section I, Power Boilers, July 2001 | 59.10–5 |
| Boiler and Pressure Vessel Code Section VII, Recommended Guidelines for the Care of Power Boilers, July 2001. | 59.01–5 |
| Boiler and Pressure Vessel Code Section VIII, Division 1, Pressure Vessels July 2001 | 59.10–5; 59.10–10 |
| Boiler and Pressure Vessel Code Section IX, Welding and Brazing Qualifications, July 1989 with 1989 addenda. | 59.10–5 |

94. Revise § 59.01–5(e) to read as follows:

**§ 59.01–5 Repairs, replacements, or alterations.**

* * * * *

(e) Where applicable, manufacturers' instruction books, manuals, and the like, and section VII of the ASME Code must be used for guidance.

## PART 61—PERIODIC TESTS AND INSPECTIONS

95. Revise the authority citation for part 61 to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3307, 3703; Executive Order 12234, 45 FR 58801, 3 CFR 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

96. In § 61.15–10, revise the section heading and paragraph (b) to read as follows:

**§ 61.15–10 Liquefied-petroleum-gas piping for heating and cooking.**

* * * * *

(b) Test the system for leakage in accordance with the following procedure: With the appliance valve closed, the master shutoff valve on the appliance open, and one cylinder valve open, note pressure in gage.

## PART 62—VITAL SYSTEM AUTOMATION

97. Revise the authority citation for part 62 to read as follows:

**Authority:** 46 U.S.C. 3306, 3703, 8105; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

98. Revise § 62.05–1 to read as follows:

**§ 62.05–1 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register. To enforce any edition other than the one listed in paragraph (b) of this section, the Coast Guard must publish notice of the change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, Washington, DC 20408, and at the office of the Commandant (G–MSE), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

(b) The material approved for incorporation by reference in this part is:

| | |
|---|---|
| *American Bureau of Shipping (ABS),* ABS Plaza, 16855 Northchase Drive, Houston, TX 77060: | |
| Rules for Building and Classing Steel Vessels, 2003 | 62.25–30(a)(1), (2), (3), and (5); 62.35–5(d); 62.35–35(a); 62.35–40(c); 62.35–50; 62.50–30(c); and 62.50–30(k) |

99. Revise § 62.25–1(c) to read as follows:

**§ 62.25–1 General.**

* * * * *

(c) Each console for a vital control or alarm system and any similar enclosure that relies upon forced cooling for proper operation of the system must have a backup means of providing cooling. It must also have an alarm activated by the failure of the temperature-control system.

100. Revise § 62.25–5(a) to read as follows:

**§ 62.25–5 All control systems.**

(a) Local and remote starting for any propulsion engine or turbine equipped with a jacking or turning gear must be prevented while the turning gear is engaged.

* * * * *

101. In § 62.25–30, revise paragraphs (a)(1), (a)(2), (a)(3), and (a)(5) to read as follows:

**§ 62.25–30 Environmental design standards.**

(a) * * *

(1) Ship motion and vibration described in Table 9 of section 4–9–7 of ABS Rules.

* * * * *

(2) Ambient air temperatures described in Table 9 of part 4–9–7 of ABS Rules.

(3) Electrical voltage and frequency tolerances described in Table 9 of part 4–9–7 of ABS Rules.

* * * * *

(5) Hydraulic and pneumatic pressure variations described in Table 9 of part 4–9–7 of ABS Rules.

* * * * *

102. In § 62.35–5, revise the section heading and paragraph (d) to read as follows:

**§ 62.35–5 Remote propulsion-control systems.**

* * * * *

(d) *Transfer of control location.* Transfer of control location must meet section 4–9–2/5.11 of ABS Rules. Manual alternative-propulsion-control locations must be capable of overriding, and of operating independent of, all remote and automatic propulsion-control locations.

* * * * *

103. Revise § 62.35–35 to read as follows:

**§ 62.35–35 Starting systems for internal-combustion engines.**

The starting systems for propulsion engines and for prime movers of ships' service generators required to start automatically must meet sections 4–6–5/9.5 and 4–8–2/11.11 of ABS Rules.

104. Revise § 62.35–40(c) to read as follows:

**§ 62.35–40 Fuel systems.**

* * * * *

(c) *Automatic fuel heating.* Automatic fuel heating must meet section 4–9–3/15.1 of ABS Rules.

* * * * *

105. In § 62.35–50, Table 62.35–50, revise the footnotes 1, 2, 8, and 9 following the table; and revise Notes 1 and 9 on the table to read as follows:

**§ 62.35–50 Tabulated monitoring and safety control requirements for specific systems.**

TABLE 62.35.50—MINIMUM SYSTEM MONITORING AND SAFETY CONTROL REQUIREMENTS FOR SPECIFIC SYSTEMS (NOTE 1)

* * * * * * *

[1] See ABS Rules Part 4–9–4, tables 7A and 8.
[2] See ABS Rules Part 4–9–4, tables 7A and 8.
* * * * *
[8] See ABS Rules Part 4–9–4, Table 8; and § 58.10–15(f) of this chapter.
[9] See ABS Rules Part 4–9–4, tables 7A and 8.
Notes on Table 62.35–50:
1. The monitoring and controls listed in this table are applicable if the system listed is provided or required.
* * * * * * *
9. Main and remote control stations, including the navigational bridge, must provide visual and audible alarms in the event of a fire in the main machinery space.

106. In § 62.50–30, revise paragraphs (c) and the introductory text of paragraph (k) to read as follows:

**§ 62.50–30 Additional requirements for periodically unattended machinery plants.**

* * * * *

(c) *Fuel systems.* Each system for the service or treatment of fuel must meet section 4–6–4/13.5 of ABS Rules.

* * * * *

(k) *Continuity of electrical power.* The electrical plant must meet sections 4–8–2/3.11 and 4.8.2/9.9 of ABS Rules, and must—

* * * * *

## PART 63—AUTOMATIC AUXILIARY BOILERS

107. Revise the authority citation for part 63 to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Executive Order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

**§ 63.01–3 [Amended]**

108. In § 63.01–3(b) remove the term ''(20 gph)''.

109. In § 63.05–1(b), revise the entries for ''American Gas Association'', ''American Society of Mechanical Engineers (ASME) International'', ''American Society for Testing and Materials (ASTM)'', ''International Maritime Organization (IMO)'', ''International Organization for Standardization'', and ''Underwriters'' Laboratories, Inc. (UL)'', and place them in alphabetical order, to read as follows:

**§ 63.05–1 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *American Gas Association,* 1515 Wilson Boulevard, Arlington, VA 22209 | |
| ANSI/AGA Z21.22–1999 Relief Valves and Automatic Shutoff Devices for Hot Water Supply Systems. | 63.25–3 |
| *American Society of Mechanical Engineers (ASME) International,* Three Park Avenue, New York, NY 10016–5990 | |
| ASME CSD–1–1998, Controls and Safety Devices for Automatically Fired Boilers | 63.10–1; 63.15–1; 63.20 |
| *American Society for Testing and Materials (ASTM),* 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959 | |
| ASTM F 1323–01, Standard Specification for Shipboard Incinerators | 63.25–9 |
| *International Maritime Organization (IMO),* Publications Section, 4 Albert Embankment, London, SE1 7SR United Kingdom | |
| Resolution MEPC.76(40), Standard, Specification for Shipboard Incinerators (1997) | 63.25–9 |
| *International Organization for Standardization,* Case postale 56, CH–1211, Geneva 20, Switzerland | |
| Shipbuilding—Shipboard Incinerators—Requirements, 13617 (1995) | 63.25–9 |
| *Underwriters' Laboratories, Inc. (UL),* 12 Laboratory Drive, Research Triangle Park, NC 27709–3995 | |
| ANSI/UL–174, Household Electric Storage Tank Water Heaters, 1996 | 63.25–3 |
| ANSI/UL–296, Oil Burners, 1994 | 63.15–5 |
| ANSI/UL–343, Pumps for Oil Burning Appliances 1997 | 63.15–5 |
| ANSI/UL–1453, Electric Booster and Commercial Storage Tank Water Heaters, 1995 | 63.25–3 |

110. In § 63.25–1, revise the introductory text to read as follows:

**§ 63.25–1 Small automatic auxiliary boilers.**

Small automatic auxiliary boilers defined as having heat-input ratings of 400,000 Btu/hr. or less (117 kilowatts or less) must also meet the following requirements:

* * * * *

111. Revise § 63.25–9 to read as follows:

**§ 63.25–9 Incinerators.**

(a) *General.* Incinerators installed on or after March 26, 1998, must meet the requirements of IMO resolution MEPC.76(40). Incinerators in compliance with ISO standard 13617, ''Ships and marine technology—Shipboard Incinerators—Requirements'', must meet IMO resolution MEPC.76(40). Incinerators in compliance with both ASTM F 1323, ''Standard Specification for Shipboard Incinerators'' and Annexes A1–A3 of IMO resolution MEPC.76(40) must meet IMO resolution MEPC.76(40). An application for type approval of shipboard incinerators must be sent to the Commanding Officer, U.S. Coast

Guard Marine Safety Center, Engineering Division, 400 Seventh Street SW, Washington, DC 20590–0001.

(b) *Testing.* Before type approval is granted, the manufacturer must have tests conducted, or submit evidence that such tests have been conducted, by an independent laboratory acceptable to the Commanding Officer, USCG Marine Safety Center. The laboratory must—

(1) Have the equipment and facilities for conducting the inspections and tests required by this section;

(2) Have experienced and qualified personnel to conduct the inspections and tests required by this section;

(3) Have documentary proof of the laboratory's qualifications to perform the inspections and tests required by this section; and

(4) Not be owned or controlled by a manufacturer, supplier, or vendor of shipboard incinerators.

(c) *Prohibited substances.* Shipboard incineration of the following substances is prohibited:

(1) Annexes I, II, and III of MARPOL 73/78 on cargo residues and related contaminated packing materials.

(2) Polychlorinated biphenyls (PCBs).

(3) Garbage, as defined in Annex V of MARPOL 73/78, containing more than traces of heavy metals.

(4) Refined petroleum products containing halogen compounds.

(d) *Operating manual.* Each ship with an incinerator subject to this rule must possess a manufacturer's operating manual, which must specify how to operate the incinerator within the limits described in Annex A1.5 of Resolution MEPC.76(40).

(e) *Training.* Each person responsible for operating any incinerator must be trained and be capable of implementing the guidance provided in the manufacturer's operating manual.

(f) *Acceptable methods and standards for testing emissions.* The methods and standards for testing emissions that the laboratory may use in determining emissions-related information described in Annex A1.5 of Resolution MEPC.76(40) are—

(1) 40 CFR part 60 Appendix A, Method 1—Sample and velocity traverses for stationary sources;

(2) 40 CFR part 60 Appendix A, Method 3A—Determination of oxygen and carbon dioxide concentrations in emissions from stationary sources (instrumental-analyzer procedure);

(3) 40 CFR part 60 Appendix A, Method 5—Determination of particulate emissions from stationary sources;

(4) 40 CFR part 60 Appendix A, Method 9—Visual determination of the opacity of emissions from stationary sources;

(5) 40 CFR part 60 Appendix A, Method 10—Determination of carbon-monoxide emissions from stationary sources;

(6) ISO standard 9096 (1992) ''Stationary source emissions—Determination of concentration and mass flow rate of particulate material in gas-carrying ducts-Manual gravimetric method;'' and

(7) ISO standard 10396 (1993) ''Stationary source emissions—Sampling for the automated determination of gas concentrations.''

## PART 76—FIRE PROTECTION EQUIPMENT

112. Revise the authority citation for part 76 to read as follows:

**Authority:** 46 U.S.C. 3306; Executive order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

113. In § 76.50–5, revise Table 76.50–5(c) to read as follows:

**§ 76.50–5 Classification.**

* * * * *

TABLE 76.50–5(C)

| Classification | | Soda acid and water, liters (gallons) | Foam, liters (gallons) | Carbon dioxide, kilograms (pounds) | Dry chemical, kilograms (pounds) |
|---|---|---|---|---|---|
| Type | Size | | | | |
| A | II | 9.5 (2.5) | 9.5 (2.5) | | |
| B | I | | 4.75 (1.25) | 1.8 (4) | |
| B | II | | 9.5 (2.5) | 6.8 (15) | 4.5 (10) |
| B | III | | 45.5 (12) | 15.9 (35) | 9.0 (20) |
| B | IV | | 76 (20) | 22.7 (50) | 13.6 (30) |
| B | V | | 151 (40) | 45.3 (100) | 22.7 (50) |
| C | I | | | 1.8 (4) | 1 (2) |
| C | II | | | 6.8 (15) | 4.5 (10) |

* * * * *

## PART 92—FIRE PROTECTION EQUIPMENT

114. Revise the authority citation for part 92 to read as follows:

**Authority:** 46 U.S.C. 3306; Executive order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

115. In § 92.15–10, revise paragraph (d) to read as follows:

**§ 92.15–10 Ventilation for closed spaces.**

* * * * *

(d) The ventilation of spaces that are ''specially suitable for vehicles'' shall be in accordance with §§ 111.105–39 and 111.105–40 of this chapter, as applicable.

* * * * *

## PART 110—GENERAL PROVISIONS

116. Revise the authority citation for part 110 to read as follows:

**Authority:** 33 U.S.C. 1509; 43 U.S.C 1333; 46 U.S.C. 3306, 3307, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.277; Department of Homeland Security Delegation No. 0170.1; § 110.01–2 also issued under 44 U.S.C. 3507.

117. In § 110.10–1(b) revise the entries for ''American Bureau of Shipping (ABS)'', ''American National Standards Institute (ANSI)'', ''Institute of Electrical and Electronic Engineers (IEEE)'', ''International Electrotechnical Commission (IEC)'', ''International Maritime Organization (IMO)'', ''National Electrical Manufacturers Association (NEMA)'', ''National Fire Protection Association (NFPA)'', ''Naval Publications and Forms Center (NPFC)'', ''Naval Sea Systems Command (NAVSEA)'', and ''Underwriters Laboratories Inc. (UL)'', and add, in alphabetical order, the entry ''American Society of Mechanical Engineers (ASME)'' to read as follows:

**§ 110.10–1 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *American Bureau of Shipping (ABS),* American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, TX 77060 USA. | |
| Rules for Building and Classing Steel Vessels, 2003 | 110.15–1; 111.01–9; 111.12–1(a); 111.12–3; 111.12–5; 111.12–7; 111.33–11; 111.35–1; 111.70–1(a); 111.105–31(n); 111.105–39(a); 111.105–40(a); 113.05–7 |
| Rules for Building and Classing Mobile Offshore Drilling Units, 2001: Including Notice No. 2. | 111.12–1(a); 111.12–3; 111.12–5; 111.12–7; 111.33–11; 111.35–1; 111.70–1(a) |
| *American National Standards Institute (ANSI),* American National Standards Institute, 25 West 43rd Street, New York, NY 10036. | |
| ANSI/IEEE C37.010, Application Guide for AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis, 1999. | 111.54–1(c) |
| ANSI C37.12, For AC High-Voltage Circuit Breakers Rated on a Symmetrical Current Basis-Specification Guide, 1991. | 111.54–1(c) |
| *American Society of Mechanical Engineers (ASME),* American Society of Mechanical Engineers, ASME International, 22 Law Drive, Fairfield, NJ 07007–2900. | |
| ASME A17.1, Safety Code for Elevators and Escalators, 2000 | 111.90–1 |
| *Institute of Electrical and Electronic Engineers (IEEE),* IEEE Service Center, 445 Hoes Lane, Piscataway, NJ 08854. | |
| IEEE Std C37.04, IEEE Standard for AV High-Voltage Circuit Breakers, 1999 | 111.54–1(c) |
| IEEE Std C37.13, IEEE Standard for Low-Voltage AC Power Circuit Breakers used in Enclosures, 1990. | 111.54–1(c) |
| IEEE Std C37.14, IEEE Standard for Low-Voltage DC Power Circuit Breakers used in Enclosures, 2002. | 111.54–1(c) |
| IEEE Std 45–1998, IEEE Recommended Practice for Electric Installations on Shipboard | 111.30–19(a)(1); 111.105–3; 111.105–31(e); 111.105–41. |
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118. In § 110.15–1, revise paragraph (a) to read as set out below, and in paragraph (b), revise the definition of ''Nonsparking fan'', to read as follows:

**§ 110.15–1 Definitions.**

(a) The electrical and electronic terms are defined in IEEE Std 100 or IEC 60092–101.

(b) * * *

*Nonsparking fan* means nonsparking fan as defined in ABS Rules for Building and Classing Steel Vessels, section 4–8–3/11.

* * * * *

## PART 111—GENERAL PROVISIONS

119. Revise the authority citation for part 111 to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

120. In § 111.01–9, remove the Note to § 111.01–9 and revise paragraph (b) to read as follows:

**§ 111.01–9 Degrees of protection.**

* * * * *

(b) Electrical equipment in locations requiring exceptional degrees of protection as defined in § 110.15–1 of this chapter must be enclosed to meet at least the minimum degrees of protection in ABS Rules for Building and Classing Steel Vessels, section 4–8–3, Table 2, or appropriate NEMA 250 Type for the service intended. Each enclosure must be designed so that the total rated temperature of the equipment inside the enclosure is not exceeded.

* * * * *

121. Revise § 111.05–7 to read as follows:

**§ 111.05–7 Armored and metallic sheathed cable.**

When installed, the metallic armor or sheath must meet the installation

requirements of Section 25 of IEEE Std 45.

122. Revise § 111.05–9 to read as follows:

**§ 111.05–9 Masts.**

Each nonmetallic mast and topmast must have a lightning-ground conductor in accordance with section 10 of IEC 60092–401.

123. Revise § 111.05–33 to read as follows:

**§ 111.05–33 Equipment safety grounding (bonding) conductors.**

(a) Each equipment-grounding conductor must be sized in accordance with article 250–122 of the National Electrical Code (NEC) (NFPA 70).

(b) Each equipment-grounding conductor (other than a system-grounding conductor) of a cable must be permanently identified as a grounding conductor in accordance with the requirements of article 250–119 of the NEC.

124. Revise § 111.12–1(a) to read as follows:

**§ 111.12–1 Prime movers.**

(a) Prime movers must meet section 58.01–5 and Subpart 58.10 of this chapter except that those for mobile offshore drilling units must meet Part 4, Chapter 3, sections 4/3.17 and 4/3.19 of the ABS Rules for Building and Classing Mobile Offshore Drilling Units. Further requirements for emergency generator prime movers are in Subpart 112.50 of this chapter.

* * * * *

125. Revise § 111.12–3 to read as follows:

**§ 111.12–3 Excitation.**

In general, excitation must meet sections 4–8–3/13.2(a), 4–8–5/5.5.1, 4–8–5/5.5.2, and 4–8–5/5.17.6 of the ABS Rules for Building and Classing Steel Vessels, except that those for mobile offshore drilling units must meet Part 4, Chapter 3, sections 4/3.21.1 and 4/3.23.1 of the ABS Rules for Building and Classing Mobile Offshore Drilling Units. In particular, no static exciter may be used for excitation of an emergency generator unless it is provided with a permanent magnet or a residual-magnetism-type exciter that has the capability of voltage build-up after two months of no operation.

126. Revise § 111.12–5 and its heading to read as follows:

**§ 111.12–5 Construction and testing of generators.**

Each generator must meet the applicable requirements for construction and testing in section 4–8–3 of the ABS Rules for Building and Classing Steel Vessels except that each one for a mobile offshore drilling unit must meet those in Part 4, Chapter 3, section 4 of the ABS Rules for Building and Classing Mobile Offshore Drilling Units.

127. Revise § 111.12–7 to read as follows:

**§ 111.12–7 Voltage regulation and parallel operation.**

Voltage regulation and parallel operation must meet:

(a) Sections 4–2–3/7.5.2, 4–2–4/7.5.2, 4–8–3/3.13.2, and 4–8–3/3.13.3 for AC systems;

(c) Section 4–8–3/3.13.3(c) of the ABS Rules for Building and Classing Steel Vessels, and IEC 60092–202 and 301 for DC systems; and

(d) for mobile offshore drilling units, Part 4, Chapter 3, section 4/3.21.2, 4/3.21.3, 4/3.23.2, and 4/3.23.3 of the ABS Rules for Building and Classing Mobile Offshore Drilling Units.

128. Revise § 111.15–2(b) to read as follows:

**§ 111.15–2 Battery construction.**

* * * * *

(b) Each fully charged lead-acid battery must have a specific gravity that meets section 22 of IEEE Std 45.

* * * * *

129. Revise § 111.20–15 and its heading to read as follows:

**§ 111.20–15 Protection of transformers against overcurrent.**

Each transformer must have protection against overcurrent that meets article 450 of the NEC or IEC 60092–303.

130. Revise § 111.25–5(a) to read as follows:

**§ 111.25–5 Marking.**

(a) Each motor must have a marking or nameplate that meets either article 430–7 of the NEC or IEC 60092–301 (clause 16).

* * * * *

131. Revise § 111.30–1 to read as follows:

**§ 111.30–1 Location and installation.**

Each switchboard must meet the location and installation requirements in section 8.2 of IEEE Std 45 or IEC 60092–302, as applicable.

132. In § 111.30–5, revise paragraphs (a)(1) and (a)(2) to read as follows:

**§ 111.30–5 Construction.**

(a) * * *

(1) For low voltages, either section 8.3 of IEEE Std 45 or IEC 60092–302, as appropriate.

(2) For medium voltages, either section 8.4 of IEEE Std 45 or IEC 60092–302, as appropriate.

* * * * *

133. In § 111.30–19, revise paragraphs (a)(1), (a)(2), and (b)(4) to read as follows:

**§ 111.30–19 Buses and wiring.**

(a) * * *

(1) Section 7.10 of IEEE Std 45; or

(2) IEC 60092–302 (clause 6).

* * * * *

(b) * * *

(4) Flame-retardant meeting ANSI/UL 1581 test VW–1 or IEC 600332–1; and

* * * * *

134. In § 111.33–3, revise paragraphs (a)(1) and (2) to read as follows:

**§ 111.33–3 Nameplate data.**

(a) * * *

(1) Section 10.20.12 of IEEE Std 45; or

(2) IEC 60092–304 (clause 8).

* * * * *

135. In § 111.33–5, revise paragraphs (a) and (b) to read as follows:

**§ 111.33–5 Installations.**

* * * * *

(a) Sections 10.20.2, 10.20.7, and 10.20.8 of IEEE Std 45; or

(b) IEC 60092–304.

136. Revise § 111.33–11 to read as follows:

**§ 111.33–11 Propulsion systems.**

Each power semiconductor rectifier system in a propulsion system must meet sections 4–8–5/5.17.9 and 4–8–5/5.17.10 of ABS Rules for Building and Classing Steel Vessels, except that each one for mobile offshore drilling units must meet those in Part 4, Chapter 3, section 4/3.5.3 of ABS Rules for Building and Classing Mobile Offshore Drilling Units.

137. Revise § 111.35–1 to read as follows:

**§ 111.35–1 Electrical propulsion installations.**

Each electric propulsion installation must meet sections 4–8–5/5.5, 4–8–5/5.11, 4–8–5/5.13, 4–8–5/5.17.8(e), 4–8–5/5.17.9, and 4–8–5/5.17.10 of ABS Rules for Building and Classing Steel Vessels except that each one for mobile offshore drilling units must meet those in Part 4, Chapter 3, section 4/3.5.3 of ABS Rules for Building and Classing Mobile Offshore Drilling Units.

138. Revise § 111.40–1 to read as follows:

**§ 111.40–1 Panelboard standard.**

Each panelboard must meet section 17.1 of IEEE Std 45.

139. In § 111.50–3, revise paragraphs (c), (e), and (g)(2) to read as follows:

**§ 111.50–3 Protection of conductors.**

* * * * *

(c) *Fuses and circuit breakers.* If the allowable current-carrying capacity of the conductor does not correspond to a standard rating for fuses or circuit breakers that meets article 240–6 of the NEC or IEC 60092–202, then the next larger such rating is acceptable, except that:

(1) This rating must not be larger than 150 percent of the current-carrying capacity of the conductor; and

(2) The effect of temperature on the operation of fuses and thermally controlled circuit breakers must be taken into consideration.

* * * * *

(e) *Thermal devices.* No thermal cutout, thermal relay, or other device not designed to open a short circuit may be used for protection of a conductor against overcurrent due to a short circuit or ground, except in a motor circuit as described in Article 430 of the National Electrical Code or in IEC 60092–202.

* * * * *

(g) * * *

(2) For motor-running protection described in Article 430 of the National Electrical Code or in IEC 60092–202.

140. Revise § 111.50–9 to read as follows:

**§ 111.50–9 Disconnecting and guarding.**

Disconnecting and guarding of overcurrent protective devices must meet Part IV of Article 240 of the National Electrical Code.

141. Revise § 111.52–5(c) to read as follows:

**§ 111.52–5 Systems 1500 kilowatts or above.**

* * * * *

(c) Estimated calculations using IEC 61363–1.

* * * * *

142. Revise § 111.53–1(a)(1) to read as follows:

**§ 111.53–1 General.**

(a) * * *

(1) Meet the general provisions of article 240 of the NEC or IEC 60092–202 as appropriate.

* * * * *

143. In § 111.54–1, revise paragraphs (a)(1), (b), and (c) to read as follows:

**§ 111.54–1 Circuit breakers.**

(a) * * *

(1) Meet the general provision of article 240 of the NEC or IEC 60092–202 as appropriate;

* * * * *

(b) No molded-case circuit breaker may be used in any circuit having a nominal voltage of more than 600 volts (1,000 volts for a circuit containing a circuit breaker manufactured to the standards of the IEC). Each molded-case circuit breaker must meet UL 489–9 and its marine supplement 489 SA or IEC 60947–2 Part 2, except as noted in paragraph (e) of this section.

(c) Each circuit breaker, other than a molded-case one, that is for use in any of the following systems must meet the following requirements:

(1) An alternating-current system having a nominal voltage of 600 volts or less (1,000 volts for such a system with circuit breakers manufactured to the standards of the IEC) must meet—

(i) IEEE Std C37.13;

(ii) IEEE Std 331; or

(iii) IEC 60947–2.

(2) A direct-current system of 3,000 volts or less must meet IEEE Std C37.13 or IEC 60947–2.

(3) An alternating-current system having a nominal voltage greater than 600 volts (or greater than 1,000 volts for IEC standard circuit breakers) must meet—

(i) IEEE Std C37.04 including all referenced supplements, ANSI/IEEE C37.010–79 including all referenced supplements, and ANSI C37.12; or

(ii) IEC 62271–100.

* * * * *

144. Revise § 111.55–1 (a) to read as follows:

**§ 111.55–1 General.**

(a) Each switch must meet Article 404 of the NEC.

* * * * *

145. Revise § 111.59–1 to read as follows:

**§ 111.59–1 General.**

Each busway must meet Article 368 of the NEC.

146. Revise § 111.60–1 and its heading to read as follows:

**§ 111.60–1 Construction and testing of cable.**

(a) Each marine shipboard cable must meet all the requirements for construction and identification of either IEEE Std 1580, UL 1309, IEC 60092–353, MIL–C–24640A, MIL–C–24643A, or MIL–C–915, including the respective flammability tests contained therein, and must be of a copper-stranded type.

(b) Each cable constructed to IEC 60092–353 must meet the flammability requirements of IEC 60332–3, Category A.

(c) Electrical cable that has a polyvinyl-chloride insulation with a nylon jacket (Type T/N) must meet either UL 1309 or IEEE Std 1580.

(d) Medium-voltage electric cable must meet the requirements of IEEE Std 45 and UL 1072, where applicable, for cables rated above 5,000 volts.

147. In § 111.60–2, revise the introductory text to read as follows:

**§ 111.60–2 Specialty cable for communication and RF applications.**

Specialty cable such as certain coaxial cable that cannot pass the flammability test contained in IEEE Std 1580, ANSI/UL 1581 test VW–1, or IEC 60332–2, Category A, because of unique properties of construction, must—

* * * * *

148. Revise § 111.60–3 to read as follows:

**§ 111.60–3 Cable application.**

(a)(1) Cable constructed according to IEEE Std 1580 must meet the provisions for cable application of section 24 of IEEE Std 45.

(2) Cable constructed according to IEC 60092–353 or UL 1309 must meet section 24 of IEEE Std 45, except 24.6.1, 24.6.7, and 24.8.

(3) Cable constructed according to IEC 60092–353 must meet IEC 60092–352, Table 1, for ampacity values.

(b)(1) Cable constructed according to IEEE Std 1580 must be derated according to Table 25, Note 6, of IEEE Std 45.

(2) Cable constructed according to IEC 60092–353 must be derated according to IEC 60092–352, paragraph 8.

(3) Cable constructed according to MIL–C–24640A or MIL–C–24643A must be derated according to MIL–HDBK–299 (SH).

(c) Cable for special applications defined in section 24 of IEEE Std 45 must meet the provisions of that section.

149. In § 111.60–5, revise paragraphs (a)(1), (a)(2), (b), and (c) to read as follows:

**§ 111.60–5 Cable Installation.**

(a) * * *

(1) Sections 25, except 25.11, of IEEE Std 45; or

(2) IEC 60092–353 and paragraph 8 of IEC 60092–352.

(b) Each cable installation made in accordance with paragraph 8 of IEC 60092–352 must utilize the conductor ampacity values of Table I of IEC 60092–352.

(c) No cable may be located in any tank unless—

(1) The purpose of the cable is to supply equipment or instruments especially designed for and compatible with service in the tank and whose function requires the installation of the cable in the tank; and

(2) The cable is either compatible with the liquid or gas in the tank or protected by an enclosure.

(3) Neither braided cable armor nor cable metallic sheath may be used as the grounding conductor.

* * * * *

150. Revise § 111.60–6(a) to read as follows:

**§ 111.60–6 Fiber optic cable.**

* * * * *

(a) Be constructed to pass the flammability test contained in IEEE Std 1202, ANSI/UL 1581 test VW–1 or IEC 60332–3 Category A; or

* * * * *

151. Revise § 111.60–11(c) to read as follows:

**§ 111.60–11 Wire.**

* * * * *

(c) Wire, other than in switchboards, must meet the requirements in sections 24.6.7 and 24.8 of IEEE Std 45; MIL–W–76D; UL 44; UL 83; or equivalent standard.

* * * * *

152. In § 111.60–13, revise paragraphs (a), (b), and (c) to read as follows:

**§ 111.60–13 Flexible electric cord and cables.**

(a) *Construction and testing*. Each flexible cord and cable must meet the requirements in section 24.6.1 of IEEE Std 45, article 400 of the NEC, NEMA WC3, NEMA WC70 or UL 62.

(b) *Application*. No flexible cord may be used except—

(1) As allowed under Sections 400–7 and 400–8 of the National Electric Code; and

(2) In accordance with Table 400–4 of the National Electric Code.

(c) *Allowable current-carrying capacity*. No flexible cord may carry more current than allowed under Table 400–5 of the National Electric Code, NEMA WC 3, or NEMA WC 70.

* * * * *

153. Revise § 111.60–19(b) to read as follows:

**§ 111.60–19 Cable splices.**

* * * * *

(b) Each cable splice must be made in accordance with section 25.11 of IEEE Std 45.

154. Revise § 111.60–21 to read as follows:

**§ 111.60–21 Cable insulation tests.**

All cable for electric power and lighting and associated equipment must be checked for proper insulation resistance to ground and between conductors. The insulation resistance must not be less than that in section 34.2.1 of IEEE Std 45.

155. In § 111.60–23, revise paragraphs (b), (d), and (f) to read as follows:

**§ 111.60–23 Metal-clad (Type MC) cable.**

* * * * *

(b) The cable must have a corrugated gas-tight, vapor-tight, and watertight sheath of aluminum or other suitable metal that is close-fitting around the conductors and fillers and that has an overall jacket of an impervious PVC or thermoset material.

* * * * *

(d) The cable must be installed in accordance with article 326 of the NEC. The ampacity values found in table 25 of IEEE Std 45 may not be used.

* * * * *

(f) Equipment grounding conductors in the cable must be sized in accordance with article 250–122 of the NEC. System grounding conductors must be of a cross-sectional area not less than that of the normal current carrying conductors of the cable. The metal sheath must be grounded but must not be used as a required grounding conductor.

* * * * *

156. In § 111.70–1(a), revise the introductory text to read as follows:

**§ 111.70–1 General.**

(a) Each motor circuit, controller, and protection must meet the requirements of ABS Rules for Building and Classing Steel Vessels, sections 4–8–2/9.17, 4–8–3/5.7.3, 4–8–4/9.5, and 4–8–3/5; ABS Rules for Building and Classing Mobile Offshore Drilling Units, Part 4, Chapter 3, sections 4/7.11 and 4/7.17; or IEC 60092–301, as appropriate, except for the following circuits:

* * * * *

157. In § 111.70–3, revise the section heading and paragraph (a) to read as follows:

**§ 111.70–3 Motor controllers and motor-control centers.**

(a) *General*. The enclosure for each motor controller or motor-control center must meet either NEMA No. ICS 2, 2000, and NEMA No. ICS 2.3 1995, or Table 5 of IEC 60092–201, as appropriate, for the location where it is installed. In addition, each such enclosure in a hazardous location must meet Subpart 111.105 of this part. NEMA No. ICS 2.4 provides guidance on the differences between devices meeting NEMA and those meeting IEC for motor service.

* * * * *

158. Revise § 111.75–5(b) to read as follows:

**§ 111.75–5 Lighting branch circuits.**

* * * * *

(b) *Connected Load*. The connected loads on a lighting branch circuit must not be more than 80 percent of the rating of the overcurrent protective device, computed on the basis of the fixture ratings and in accordance with IEEE Std 45, section 5.4.2.

* * * * *

159. In § 111.75–20, revise paragraphs (a) and (e) to read as follows:

**§ 111.75–20 Lighting fixtures.**

(a) The construction of each lighting fixture for a non-hazardous location must meet UL 1598A or IEC 60092–306.

* * * * *

(e) Non-emergency and decorative interior-lighting fixtures in environmentally protected, non-hazardous locations need meet only the applicable UL type-fixture standards in UL 1598 and UL 1598A marine supplement or the standards in IEC 60092–306. These fixtures must have vibration clamps on fluorescent tubes longer than 102 cm (40 inches), secure mounting of glassware, and rigid mounting.

160. Revise § 111.81–1(d) to read as follows:

**§ 111.81–1 Outlet boxes and junction boxes; general.**

* * * * *

(d) Each outlet-box or junction-box installation must meet article 314 of the NEC, UL 50, UL 514 series, or IEC Series 60092 Publications (*e.g.*, IEC 60092–306), as appropriate.

* * * * *

161. Revise § 111.91–1 to read as follows:

**§ 111.91–1 Power, control, and interlock circuits.**

Each electric power, control, and interlock circuit of an elevator or dumbwaiter must meet ASME A17.1.

162. Revise § 111.101–1 to read as follows:

**§ 111.101–1 Applicability.**

This subpart applies to each submersible motor-driven bilge pump required on certain vessels under § 56.50–55 of this chapter.

163. Revise § 111.105–1, including its Note, to read as follows:

**§ 111.105–1 Applicability.**

This subpart applies to installations in hazardous locations as defined in the NEC and in IEC 60079–0.

**Note to § 111.105–1:** Chemicals and materials in addition to those listed in Article 500 Tables 5–1 and 5–2 of the NEC and IEC 60079–12 are listed in subchapter O of this chapter.

164. Revise § 111.105–3 to read as follows:

**§ 111.105–3 General requirements.**

All electrical installations in hazardous locations must comply with the general requirements of section 33 of IEEE Std 45 and either the NEC articles 500–505 or IEC 60079 publications series. When installations are made in accordance with the NEC articles, and when installed fittings are approved for the specific hazardous location and the cable type, marine shipboard cable that complies with Subpart 111.60 of this chapter may be used instead of rigid metal conduit.

165. Revise § 111.105–5 to read as follows:

**§ 111.105–5 System integrity.**

In order to maintain system integrity, each individual electrical installation in a hazardous location must comply specifically with NEC articles 500–505, as modified by § 111.105–3, or the IEC 60079 publications series, but not in combination in a manner that would compromise system integrity or safety. Hazardous location equipment must be approved as suitable for use in the specific hazardous atmosphere in which it is installed. The use of non-approved equipment is prohibited.

166. In § 111.105–7, revise the introductory text and paragraph (b) to read as follows:

**§ 111.105–7 Approved equipment.**

When this subpart or the NEC states that an item of electrical equipment must be approved, or when IEC 60079–0 states that an item of electrical equipment must be tested or approved in order to comply with IEC 60079 publications series that item must be—

* * * * *

(b) Purged and pressurized equipment that meets NFPA No. 496 or IEC 60079–2.

167. Revise § 111.105–9 to read as follows:

**§ 111.105–9 Explosion-proof and flameproof equipment.**

Each item of electrical equipment required by this subpart to be explosion-proof under the NEC classification system must be approved as meeting UL 1203. Each item of electrical equipment required by this subpart to be flameproof must be approved as meeting IEC 60079–1.

168. Revise § 111.105–11(a) to read as follows:

**§ 111.105–11 Intrinsically safe systems.**

(a) Each system required by this subpart to be intrinsically safe must use approved components meeting UL 913 or IEC 60079–11.

* * * * *

169. Revise § 111.105–15 to read as follows:

**§ 111.105–15 Additional methods of protection.**

Each item of electrical equipment that is—

(a) A sand-filled apparatus must meet IEC 60079–5;

(b) An oil-immersed apparatus must meet either IEC 60079–6 or NEC article 502;

(c) Type of protection ''e'' must meet IEC 60079–7;

(d) Type of protection ''n'' must meet IEC 60079–15; and

(e) Type of protection ''m'' must meet IEC 60079–18.

170. Revise § 111.105–17(b) to read as follows:

**§ 111.105–17 Wiring methods for hazardous locations.**

* * * * *

(b) Where conduit is installed, the applicable requirements of either the NEC or IEC 60079 must be followed.

* * * * *

171. In § 111.105–31, revise the section heading and paragraphs (e) and (n) to read as follows:

**§ 111.105–31 Flammable or combustible cargo with a flashpoint below 60 °C (140 °F), carriers of liquid-sulphur or inorganic acid.**

* * * * *

(e) *Cargo Tanks.* A cargo tank is a Class I, Division 1 (IEC Zone 0) location that has additional electrical equipment restrictions outlined in section 33 of IEEE Std 45 and IEC 60092–502. Cargo tanks must not contain any electrical equipment except the following:

(1) Intrinsically safe equipment; and

(2) Submerged cargo pump motors and their associated cable.

* * * * *

(n) *Duct keel ventilation or lighting.*

(1) The lighting and ventilation system for each pipe tunnel must meet ABS Rules for Building and Classing Steel Vessels, section 5–1–7/31.17.

(2) If a fixed gas detection system is installed, it must meet the requirements of SOLAS 74 and ABS Rules for Building and Classing Steel Vessels Part 4, Chapter 3.

172. In § 111.105–39, revise the introductory text and paragraph (a) to read as follows:

**§ 111.105–39 Additional requirements for vessels carrying vehicles with fuel in their tanks.**

Each vessel that carries a vehicle with fuel in its tank must meet the requirements of ABS Rules for Building and Classing Steel Vessels, section 5–10–4/3, except as follows:

(a) If the ventilation requirements of ABS Rules for Building and Classing Steel Vessels section 5–10–4/3 are not met, all installed electrical equipment must be suitable for a Class I, Division 1; Zone 0; or Zone 1 hazardous location.

* * * * *

173. In § 111.105–40, revise paragraph (a) and the introductory text in paragraph (c) to read as follows:

**§ 111.105–40 Additional requirements for RO/RO vessels.**

(a) Each RO/RO vessel must meet ABS Rules for Building and Classing Steel Vessels, section 4–8–4/27.3.2.

* * * * *

(c) Where the ventilation requirement of ABS Rules for Building and Classing Steel Vessels section 4–8–4/27.3.2, is not met—

* * * * *

174. Revise § 111.107–1(c)(1) to read as follows:

**§ 111.107–1 Industrial systems.**

* * * * *

(c) * * *

(1) Be installed in accordance with § 111.60–5 of this part and meet the flammability-test requirements of either IEEE Std 1201 or IEC 60332–3–22, Category A; or

* * * * *

## PART 113—COMMUNICATION AND ALARM SYSTEMS AND EQUIPMENT

175. Revise the authority citation for part 113 to read as follows:

**Authority:** 46 U.S.C. 3306, 3703; Department of Homeland Security Delegation No. 0170.1.

176. In § 113.05–7, revise paragraphs (a) and (b) to read as follows:

**§ 113.05–7 Environmental tests.**

* * * * *

(a) Section 4–9–7, Table 9, of ABS Rules for Building and Classing Steel Vessels or the applicable ENV category of Lloyd's Register Type approval System-Test Specification No. 1; and

(b) IEC 60533 as appropriate.

177. Revise § 113.25–6 to read as follows:

**§ 113.25–6 Power supply.**

The emergency power source for the general emergency alarm system must meet the requirements of SOLAS 74, Regulation II–1/42 or II–1/43, as applicable.

178. In § 113.25–12, revise paragraph (c) and add paragraph (d) to read as follows:

**§ 113.25–12 Alarm signals.**

* * * * *

(c)(1) The minimum sound-pressure levels for the emergency-alarm tone in

interior and exterior spaces must be a sound level of not less than 80dB(A) measured at 10 feet on the axis; and

(2) At least 10dB(A) measured at 10 feet on the axis, above the background noise level when the vessel is under way in moderate weather unless flashing red lights are used in accordance with § 113.25–10(b) of this subpart.

(d) Alarm signals intended for use in sleeping compartments may have a minimum sound level of 75dB(A) measured 3 feet (1 meter) on axis and at least 10dB(A) measured 3 feet (1 meter) on axis, above ambient noise levels with the ship under way in moderate weather.

179. Revise § 113.30–3(b) to read as follows:

**§ 113.30–3 Means of Communications.**

* * * * *

(b) The means of communication and calling must be a reliable means of voice communication and must be independent of the vessel's electrical system.

180. Revise § 113.30–20(c) to read as follows:

**§ 113.30–20 General requirements.**

* * * * *

(c) No jack-box or headset may be on a communication system that includes any station required by this subpart, except for a station installed to meet paragraphs 113.30–5(h) or 113.30–25(f).

181. Revise § 113.30–25 to read as follows:

**§ 113.30–25 Detailed requirements.**

(a) Multiple stations must be able to communicate at the same time.

(b) The loss of one component of the system must not disable the rest of the system.

(c) The system must be able to operate under full load for the same period of operation as required for the emergency generator. See Table 112.05–5(a) of this chapter.

(d) Each voice-communication station device in the weather must be in a proper enclosure as required in § 111.01–9 of this chapter. The audible-signal device must be outside the station enclosure.

(e) Each station in a navigating bridge or a machinery space must be in an enclosure meeting at least NEMA 250 Type 2 or IEC IP 22.

(f) In a noisy location, such as an engine room, there must be a booth or other equipment to permit reliable voice communication while the vessel is operating.

(g) In a space throughout which the voice communication station audible signal device cannot be heard, there must be another audible-signal device or a visual-device, such as a light, either of which is energized from the final emergency bus.

(h) If two or more voice communication stations are near each other, there must be a means that indicates the station called.

(i) Each connection box must meet at least NEMA 250 Type 4, or 4X, or IEC IP 56.

(j) Voice communication cables must run as close to the fore-and-aft centerline of the vessel as practicable.

(1) No cable for voice communication may run through any space at high risk of fire such as machinery rooms and galleys, unless it is technically impracticable to route it otherwise or it must serve circuits within those spaces.

(2) Each cable running through any space at high risk of fire must meet IEC 60331–11 and IEC60331–21.

(k) If the communications system uses a sound-powered telephone, the following requirements also apply:

(1) Each station except one regulated by paragraph (d) of this section must include a permanently wired handset with a push-to-talk button and a hanger for the handset.

(2) The hanger must be constructed so that it holds the handset away from the bulkhead and so that the motion of the vessel will not dislodge the handset.

(3) Each talking circuit must be electrically independent of each calling circuit.

(4) No short circuit, open circuit, or ground on either side of a calling circuit may affect a talking circuit.

(5) Each circuit must be insulated from ground.

182. Revise § 113.65–5 to read as follows:

**§ 113.65–5 General Requirements.**

Each whistle operator must meet section 21.5 of IEEE Std 45.

## PART 162—ENGINEERING EQUIPMENT

183. Revise the authority citation for part 162 to read as follows:

**Authority:** 33 U.S.C. 1321(j), 1903; 46 U.S.C. 3306, 3703, 4104, 4302; Executive order 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

184. Revise § 162.017–1 and its heading to read as follows:

**§ 162.017–1 Incorporation by reference.**

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, Commandant (G–MSE), 2100 Second Street, SW., Washington, DC, 20593–0001, and is available from the sources listed in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the section affected are:

| | |
|---|---|
| *International Organization for Standardization (ISO)* ISO copyright office, Case postale 56 CH–1211 Geneva 20, Switzerland ISO 15364, Ships and marine technology-Pressure/vacuum valves for cargo tanks, 2000 ..... | 162.017–3 |

185. Add § 162.017–3(r) to read as follows:

**§ 162.017–3 Materials, construction, and workmanship.**

* * * * *

(r) Pressure-vacuum relief valves constructed in accordance with ISO 15364 meet the requirements of this subpart.

## PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

186. Revise the authority citation for part 170 to read as follows:

**Authority:** 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

187. In § 170.015(b), revise the entry ''American Society for Testing and Materials (ASTM)'' to read as follows:

**§ 170.015 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *American Society for Testing and Materials (ASTM),* 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959 | |
| ASTM F 1196–00, Standard Specification for Sliding Watertight Door Assemblies ..... | 170.270 |
| ASTM F 1197–00, Standard Specification For Sliding Watertight Door Control Systems | 170.270 |

* * * * *

## PART 175—GENERAL PROVISIONS

188. Revise the authority citation for part 175 to read as follows:

**Authority:** 46 U.S.C. 2103, 3205, 3306, 3307, 3703; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; Department of Homeland Security Delegation No. 0170.1; 175.900 also issued under authority of 44 U.S.C. 3507.

189. In § 175.600(b), add, in alphabetical order, an entry for ''International Organization for Standardization (ISO)'' to read as follows:

**§ 175.600 Incorporation by reference.**

* * * * *

(b) * * *

| | |
|---|---|
| *International Organization for Standardization (ISO),* Case postale 56 CH–1211 Geneva 20, Switzerland | |
| ISO 8849:1990 Small craft—Electrically operated bilge pumps, first edition ..... | 182.500(b) |
| ISO 8846:1990 Small craft-Electrical devices—Protection against ignition of surrounding flammable gases, first edition. | 182.500(b) |

* * * * *

## PART 182—MACHINERY INSTALLATION

190. Revise the authority citation for part 182 to read as follows:

**Authority:** 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

191. In § 182.455, in paragraph (a)(1), revise introductory text and paragraph (iii), to read as follows:

**§ 182.455 Fuel piping.**

(a) * * *

(1) Fuel lines must be annealed tubing of copper, nickel-copper, or copper-nickel having a minimum wall thickness of 0.9 millimeters (0.035 inches) except that—

* * * * *

(iii) When used, flexible hose must meet the requirements of § 182.720(e) of this part.

* * * * *

192. Revise § 182.500(b) to read as follows:

**§ 182.500 General.**

* * * * *

(b) A vessel of not more than 19.8 meters (65 feet) in length carrying not more than 12 passengers may meet the requirements of ABYC Project H–22, ''DC Electric Bilge Pumps Operating Under 50 Volts'', or the requirements in ISO 8846 and 8849, instead of those of this subpart, provided that each watertight compartment forward of the collision bulkhead is provided with a means for dewatering.

* * * * *

193. Revise § 182.520(e)(1) to read as follows:

**§ 182.520 Bilge pumps.**

* * * * *

(e) * * *

(1) The pump is listed by an independent laboratory as meeting the requirements in UL 1113;

* * * * *

## PART 183—ELECTRICAL INSTALLATION

194. Revise the authority citation for part 183 to read as follows:

**Authority:** 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; Department of Homeland Security Delegation No. 0170.1.

195. Add § 183.230, under Subpart B—General Requirements, to read as follows:

**§ 183.230 Temperature ratings.**

Temperature ratings of electrical equipment must meet the requirements of section 111.01–15 of this chapter.

Dated: June 16, 2004.

**T. H. Gilmour,**

*Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.*

[FR Doc. 04–14368 Filed 6–29–04; 8:45 am]

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June 30, 2004

# Part V

# Department of Transportation

## Federal Railroad Administration

49 CFR Part 229

**Locomotive Event Recorders; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration**

**49 CFR Part 229**

**[Docket No. FRA–2003–16357, Notice No. 1]**

**RIN 2130–AB34**

## Locomotive Event Recorders

**AGENCY:** Federal Railroad Administration (FRA), (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** To improve the crashworthiness of railroad locomotive event recorders and to enhance the quality of information available for post-accident investigations, FRA proposes to amend its existing regulations in four major ways: By requiring that new locomotives have event recorders with ''hardened'' memory modules, proven by a requirement that the memory modules preserve stored data throughout a sequence of prescribed tests; by requiring that new locomotives have an event recorder that collects certain additional types of information; by simplifying standards for inspecting, testing, and maintaining event recorders; and by requiring the phasing out, over a six-year period, of event recorders that use magnetic tape as a data storage medium. FRA is also proposing to revise the definitions contained in the existing regulation to remove the letter designations so that the defined terms are presented in alphabetical order.

**DATES:** (1) Written comments must be received by August 31, 2004. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to August 15, 2004, one will be scheduled and FRA will publish a supplemental document in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA–2003–16357, may be submitted by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the Privacy Act heading in the ''Supplementary Information'' section of this document for Privacy Act information related to any submitted comments or materials.

*Public Hearing:* FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to August 15, 2004, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

*Docket:* For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Edward W. Pritchard, Director, Office of Safety Assurance and Compliance, RRS–10, Mail Stop 25, Federal Railroad Administration, Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6247), or Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6036).

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Background

Sections 10 and 21 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100–342, 102 Stat. 624 (June 22, 1988), provide as follows:

SEC. 10. EVENT RECORDERS.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

''(m)(1)(A) The Secretary shall, within 18 months after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders within 1 year after such rules, regulations, orders, and standards are issued.

''(B) If the Secretary finds that it is impracticable to equip trains as required under subparagraph (A) within the time limit under such subparagraph, the Secretary may extend the deadline for compliance with such requirement, but in no event shall such deadline be extended past 18 months after such rules, regulations, orders, and standards are issued.

''(2) For the purpose of this subsection, the term 'event recorders' means devices that—

''(A) record train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

''(B) are designed to resist tampering.''

* * * * *

SEC. 21. TAMPERING WITH SAFETY DEVICES.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

''(o)(1) The Secretary shall * * * issue such rules, regulations, orders, and standards as may be necessary to prohibit the willful tampering with, or disabling of, specified railroad safety or operational monitoring devices.

* * * * *

Codified at 49 U.S.C. 20137–20138, superseding 45 U.S.C. 431(m) and (o).

### II. Proceedings to Date

On November 23, 1988, FRA published an ANPRM (Advance Notice of Proposed Rulemaking) in FRA Docket No. LI–7, soliciting comments on how to implement these statutory mandates concerning event recorders. *See* 53 FR 47557. On June 18, 1991, FRA published an NPRM in that docket, setting forth proposed regulations on event recorders, the elements they were to record, and the preservation of data from the event recorder in the event of an accident. *See* 56 FR 27931. Two public hearings were held in order to facilitate public participation; the written comments submitted in response to the NPRM were extensive, detailed, and helpful.

FRA prescribed final event recorder rules, effective May 5, 1995 (58 FR 36605, July 8, 1993) and issued a response to petitions for reconsideration (60 FR 27900, May 26, 1995); they were codified principally at 49 CFR 229.135. In issuing the final rules, FRA noted the need to provide more refined technical standards. The National Transportation

Safety Board (NTSB) had previously noted the loss of data from event recorders in several accidents due to fire, water, and mechanical damage. NTSB proposed performance standards and agreed to serve as co-chair for a joint industry/government working group that would refine technical standards for next-generation event recorders. FRA conducted a meeting of an informal working group comprised of railroad labor and management representatives and co-chaired by NTSB on December 7, 1995, to consider development of technical standards. At the July 24–25, 1996 meeting of FRA's Railroad Safety Advisory Committee (RSAC), the Association of American Railroads (AAR) agreed to continue the inquiry and on November 1, 1996, reported the status of work on proposed industry standards to the RSAC.

On March 5, 1997, the NTSB issued several recommendations regarding testing and maintenance of event recorders as a result of its findings in the investigation of an accident on February 1, 1996, at Cajon Pass, CA. As the Board noted in its recommendation to FRA, the train that derailed in Cajon Pass ''had an event recorder that was not fully operational. The self-diagnostic light on the unit was insufficient to fully examine the unit and ensure that it was recording the data.'' The Board recommended that inspection and testing of event recorders ''include, at a minimum, a review of the data recorded during actual operations of the locomotive to verify parameter functionality. * * *'' *See* NTSB Recommendation R–96–70.

**III. RSAC Overview**

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Department/Brotherhood of Locomotive Engineers (ATDD/BLE)
National Passenger Railroad Corporation (Amtrak)
Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Maintenance of Way Employees (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA)*
High Speed Ground Transportation Association
Hotel Employees & Restaurant Employees International Union
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA)*
League of Railway Industry Women*
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women*
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
National Transportation Safety Board (NTSB)*
Railway Progress Institute (RPI)
Safe Travel America
Secretaria de Communicaciones y Transporte*
Sheet Metal Workers International Association
Tourist Railway Association Inc.
Transport Canada*
Transport Workers Union of America (TWUA)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)
*Indicates associate membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgement on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

On March 24, 1997, the RSAC indicated its desire to receive a task to consider the NTSB recommendations with regard to crash survivability, testing, and maintenance. A task was presented to, and accepted by, the RSAC on June 24, 1997. The Working Group on Event Recorders was formed and a Task Force established. Members of the Working Group, in addition to FRA, included the following:

AAR, including members from
The Burlington Northern and Santa Fe Railway Company (BNSF),
Canadian National Railway Company (CN),
Canadian Pacific Railway Company (CP),
Consolidated Rail Corporation (CR)
CSX Transportation, Incorporated (CSX),
Florida East Coast Railway Company (FEC),
Illinois Central Railroad Company (IC),
Norfolk Southern Corporation (NS),
Union Pacific Railroad Company (UP),

APTA, including members from
Southeastern Pennsylvania Transportation Authority (SEPTA)
Amtrak,
Bach-Simpson,
BLE
EDI,
General Motors Corporation/Electro-Motive Division (EMD)
IBEW,
Pulse/Wabco,
Q-Tron,
TCIU/BRC, and
UTU.

The NTSB met with the Working Group and provided staff advisors. In addition, GE-Harris, STV Incorporated, and

Peerless Institute attended many of the meetings and contributed to the technical discussions.

The Working Group and related Task Force conducted a number of meetings and discussed each of the matters proposed in this NPRM. Minutes of these meetings have been made part of the docket in this proceeding. The Working Group reached full consensus on the proposal on October 20, 2003, and transmitted the document as its recommendation to the full RSAC for its concurrence via mail ballot on October 23, 2003. By November 12, 2003, the deadline set for casting a ballot in this matter, thirty-five of the forty-eight voting members of the full RSAC had returned their ballots on the regulatory recommendation submitted by the Working Group. All thirty-five of the voting members concurred with and accepted the Working Group's recommendation. Thus, the Working Group's recommendation became the full RSAC's recommendation to FRA in this matter. After reviewing the full RSAC's recommendation, FRA adopted the recommendation with minor changes for purposes of clarity, and responsiveness to certain comments made by Working Group and RSAC members when submitting their concurrences.

During the final development of the Working Group's recommendation, FRA received written suggestions and recommendations from LTK Engineering Services (through APTA) and AAR. In addition, the BLE when entering its vote on the Working Group's recommendation to the full RSAC, concurred with the recommendation but provided separate written comments on the recommendation. FRA permits Working Group members to either ''non-concur,'' ''concur,'' or ''concur with comment'' when voting on any Working Group recommendation. In cases where a Working Group member ''concurs with comment,'' the verbatim comment is provided to the full RSAC for consideration with the Working Group's recommendation and the comment is incorporated into the preamble discussion of any developed regulatory document, if FRA believes it to be appropriate. In this instance, the written submissions of APTA, AAR, and BLE have been incorporated into the preamble discussion and have been made part of the docket in this proceeding.

Throughout the preamble discussion of this proposal, FRA refers to comments, views, suggestions, or recommendations made by members of the Working Group. When using this terminology, FRA is referring to views, statements, discussions or positions identified or contained in either the minutes of the Working Group and Task Force meetings or the specific written submissions discussed above. These documents have been made part of the docket in this proceeding and are available for public inspection as discussed in the preceding **ADDRESSES** portion of this document. These points are discussed to show the origin of certain issues and the course of discussions on those issues at the task force or working group level. We believe this helps illuminate factors FRA has weighed in making its regulatory decisions, and the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is acting.

## IV. Technical Background

The AAR Universal Machine Language Equipment Register (UMLER) file had approximately 28,000 locomotives registered as of January 1, 2000, including locomotives operated by shortline and regional railroads, Canadian and Mexican railroads, and Amtrak. Portions of the Canadian and Mexican fleet operate in the United States. Every major railroad uses event recorders, and no railroads report a difficulty in complying with the 1995 regulations requiring event recorders on the lead locomotive of any train operated faster than 30 miles per hour. As noted above, this proceeding builds on the current regulations in Part 229 and adds requirements for crash survivability and enhanced data collection by event recorders. In addition, this proposed rule would require the installation of these current ''state-of-the-art'' event recorders in new locomotives and would require that, if a locomotive with an event recorder is remanufactured, it be equipped with a certified survivable version of its previous event recorder.

During the discussions and review of draft language leading to the development of this document, members of the RSAC Working Group on Event Recorders and the full RSAC raised a number of important issues.

### *A. Adoption of Alternate, or Industry, Standards*

Several members of the RSAC Working Group suggested that FRA adopt crashworthiness or data collection/accuracy standards already existing within the industry. One standard, in particular, was advanced by the Vehicular Technology Society. It is the Institute of Electrical and Electronics Engineers (IEEE) Standard 1482.1–1999, the IEEE Standard for Rail Transit Vehicle Event Recorders. A technically advanced standard, the crashworthiness requirements of the IEEE standard were claimed to be significantly less expensive to meet than some of the other potential standards considered by the Working Group. For example, FRA staff originally suggested that the Working Group adopt a fire standard based on earlier work used to validate the thermal protective insulation on tank cars transporting flammable and toxic gases; this standard was based on the heat of a flame fueled by liquified petroleum gas. While that standard is entirely appropriate for tank cars that often travel in combination with other tank cars similarly laden, the practical truth is that the typical and most likely fuel for a fire impinging on a locomotive-mounted event recorder is diesel fuel from the locomotive's own tanks. Consequently, the proposed performance criteria for certifying event recorders as crashworthy and contained in Appendix D of this NPRM has been amended to include the open flame burn temperature of diesel fuel. FRA also proposes adopting many of the data elements contained in the IEEE standard as applicable to heavy electric commuter (MU) operations. FRA considered removing the requirements for certifying a crashworthy event recorder memory module (proposed in Appendix D of this document) and simply cross-referencing a voluntary industry (AAR) standard that the industry would ''expeditiously consider'' adopting. However, FRA is not willing to withdraw a major portion of this proposal and wait for an industry consensus standard that does not now exist and may never exist.

### *B. Record Retention*

Although the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229, 114 Stat. 464, June 30, 2000) requires that regulated entities be allowed to keep records electronically, in appropriate circumstances. FRA believes that the tenor and language of this proposed rule make it unnecessary to discuss the specifics of whether or not the Electronic Signatures Act applies to the subject matter of this proposed rule because nothing in this rule is intended to circumvent the requirements of that act. With the exception of the ''maintenance instructions of the manufacturer, supplier, or owner'' of the event recorder (see proposed § 229.25(e)), and any notations this rule proposes to require on the ''cab card'' (Form FRA F6180–49A), all other records required

by this proposed rule may be kept electronically. Proposed § 229.25(e) requires that the maintenance instructions for the event recorder may be kept electronically, but must be available in hard copy at the maintenance/repair point so they can be used by workers on the shop floor, at the point of testing and repair. Maintenance instructions printed from an electronically maintained master copy would satisfy this requirement. The proposed ''hard copy'' requirement tracks common quality assurance (QA) program requirements; for example, the QA requirements applicable to tank cars contained at 49 CFR 179.7(d). The applicable cab card provisions are existing regulatory requirements that are not being amended by this rulemaking and are intended to establish whether the locomotive is ''equipped'' or not, in the field, without requiring reference or access to a data base at some other location.

*C. Throttle Position*

There is considerable controversy within the railroad industry about the use of the term ''throttle position.'' Among the earliest mechanical engines were those powered by steam: A pound of water occupies .2 cubic feet of space. Apply heat and convert that pound of water into steam and the result occupies 27 cubic feet of space (at atmospheric pressure). If the steam remains in the same vessel it was heated in, pressure will rise—and from this pressure differential, power can be generated either directly by moving a piston, or indirectly by spinning a turbine and generating electricity. The early throttle was a means to control, or limit, the amount of steam leaving the generating chamber and entering the device in which work would be performed. (Imagine a locomotive that always ran at top speed; stopping at a station to load passengers or freight would be impossible.) The control handle, called the ''throttle handle,'' manipulated a valve to direct the steam, and to determine the quantity so directed, either into the working mechanism or into the atmosphere, wasted. Over time, the ''throttle handle'' used to control the flow of steam was shortened to today's ''throttle,'' but the process remained the same—controlling the output of the locomotive. As electric and diesel-electric locomotives came into use, the physical controlling device gained an additional name, ''master controller.'' Other than the few remaining historic and tourist steam locomotives, the two names are synonymous.

Ignoring for the purposes of this discussion those master controllers—''throttles''—which combine brake control and power control in a single-handle design, the function of the throttle handle is unchanged over history: to control the power output of the locomotive. The vast majority of the master controllers which are used to perform the throttle control function do so by creating discrete positions of the throttle handle which in turn send electric-current specific combinations of train line wire energization patterns. These train line wire energization patterns are interpreted by the engine or propulsion control systems as the locomotive engineer's request for a specific speed/tractive effort characteristic. In most diesel-electric freight locomotives used in the United States, the throttle arc is divided into nine discrete positions: ''Idle,'' and eight ''notches'' of energization.

The point that the throttle handle positions—''notches''—correspond to speed/tractive effort characteristics is important and should not be overlooked. It is convenient to say that they correspond to an engine's revolutions per minute (RPM), and, for diesel-electric locomotives, that is correct. However, to extend that to say that they correspond to *power* is only correct in a non-rigorous use of the term. For purposes of this rule, FRA will consider that the ''throttle'' controls speed/tractive effort characteristics rather than ''power.'' Over most—but not all—of the operating speed range of a diesel-electric locomotive, the speed/tractive effort characteristic is approximately a constant horsepower characteristic. Unfortunately, the same is not true of electric locomotives, be they locomotives in the conventional sense or electric multiple unit (EMU) locomotives. Application of speed/tractive effort characteristics instead of ''power'' as the result of throttle handle position will enable coverage of all types of locomotives.

Almost all throttles have at least a few discrete output positions, and some have continuously variable segments as well. Those discrete positions do not, unfortunately, correspond to uniform fractions of maximum engine RPM or current. For diesel-electric locomotives, they do correspond roughly to uniform fractions of the maximum speed/tractive effort characteristic, but the actual diesel engine speed schedule utilized to achieve a given speed/tractive effort characteristic will be tailored by the manufacturer based on a number of design considerations. For electric locomotives, especially EMU locomotives, the throttle positions often reflect the design configuration of the EMU's propulsion system, and may reflect such things as motor connections (series versus series-parallel, for example), motor field strength, transformer tap position, and the like.

For those throttles with continuously variable segments, the output, and ''power requested'' corresponding thereto, vary from minimum to maximum. Minimum may be ''zero,'' or it may be a small, non-zero positive value of the control variable. ''Maximum'' depends on the design of the master controller, and may be some level of DC or AC control current, some control voltage, or some percentage pulse-width-modulation value of a control output current or voltage approaching or equal to 100 percent. It may also be a stream of binary bits, interpreted by the engine and/or propulsion control system as a control variable. The ''power'' equivalent to the maximum output value of the control variable will be the maximum speed/tractive effort characteristic of which the locomotive is capable.

In order to give a meaningful resolution of such continuously variable outputs for recording purposes, and to be consistent with digital communications that are emerging in the industry, digital to analog (or vice versa) conversion of no less than eight-bit resolution would appear appropriate, and FRA solicits comments on this concept. Some existing EMU locomotives have fewer than eight discrete throttle ''power'' positions. For example, the SEPTA Silverliner IV EMUs have four. It would be both physically impossible and meaningless to artificially require these locomotives to have event recorders which capture one-eighth of the full output, as these EMU's cannot physically operate at intermediate levels of speed/tractive effort other than the four provided by their propulsion systems. Historically, some locomotives have had more than eight discrete throttle positions. The number of such locomotives remaining in service and subject to the proposed rule is believed to be quite small and may, in fact, be zero. While FRA may wish to limit the resolution of the discrete throttle positions to one-eighth of full power, it does not appear burdensome to require that all available discrete positions be recorded. FRA seeks comments and suggestions from all interested parties on this issue.

*D. Post-accident Data Preservation*

In this rulemaking, FRA proposes a modification to the current standard. As § 229.135(d) is now written, after an accident, a railroad may ''extract and analyze'' data from the event recorder, if the railroad preserves ''the original or

a first-order accurate copy'' of the data. Experience since the present event recorder rule became effective shows that the phrase ''first-order accurate copy'' is not easily understood by those first on scene at a derailment. First responders must primarily deal with wrecked equipment, the potential need for life-saving actions, and the ever-present danger—especially if hazardous materials are present—of fire, smoke, and explosion. FRA believes it has clarified the requirement. The proposal here permits the railroad to extract and analyze such data, provided the original downloaded data file, or an unanalyzed exact copy of it, is retained subject to the direction and control of FRA or the NTSB. In the case of microprocessor-based machines, the ''original'' copy of the data will not show any immediately prior downloads, while the ''copies'' may show that previous downloads have occurred. Certainly this is not a requirement to put a ''marker,'' or some indication in the downloaded data to show the ''order'' in which multiple downloads were made; the proposed rule would, as does the present requirement, mandate that the original download be preserved for analysis by FRA or NTSB.

Both the current rule and this proposal require efforts, ''to the extent possible,'' and ''to the extent consistent with safety,'' to preserve all the data stored in any locomotive-mounted recording device designed to record information concerning the functioning of the locomotive or train. FRA is well aware of the difficulty of performing field downloads of data retention devices not so designed; FRA is also aware that such downloads may be more dangerous, especially in an accident situation, than extracting the data from a crash-hardened event recorder memory module designed for easy field downloads. FRA's experience is that those who serve as the railroad's incident commanders are well schooled in safety and the preservation of life and property, and this agency is comfortable with the decisions they will make about the safety of entering a hostile atmosphere to gather knowledge about the dynamics immediately preceding an accident.

*E. Data Element—Horn Control*

One data element proposed in this Notice for new locomotives with new event recorders generated a significant amount of controversy—the recording of the horn control handle activation. FRA believes this data element will enhance the investigatory tools available in highway-rail grade crossing accidents. Users of event recorder data for purposes other than accident investigation (such as supporting claims in accident-related litigation) should bear in mind that the event recorder samples what is going on in the locomotive and there are gaps between the time the recorder first ''looks'' for the data from the horn switch activation sensor and the time it next takes that ''look.'' Even a gap of a second, at main line track speeds, can yield an inaccurate, false record of when, exactly, or where, exactly, the horn was blown. Further, horns are air-operated on freight locomotives and, once the switch is activated, there is a lag—short, to be sure—before the horn blows; the horn may also fail en route and the engineer activate its switch only to have no sound come out. As reported in the daily press, emergency responders complain that automobile drivers with their windows up, radios on, and air conditioning on often do not react to the sirens or air horns on fire trucks. The same phenomena exist when a railroad engineer blows his horn at an automobile starting across a crossing with too little time to clear. Finally, the locomotive horn is external to the cab of the locomotive and subject to becoming blocked by snow or sleet in the wintertime.

To summarize: FRA proposes to require the recording of the horn control handle activation because it will provide one tool, among many, in the investigation of railroad accidents and in the monitoring of equipment and the people who operate it. FRA believes that the use of the data for other purposes should be made only after fully considering the limited usefulness of such data as briefly discussed above. This proposal reflects FRA's responsibility to implement 49 U.S.C. 20153. The Working Group and the full RSAC were not able to reach a recommendation regarding this issue.

*F. Inspection and Maintenance*

Older styled event recorders used eight-track tape cartridges as their recording medium; while this proposed rule will ''sunset'' such equipment, it needs to be maintained in order to perform satisfactorily. The present rule provides for this, at 49 CFR 229.25(e). Microprocessor-based event recorders, typified by virtually all of the recorders now being installed in locomotives, are similar to many consumer solid state electronic devices; either they work or they do not. Maintenance consists of checking for satisfactory operation and, if there is a failure, replacing either the failed component or the entire unit.

What further complicates the newest installations is that there is no ''black box,'' as such. Rather, the entire locomotive is wired with sensors and, as an illustration, those elements necessary for routine maintenance of the locomotive are routed to one collection point and those required for accident analysis are routed to another. There are also ways to retrieve any particular subset of data out of a single data port by using what is popularly called a ''smart card'' to query the computer for a predetermined set of data. Accident investigators would get the data elements specified in proposed § 229.135(b), locomotive electrical maintainers would get the set of data applicable to their work, and a person evaluating the engineer's performance over the last run would download a data set preprogramed for that purpose. Data necessary for accident analysis, as proposed here, would be routed to a crash-hardened memory module.

Essentially all modern event recorder systems are also equipped with self-test circuitry that constantly compares data flowing in with the data being stored and signals (a red light is typical) when there is a fault. In a sense, maintenance is simple: If the red light is off (and the unit is still receiving power), the unit is in good working order. However, experts in the field, and there are no experts more familiar with black boxes than the NTSB, warn that the whole event recorder system needs to be verified to know that the recorder is capturing ''real'' data. Recorders, sensors, and cables all fail, and at unpredictable intervals. To ensure that the recorder is indeed capturing data representative of the locomotive's actual operations, this proposal requires that, sometime within 30 days of each annual periodic inspection, the railroad download and review the data required by § 229.135(b), as captured by the event recorder's crashworthy memory module. This download might be part of any other download a railroad might choose to perform, whether as a part of locomotive maintenance, employee monitoring, service planning, or whatever. The downloaded data would be compared to the known operations of the locomotive over the past 48 hours and, if all required channels were recording and the required elements were representative of actual operations, the recorder—assuming always that the fault light is not on—would require no further maintenance or checking. This added flexibility in the proposed rule could mean that locomotives equipped with microprocessor-based event recorders need never visit a shop just to check the recorder.

*G. New Technologies*

FRA is well aware of the pace at which technology is changing. Locomotives, once controlled by mechanical levers and wheels, now read the ''input'' of a moved lever and adjust multiple aspects of their operating systems to produce the desired result; they can accept a cruise control setting and adjust power to maintain a constant speed as the grade increases. New methods for monitoring and controlling train operations, some of them using global-positioning satellites as the basis for position determination, are now being deployed. Where these technologies affect the operation and safety of trains, the event recorder needs to be able to capture data elements that will enable analysis of the locomotive's operations. As just one example, if a positive train control system (PTC) ''took away'' control of a locomotive to enforce train separation protocols, the recorder needs to capture the information that an input from outside the cab caused the train to speed up or slow down.

With PTC, the recorder needs to identify both the fact of an incoming signal and the response to it, whether automated or an engineer override. Just as the recording of cab signals is relatively easy because the signal system's aspect is already on board, so too it should be easy to capture a PTC signal and record any display elements on which the engineer is expected to rely and any commands sent to initiate braking and knock down power. The existing regulation requires that the cab signal display be recorded, but this technology may be superseded in the future. In the Working Group meetings, the Brotherhood of Locomotive Engineers has consistently raised a concern with respect to determining the source of penalty brake applications initiated by innovative train control systems (*i.e.*, not only what was the source of the brake application, but what indication was displayed to the engineer and on what basis this was determined). Although it may not be possible to specify clearly all of the information that would be required to determine the basis for every penalty application, given the wide variety of possible system architectures, FRA proposes to require that the following be recorded:

- Applications and operations of the train automatic air brake, including emergency applications. The system shall record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (*e.g.*, electronic braking system controller, locomotive electronic control system, or train control computer), the system shall record, or provide a means of determining, the involvement of any such computer; and
- Safety-critical train control data routed to the locomotive engineer's display with which the engineer is required to comply, specifically including text messages conveying mandatory directives, and maximum authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan submitted for the train control system under subpart H of part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

These proposed provisions are discussed in greater detail in the section-by-section analysis related to § 229.135(b)(3).

FRA seeks information and comments from interested parties regarding whether the data elements that are required to be entered into the system should be recorded and retained in the memory module where a train's braking system utilizes braking algorithms. Although the current rule and this proposal require that the ''applications and operations'' of the train's braking system be recorded, FRA does not currently require the recording of all the data related to such ''applications and operations.'' If braking algorithms are dependent on or dictated by track profile information, or train and consist data, is there a need for FRA to specifically mandate that the data or information actually entered into the system also be recorded and retained in the memory module? Similarly, in order to ensure accurate analysis, should FRA require that the braking algorithm software version (and identifying number, as appropriate) be recorded or derivable from external data? FRA seeks comments from interested parties regarding the need, capability, and costs associated with capturing this type of data.

As electronics improve, and, with it, the ability to remotely control large and complex machinery, it is imperative that any such operations within the scope of this proceeding be recorded. The existing event recorder rule, and this proposed amendment, require event recorders on locomotives when operated at speeds of more than thirty miles per hour. If locomotive remote control systems can function at speeds greater than 30 miles per hour, it is only logical to require the recording of both the commands issued by the operator as well as the response by the locomotive to those commands. FRA has not included specific data elements in proposed § 229.135(b)(3) or (4) but is prepared to if comments warrant. In one view, locomotive remote control systems are like cruise control: Unless rendered incapable of operation above 30 miles per hour, it is vital that data on their use be recorded.

*H. Data Accuracy, Resolution, and Sampling Rates*

In its first event recorder rulemaking, FRA Docket No. LI–7 (58 FR 36605, July 8, 1993), FRA mandated the installation of event recorders on trains traveling faster than 30 mph. In this rulemaking, FRA is proposing requirements for the capture of additional data elements and for crash-hardening the event recorder memory module. In both proceedings, the topics of data accuracy, resolution, and sampling rate have been raised. In this proceeding, as in the first, FRA notes the current requirements for the accuracy of brake system air gauges and for speed indicators, 49 CFR 229.53 and 229.117. The issues of accuracy, resolution, and sampling rate remain unresolved in this proposal. The Working Group concentrated on the crashworthiness aspects of the event recorder memory module, together with enhancing the kind of data to be collected for post-accident analysis. FRA believes that this was both an ordering of priorities and a recognition that the industry has an economic and operational incentive to make the data as accurate as possible. What the event recorder stores are data that are, first and foremost, indispensable to the operation of the locomotive. Because the railroads have operational needs for the same data elements that are also vital to accident analysis, the ''numbers'' tend to be accurate and, with microprocessor-based event recorders, the data thus generated during the ordinary course of business are not diminished in accuracy just because they are stored. Finally, microprocessor-based event recorders run so fast that the sampling intervals are naturally short, and they may be adjusted differently for different elements.

The Rail Transit Vehicle Interface Standards Committee of the Institute of Electrical and Electronics Engineers has developed the IEEE Standard for Rail Transit Vehicle Event Recorders (IEEE

Std 1482.1–1999). While, as noted elsewhere, this standard is not applicable to the railroad industry, FRA seeks comments on whether or not the agency should adopt a requirement similar to the IEEE's standard for sampling and storage rates, from paragraph 4.2 of that standard:

4.2 Sampling and storage rate(s)

The event recorder shall be capable of sampling signals at a maximum of 20 ms intervals (minimum 50 samples per second) to ensure that changes that affect operation are detected.

Signals shall be processed and stored to ensure that changes that affect operation are captured. Repetitive samples of identical information reflecting no state change may be stored at a lower storage rate than other signals. The storage rate depends on the individual rate of change under operating or failure conditions for each signal. Thresholds, ranges, and durations for defining state changes shall be determined for each signal. Signals shall be stored at least once per second.

To conserve memory, stored data more than 10 hours old may be reprocessed to eliminate data samples that reflect no change from consecutive samples to a minimum storage rate of 1 sample per 15 seconds.

Crashworthy nonvolatile memory shall preserve a minimum of 48 hours worth of data.

One member of the Working Group, in a written submission to FRA, suggests that if FRA adopts requirements for data accuracy, resolution, and sampling rates, then any such requirements should not force the manufacture of distinctly different event recorders for transit and railroad operations in those instances where the devices could otherwise be the same, particularly with regard to hardware. This member notes that commonality of equipment between transit and rail operations is expected to result in reduced costs and more mature designs. If there are particular technical needs for railroads, then it is suggested that FRA work with the Institute of Electrical and Electronics Engineers (IEEE) to determine whether common requirements could be developed. While the difference between railroad and transit equipment will force differences in event recorders, the principle of commonality, wherever possible, is desirable.

*I. Distributed Power*

A distributed power system places locomotives within the train consist to add their tractive and braking effort to the movement of, typically, long and heavy trains. The locomotives ''distributed'' back in the train are controlled by signals from the lead locomotive. The Working Group agreed not to include a proposed requirement that new event recorders capture ''miscompare'' messages between the lead locomotive and the remotely distributed locomotive due to the extremely high costs associated with monitoring and capturing such data. One member of the Working Group, in a written submission to FRA, disagreed with the removal of this data element but agreed to move forward with the rulemaking with the opportunity to further discuss this issue at the final rule stage. This member voiced concern that locomotive engineers should be given an opportunity to show that they were not responsible for the failure of a remote control locomotive to respond properly to a control input because of a problem with the communication link or other failure originating from software or hardware faults on a locomotive.

This member seeks to introduce the term ''Locomotive Engineer Coupling'' (LEC) which is based on the term ''Aircraft-Pilot Coupling'' (APC) used in the aviation industry where the phenomenon it describes is found to exist in modern aircraft flown ''by wire'' (electronic or radio controlled). It is contended that the operation of locomotives ''by wire'' is becoming commonplace in the industry and is utilized in distributed power. The term ''Discordant APC'' is used to describe the loss of control phenomena resulting from dynamic distortion of the pilot-aircraft control system, which will occur in two areas: 1. In the information upon which the pilot judges the aircraft's response to his control input (the feedback loop); and 2. in the actual response of the aircraft to the pilot's control inputs (the feed forward loop).[1]

This member notes the similarity between APC and LEC especially with respect to remotely controlled distributed power locomotives. The locomotive engineer expects the control input to be executed as requested and many control inputs do not immediately feedback to the engineer. When something goes wrong the only feedback may be an emergency application of the train's braking system. The absence of a record of the control input sent by the locomotive engineer will leave the engineer vulnerable to accusation that any resulting mishap was due to that individual's negligence. This member further asserts that the investigation of accidents that have occurred while the lead locomotive consist is doing one thing and the distributed power is doing something different from what the engineer intended have revealed that the distributed power locomotives indicated a communication loss.

Due to the type of confusion described above, this member believes that FRA should require fully operational locomotive event recorders on all lead distributed power locomotives and requests that FRA ensure that any final rule apply to such locomotives. This individual strongly believes that the rule must avoid an injustice to individuals when the technology they have been given fails and no record of that failure can be made.

Based on the above, FRA seeks further comments from all interested parties on the need and the ability to capture ''miscompare'' messages between the lead locomotive and the remotely distributed locomotive as well as any information on the potential economic consequences of any such requirement. FRA also seeks comments and information on the issue of whether remotely distributed locomotives (or the unit that receives signals from the head end and relays them to the other remote locomotives) should also be required to be equipped with an event recorder to capture not only the receipt of a message from the lead locomotive but also the remote locomotive's response to that message. This would allow not only the capture of miscompare messages but would also allow an analysis of those messages.

**V. Section-by-Section Analysis**

*Section 229.5*

In this proposed section, the existing section is being entirely rewritten to remove the letter designations for the subparagraphs so that the terms defined in this section are simply presented in alphabetical order. In addition, the definitions of two terms have been substantially revised, and definitions of several new terms are added. The substantive changes to the existing section are limited to the following provisions:

*Cruise control* is an added definition that describes the device that controls locomotive power output to maintain a targeted speed. Primarily used on through-route passenger equipment, this device allows the engineer a choice between automated controls or the traditional throttle handle. Devices that only function at or below 30 miles per hour, such as those used in the loading/unloading of unit trains of bulk commodities, or those used to move equipment through car or locomotive

[1] *A Case for Higher Data Rates,* Ralph A. 'Harrah HQ; George Kaseote, FAA HQ; at page 2 of the proceedings of the International Symposium on Transportation Recorders on May 3–5, 1999.

washers, are not considered cruise controls for purposes of this part.

*Data element* is an added definition to clarify that the data recorded may be directly passed through or they may be derived from other data. As an example, speed may be calculated from time and distance; the event recorder may capture ''speed'' by calculating that value using the common formula of dividing distance by time. An alternative term ''data parameter'' is not used in this proposal because a ''parameter'' connotes one value standing for all others of a class and an ''element'' is a discrete value. Data may be derived from both recorded and unrecorded ''facts'' in the memory module. For instance, the distance element in the calculation of speed may be derived from a count of the wheel revolutions (data from the memory module) and the wheel diameter or wheel circumference (data measured directly from a physical component and, thus, not stored in the memory module).

*Distributed power system* is an added definition that describes a system to allow the engineer in the lead unit to automatically control locomotive power units placed within the train consist. Typically, a radio link is established between the lead unit and the remote power consist so that a single engineer can control several locomotives not directly coupled to the lead unit.

*Event recorder* is a revised definition. The definition that is currently in the regulations is modified so that the list of data elements to be recorded will now appear in rewritten § 229.135(b). This change is necessary because the event recorders proposed to be required on new locomotives will record more data elements than the recorders now required by the regulation.

*Event recorder memory module* is a new definition that describes the portion of the event recorder that will be required to meet the crashworthy standard proposed in Appendix D to Part 229.

*Lead locomotive* is a definition moved from current § 229.135(a) and revised to reflect current industry practice and to make it clear that ''lead locomotive'' describes a set position in the train rather than the locomotive from which the crew is operating the train. This change was necessary, among other reasons, to accurately record the signal indications displayed to the crew of the train.

*Mandatory directive* is a definition also contained in § 220.5 of this chapter and is being included in this part to aid in understanding the type of data that is to be captured by the event recorder when a railroad utilizes a train control system pursuant to Part 236 of this chapter.

*Remanufactured locomotive* is a new definition added to clarify when an existing event recorder-equipped locomotive must be equipped with a crashworthy event recorder.

*Self-monitoring event recorder* is a new definition added to clearly state the conditions under which an event recorder does not require periodic maintenance. One member of the Working Group, in a written submission to FRA, suggests that this definition be slightly altered to state that a self-monitoring event recorder is one that has the ability to monitor its own operation and to display an indication to the locomotive operator when any data required to be stored are not stored or *when the input signal or stored signal is detected as out-of-range.* This commenter stated that there is no way to verify whether the stored data matches the data received from the sensor or data collection point as described in the proposed definition. Examples of this are when a sensor fails open and the locomotive computer does not pass that information to the event recorder, or when a speed sensor is not producing any output due to certain failure modes. However, certain data elements can be programmed with a minimum or maximum range and if the sensor input is outside that range then an appropriate indication can be provided to the operator. FRA seeks comments from all interested parties on this suggested change to the definition of self-monitoring event recorder.

*Throttle position* is a new definition added to capture the industry understanding about this parameter of locomotive operation. As discussed in more detail earlier, while typical diesel-electric freight locomotives have positions, or ''notches'' for eight power positions and ''Idle,'' many other locomotives, especially those in passenger and heavy electric passenger service, do not. The proposed definition calls for measuring the power requested by the engineer/operator at any and all of the discrete output positions of the throttle. If the throttle quadrant on a locomotive has continuously variable segments, the recorder would be required to capture the exact level of speed/tractive effort requested, on a scale of zero (0) to 100 percent (100%) of the output variable or a value converted from a percentage to a comparable 0 to 8 digital system. FRA does not believe that there is a need to specify the specific parameters by which throttle position is recorded. FRA realizes, based on Working Group discussions, that some parties believe these parameters should be specified and recorded. Therefore, FRA seeks comments from interested parties on the need to include the specific methods contained in this definition for reporting and recording the power requested by an engineer or operator.

*Section 229.25*

This proposed rule would amend § 229.25(e) by moving the language dealing with microprocessor-based event recorders from subparagraph (e)(2) to the lead paragraph and providing that microprocessor-based event recorders with a self-monitoring feature are exempt from the 92-day periodic inspection and are to be inspected annually as required under proposed § 229.27(d). Other types of event recorders would require inspection and maintenance at 92-day intervals, as before. FRA recognizes that railroads cannot test event recorders over the *full* range of recorded parameters. Such testing might require operating locomotives at speeds far higher than safe over a particular railroad's track and some events, such as EOT valve failure are extremely rare. The proposed rule would require ''cycling, as practicable, all required recording elements * * * '' in recognition of the above stated fact. Although the proposed regulatory text does not specify how records of successful tests are to be maintained, FRA has no objection to keeping the records electronically, provided; the electronic ''record'' is the full and complete ''data verification result'' required by this proposed section, the record is secure, the record is accessible to FRA for review and monitoring, and the record is made available upon request to FRA or any other governmental agent with the authority to request them.

*Section 229.27*

This proposed rule would amend the introductory text of this section for clarity and to add a specific reference to proposed paragraph (d), dealing with the annual maintenance requirements for microprocessor-based event recorders with a self-monitoring feature. Proposed paragraph (d) has two potential triggers for required maintenance. A self-monitoring microprocessor-based event recorder would require ''maintenance'' in the sense of opening the box and making adjustments only if either or both of the following occurred: (1) The event recorder displayed an indication of a failure, or (2) the railroad has downloaded and reviewed the data for the past 48 hours of the locomotive's use and found that any required

channels were not recording data representative of the actual operations of the locomotive during this time period.

The proposed rule recognizes that certain data elements do not regularly recur and may not, in fact, have been seen for a long time. Such elements might include EOT emergency applications, EOT communications loss, EOT valve failure, and specific channels devoted to distributed power operations when such operations have not occurred to the locomotive within the past 48 hours. FRA has eased the burden of specific ''annual test dates'' by proposing that any time an event recorder is downloaded, reviewed for the relevant elements as required in § 229.135(b), and successfully passes that review, a new 368-day interval begins. (Non-self-monitoring recorders require maintenance at quarterly intervals, under the requirements of § 229.25.)

The users and vendors of self-monitoring event recorders have discovered that, in common with many electronic devices, either the unit works or it does not. If it is working—if it is recording all the data it is required to record and if it is accurately storing the data sent by the sensors or other data collection points—no tweaking, lubricating, adjusting, or other traditional maintenance practice will make it work better or more accurately. If a self-monitoring event recorder is not working, that fact will be displayed, and the experience of the users and builders is that a circuit board, or other electronic component, will have to be exchanged. By the same token, the NTSB has strongly urged that maintenance of locomotive event recorders verify that the entire event recorder system—including the recorder, the memory module, the cabling, and the sensors—is accurately recording what the locomotive has actually done. The regulatory proposal here would require a review of the past 48 hours of the locomotive's operations because that is the required recording period for the current (and the proposed) rule. Although the proposed regulatory text does not specify how records of successful tests are to be maintained, FRA has no objection to keeping the records electronically, provided the electronic ''record'' is the full and complete ''data verification result'' required by this proposed section, the record is secure, the record is accessible to FRA for review and monitoring, and the record is made available upon request to FRA or any other governmental agent with the authority to request them.

*Section 229.135*

Paragraph (a) is essentially unchanged, except as necessary to accommodate the proposed changes or additions to subsequent paragraphs in § 229.135. This proposed paragraph does modify the existing provision by requiring the make and model of the event recorder to be entered on Form FRA F6180–49A (blue card). Some members of the Working Group, at meetings and in written submissions to FRA, questioned the need to record this information on the blue card as there is no known instance where a problem was encountered downloading data or locating appropriate analysis software. These members assert that railroads and event recorder manufacturers are well aware of the type of event recorder installed on a locomotive and which software to employ for downloads. This item was requested by NTSB, and based on NTSB's stated need for the information, FRA has decided to include the provision in this proposal. FRA believes there is very little burden placed on the railroads by requiring the information to be recorded as the presence of any such recorder is already required under the existing regulation and the benefit to an accident investigator may be considerable. FRA seeks comment from interested parties regarding the benefits and costs associated with including this requirement in the final rule.

Paragraph (b) is totally rewritten to detail the proposed new requirements for when a new or remanufactured locomotive must be equipped with a certified crashworthy memory modules and details the information that must be captured and stored by both new and existing event recorders. In order to avoid confusion when locomotives are re-sold after the original purchase from the manufacturer (*i.e.*, sold from one user to another), the proposed rule specifies that the equipment required on a specific locomotive is determined by the date it was originally manufactured. The introductory text is new and would require that the data recorded be at least as accurate as the data required to be displayed to the engineer. Further, the rule would require the crashworthy event recorder memory module to be mounted for its maximum protection, stating that a module mounted behind the collision posts and above the platform will be deemed to be appropriately mounted.

Several members of the Working Group, in meetings and in written submissions to FRA, emphasized that the language contained in this proposed provision regarding the placement of the crashworthy event recorder memory module may be interpreted to limit the placement of the module. They assert that the placement of the module in an electrical cabinet may not necessarily be below the top of the collision posts and yet such placement would provide adequate protection and would actually provide superior crush resistance, be more fire resistant, and be a longer distance from the point of impact. Similarly, a module located in the nose of the locomotive may not be above the platform level and yet it would be sufficiently protected. The illustration contained in the proposed provision was intended to provide one example of a module properly mounted for its maximum protection. FRA agrees that there may be other mounting options that provide at least equal protection, and has added language to the proposed rule text making this point very clear. FRA seeks suggestions and comments from interested parties regarding potential language or approaches to this issue that address the concerns of these Working Group members.

The proposed requirements relating to when a new locomotive is required to be equipped with the crashworthy event recorder memory module is based on the date that the locomotive was originally ordered. Paragraphs (b)(3) and (b)(4) propose that any locomotive ordered one year after the effective date of the final rule must be equipped with a crashworthy event recorder memory module. FRA notes that no outside parameter has been included in this proposal. Thus, as the proposal is currently written, any locomotive ordered prior to the one-year period would not be required to be equipped with a crashworthy event recorder even if not delivered and placed in service until ten years later. FRA believes there should be a placed-in-service date included in the final rule after which any new locomotive must be properly equipped. For example, most of FRA's regulations that contain a design requirement for new equipment generally define the new equipment as any that is ordered after a certain date or that is placed in service after a certain date. *See* 49 CFR part 232 and 238. Generally these two dates are several years apart in order to provide sufficient time for an equipment order to be fully manufactured and placed in service. Rather than include an arbitrary date, FRA seeks comments and suggestions from interested parties as to an appropriate date to include in the final rule for ensuring that any applicable locomotive placed in service after that

date is properly equipped with a crashworthy memory module.

Subparagraph (b)(1) restates the equipment requirements for current event recorders that use a recording medium other than magnetic tape. This section proposes to permit the continued use of these current event recorders on any locomotive manufactured until one year after the effective date of a final rule in this proceeding. At the initial meetings with the RSAC Working Group, FRA made clear that this rule was not intended to involve the retrofitting of existing locomotives with event recorders containing crashworthy memory modules. FRA continues to believe that, except for the need to replace event recorders using magnetic tape to record information, any significant retrofit requirement of existing locomotive event recorders cannot be justified from a cost/benefit perspective. In addition to the cost of the crashwothy event recorder, it would be cost prohibitive to retrofit many existing locomotives with the ability to monitor many of the data elements described in this paragraph. Consequently, except for remanufactured locomotives and locomotives equipped with an event recorder utilizing magnetic tape, this proposal does not contain any provision requiring a locomotive manufactured prior to one year from the effective date of any final rule issued in this proceeding to be equipped with an event recorder containing a crashworthy memory module described in Appendix D of this proposal.

Although this proposal does not require the retrofitting of existing locomotives in most cases, FRA believes that the industry and the marketplace will dictate that as older style event recorders fail they will be replaced with event recorders containing crashworthy memory modules. In addition, the operational benefits derived from the newer crashworthy event recorders will likely drive the railroads' decisions when acquiring replacement event recorders for existing locomotives. Moreover, as the newer crashworthy event recorders become more prevalent and are manufactured in greater numbers, the costs of the recorders will likely be more comparable to currently produced event recorders and thus, many railroads may find it economically advantageous to purchase the new crashworthy event recorders as replacements for the older model event recorders on existing locomotives.

With these thoughts in mind, FRA seeks comments from interested parties as to whether a provision could or should be added to this rule which establishes a specific date after which any replacement event recorder on an existing locomotive must have a crashworthy memory module pursuant to Appendix D of this proposal. FRA wishes to make clear that any such provision would only be applied to existing locomotives when the event recorder with which it is equipped is replaced and it is not FRA's intention to increase the data elements required to be captured. It should be noted that FRA is not proposing to ''sunset'' the use of event recorders using magnetic tape until six years after the effective date of the final rule in this proceeding. Thus, any provision related to other current event recorders should probably not apply until at least that time. To summarize: FRA seeks comments or information from interested parties as to whether there is some future date, that would impose little or no cost burden to the industry, after which any event recorder that is replaced on an existing locomotive should be replaced with an event recorder containing a crashworthy memory module described in Appendix D of this proposal.

Subparagraph (b)(2) proposes a ''sunset'' date for current event recorders using magnetic tape as their recording medium. Because it is essentially impossible to make a crashworthy event recorder memory module that uses magnetic tape, the proposed rule would establish that, six years after the effective date of a final rule, all such recorders must be replaced with recorders using ''hardened'' memory modules, but recording the same elements as they do now. The principal supplier of this type of equipment has ceased manufacturing it and has recently discontinued supplying replacement recording media. Accordingly, FRA believes that this provision should not constitute a significant burden. FRA seeks comments and information from all interested parties regarding any significant burden imposed by this proposed provision.

Subparagraph (b)(3) contains the proposed standards for new event recorders and make new event recorders that meet these standards mandatory equipment for freight (diesel) locomotives (other than MU locomotives) manufactured one year after the effective date of a final rule in this proceeding. The new recorder would have a certified crashworthy event recorder memory module and would record the following data elements in addition to the data elements recorded by current event recorders:

- emergency brake applications initiated by the engineer or by an on-board computer;
- a loss of communications from the EOT (End of train) device;
- messages related to the ECP (electronic controlled pneumatic) braking system;
- EOT messages relating to ''ready status,'' an emergency brake command, and an emergency brake application, valve failure indication, end-of-train brake pipe pressure, the ''in motion'' signal, the marker light status, and low battery status;
- the position of the switches for headlights and for the auxiliary lights on the lead locomotive;
- activation of the horn control;
- the locomotive number;
- the automatic brake valve cut in;
- the locomotive position (lead or trail);
- tractive effort;
- the activation of the cruise control; and
- safety-critical train control display elements with which the engineer is required to comply.

Two of the data elements proposed in this subparagraph and in subparagraph (b)(4) are somewhat controversial and deserve additional explanation and clarification. FRA seeks comments, information, and suggestions from interested parties on both of the proposed data elements discussed below as well as any of the other proposed data elements contained in subparagraph (b)(3) and (b)(4).

The proposed data element contained in subparagraphs (b)(3)(vi) and (b)(4)(vi) requires that the system record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (*e.g.*, electronic braking system controller, locomotive electronic control system, or train control computer), the system would have to record, or provide a means of determining, the involvement of any such computer.

These additional proposed requirements concerning the operation of the automatic braking system are necessary in order to take into account the proliferation of processor-based technology that is now extensively used to control the functions of locomotives, including on-board computers constituting subsystems of train control systems. When the present event recorder rule was being prepared, the

automatic brake on most locomotives functioned by mechanical and pneumatic means, responding directly to manipulations of the controls by the locomotive engineer; and train control (where provided) addressed braking and power ''knock down'' functions very directly as well. Increasingly, braking functions are controlled electronically based on requests from the control stand, and the electronic commands themselves may pass through a second locomotive computer before being executed. Major manufacturers of locomotives have plans to run braking software on their own host processors. Further, some developing train control projects contemplate routing commands through other on-board computers.

In general, new electronic systems have functioned well, but there have been notable failures. It is obviously a dangerous situation when service braking is not available (requiring the engineer to employ the emergency braking feature). The unintended application of train brakes can also constitute a safety hazard, particularly in freight operations where management of in-train forces is a significant challenge. In the event of an accident, it is critical that data be logged in the event recorder memory module that is sufficient to determine the source of brake applications and releases. It should be known whether or not they were requested, and whether or not they occurred as requested, from the control stand. In the event no action was taken at the control stand that can explain the brake application, it is important to know (insofar as is feasible) the source of the application. While not every source of an unintended brake application can be determined in real time and monitored electronically, on-board computers capable of issuing a command for application or release of the brakes or executing such commands should be monitored to determine their role.

The proposed data element contained in subparagraphs (b)(3)(xxv) and (b)(4)(xxii) requires that safety-critical train control data routed to the locomotive engineer's display, with which the engineer is required to comply, be recorded. The data to be recorded would in every case include text messages conveying mandatory directives and maximum authorized speed. It may be necessary to record other data elements depending on the design of the train control system and the type of information displayed to the engineer (*e.g.*, distance to a ''target'' at which a particular action must be taken). The format, content, and proposed duration for retention of such data would be specified by the railroad in the product safety plan (PSP) submitted for the train control system under the new subpart H of 49 CFR Part 236, subject to FRA approval under this paragraph. FRA would expect to approve this element of the PSP if it was clear that data sufficient to determine the proper functioning of the train control system is routed to the memory module and retained for a sufficient period to support accident investigation. FRA anticipates that railroads will elect to record additional train control data elements in a crashworthy module (*e.g.*, train consist data entered by the crew that is critical to the correctness of the braking curve), and FRA will welcome inclusion of this additional data.

Train control systems are still evolving, and it is therefore difficult to anticipate what should be selected for recording; consequently, it may be difficult to plan for such eventualities. FRA believes that the proposed rule provides flexibility to address these future needs by determining data recording needs appropriate to various systems, including a shorter duration for data retention if appropriate to the subject matter. Contemporary solid state recorders are programmable and should be capable of receiving and retaining the necessary data. If, for some reason not presently foreseen, data retention requirements for a train control system exceed the capacity of the primary memory modules, secondary modules associated with the on-board train control computer could be used to meet the need.

The proposed provision uses the term ''safety-critical'' which is intended to have a meaning consistent with the meaning assigned in 49 CFR § 236.903. That section provides that ''safety-critical,'' as applied to a function, a system, or any portion thereof, means the correct performance of which is essential to safety of personnel and/or equipment, or the incorrect performance of which could cause a hazardous condition, or allow a hazardous condition which was intended to be prevented by the function or system to exist. In the present context, then, safety-critical data would be data displayed to the locomotive engineer that is integral to a safety-critical train control function (such as avoiding over-speed operation, preventing a collision, or preventing an incursion into a work zone). The safety-critical functions of a new train control system are defined by the railroad in the requirements section of the PSP (consistent with the assumptions specified in the accompanying risk assessment). In addition, the term ''mandatory directive,'' as used in this provision, has the meaning assigned to the term in 49 CFR § 220.5 (''any movement authority or speed restriction that affects a railroad operation'') and that definition has been duplicated in proposed § 229.5.

Subparagraph (b)(4) is a similar set of proposed new requirements for MU locomotives manufactured after one year from the effective date of the rule. Differences between subparagraphs (b)(3) and (b)(4) reflect the differences between freight locomotives and heavy electric commuter equipment, primarily in the particular brake application data required to be stored.

Subparagraph (b)(5) would require, when a locomotive equipped with an event recorder is remanufactured, that it be equipped with a certified crashworthy event recorder memory module capable of capturing the same data as the recorder on the pre-remanufactured locomotive.

Paragraph (c) is essentially the same as current paragraph (c), modified for clarity and to reflect the specific equipment requirements in paragraph (b).

Paragraph (d) is essentially the same as the current paragraph (b), rewritten to clarify that its provisions apply notwithstanding the duty to equip specified in paragraph (a).

Paragraph (e) combines and simplifies current paragraphs (d) and (d)(1). This paragraph proposes the requirement that, while the railroad may download the event recorder immediately following an accident/incident, the original downloaded data file must be preserved for FRA or the NTSB.

Paragraph (f) is the present paragraph (d)(2). It was separated for clarity and ease of citation.

Paragraph (g) is the present paragraph (e).

*Appendix D.* Appendix D contains the proposed criteria for certification of an event recorder memory module (ERMM) as crashworthy. Its elements were the result of the collaborative efforts of a task group of the RSAC Event Recorder Working Group and were adopted by the full RSAC in its recommendation to FRA. FRA agrees with the recommendation of the full RSAC This appendix establishes the general requirements, the testing sequence, and the required marking for memory modules certified by their manufacturers as crashworthy. This appendix also contains the proposed performance criteria for survivability from fire, impact shock, crush, fluid immersion, and hydrostatic pressure.

The proposed performance criteria contained in Section C of Appendix D

are presented in two tables which represent alternative performance criteria under which an ERMM could be tested for crashworthiness. During the development of this proposal the Working Group discussed and reviewed various performance criteria which some manufacturers of event recorders began using in an effort to pre-qualify their ERMMs. Rather than penalizing these manufacturers by including only the final draft performance criteria contained in Table 1, FRA also provides the performance criteria contained in Table 2 as an acceptable alternative. FRA expects that ERMMs built to Table 2 criteria would survive more extreme conditions than those built under Table 1. FRA is also advised by manufacturers that have already designed and tested Table 2 ERMMs that the incremental cost of event recorders built to those more rigorous criteria will be *less than* the incremental cost of Table 1 ERMMs (for which the differential associated with increased fire protection over the IEEE criteria is said to be the cost driver).

The proposed performance criteria contained in Table 1 of this appendix are adapted from the Institute of Electrical and Electronics Engineers, Inc., IEEE Std 1482.1–1999, *IEEE Standard for Rail Transit Vehicle Event Recorders.* Virtually all of the criteria contained in this table are included in Section 4.5 of the above noted IEEE standard. FRA has slightly modified the fire criteria to make it consistent with the conditions an event recorder would encounter in actual operation. FRA increased the IEEE high temperature fire standard from 650 degrees Celsius to 750 degrees Celsius because the higher temperature is consistent with the temperature at which locomotive diesel fuel burns. FRA also did not include IEEE's penetration standard as FRA finds it unnecessary for purposes of an event recorder mounted inside a locomotive. Although FRA and the Working Group explored other performance criteria, FRA believes that the criteria proposed in Table 1 are most likely to be acceptable to the vast majority of the parties participating in and affected by this regulation. Several manufacturer's of event recorders noted that they currently manufacture or are capable of manufacturing a crashworthy ERMM consist with IEEE's standard. Furthermore, the NTSB indicated its potential acceptance of the criteria contained in this proposal.

Table 2 of this appendix contains alternative performance criteria to those adapted from IEEE's standard. FRA has included the performance criteria contained in this table based on comments received from certain manufacturers indicating that they were currently producing crashworthy ERMMs based on the criteria contained in this table. The performance criteria contained in Table 2 are based on discussions conducted with the Working Group, were accepted by the full RSAC, and were contained in its recommendation to FRA. FRA considers them to be superior to those contained in Table 1. Thus, in order to accommodate those manufacturer's that took the lead in developing crashworthy ERMMs, FRA believes it is appropriate to include the criteria previously discussed and considered by the Working Group and recommended to FRA by the full RSAC as an alternative to the adapted IEEE standards. Therefore, manufacturers that have developed crashworthy ERMMs based on the criteria proposed in Table 2, would not need to retest their devices under the criteria contained in Table 1.

Table 2 contains two options for meeting the Impact Shock performance criteria. When using Table 2 criteria, crashworthy ERMMs may utilize either the IEEE impact shock performance criteria or the impact shock criteria developed by the Working Group. FRA believes that either impact shock criteria would be acceptable. FRA recognizes that the duration of the impact pulse proposed by the Working Group may be far more expensive to produce than that contained in the IEEE standard and that there are only a few testing laboratories capable of performing a test for that duration. FRA realizes that there is a trade-off between a higher impact value for a short duration as opposed to a lower impact pulse for a longer duration. FRA sees merit in both criteria and is not willing to espouse the benefits of either criterion over the other, and is therefore purposing to permit the use of either criterion when testing the ERMM.

FRA is proposing the performance criteria in Table 1 and 2 as alternative methods of certifying an ERMM as crashworthy. FRA seeks comments, information, and potential cost estimates for both sets of performance criteria from interested parties. Based on the comments received in response to this notice, FRA may seek to require the use of one or both sets of performance criteria (as may be suitable for a given segment of the railroad industry) or may develop different parameters altogether.

It should be noted that each set of criteria is a performance standard and FRA has not included any specific test procedures to achieve the required level of performance. Although FRA and the Working Group considered specific testing criteria, FRA does not believe it is necessary to include specific testing criteria in this regulation. FRA believes that the industry and the involved manufacturers are in the best position to determine the exact methods by which they will test for the specified performance parameters. The Working Group did consider the testing criteria contained in the following international standards: (1) The European Organization for Civil Aviation Equipment (EUROCAE), ED–55, *Minimum Operational Performance Specification for Flight Data Recorder System* (May 1990); (2) EUROCAE ED–56A, *Minimum Operational Requirement for Cockpit Voice Recorder System* (December 1993); and (3) The *Fluid Immersion Test Procedures* contained in the National Fire Protection Association's *Fire Protection Handbook*, 18th Edition. Although FRA endorses the use of any of the above standards, FRA is not proposing to mandate their use at this time. Appendix D makes clear that any testing procedures employed by a manufacturer must be documented, recognized, and acceptable. FRA seeks comments from any interested parties regarding the need to include specific testing criteria. Such comments should specifically identify the testing procedures sought to be included and provide a detailed analysis indicating the need for such inclusion.

FRA wishes to inform all interested parties that they may obtain a copy of the standards noted in the above discussion through the following: (1) The EUROCAE standards may be obtained from The European Organization for Civil Aviation Equipment, 17, rue Hamelin, 75783 PARIS CEDEX 16, France; (2) the *Fire Protection Handbook*, 18th Edition, may be obtained from the National Fire Protection Association, 1 Batterymarch Park, PO Box 9101, Quincy, MA 02269–9101; and (3) the *IEEE Standard for Rail Transit Event Recorders*, IEEE Std 1482.1–1999, may be obtained from The Institute of Electrical and Electronics Engineers, Inc., 345 East 47th Street, New York, NY 10017–2394. Interested parties may also inspect a copy of any of these materials during normal business hours at the Federal Railroad Administration, Docket Clerk, Suite 7000, 1120 Vermont Avenue, NW., Washington DC 20590.

Section E of appendix D contains a proposed testing exception for new model crashworthy ERMMs that represent an evolution or upgrade of an older model ERMM meeting the performance criteria contained in this appendix. FRA has included this

exception based on its determination that there is no reason to subject a new model ERMM to the proposed testing where no material change has been made to the unit that would impact any of the performance criteria. For example, if a memory chip is modified but the remainder of the box is left unchanged, there would likely be no reason to subject the unit to all or any of the required tests. In this example, the only performance criteria, if any, potentially affected might be the fire standard. This proposed section makes clear that the new model ERMM need only be tested for compliance with those performance criteria contained in Section C of appendix D that are potentially affected by the upgrade or modification. FRA will consider a performance criteria to not be potentially affected if a preliminary engineering analysis or other pertinent data establishes that the modification or upgrade will not affect the crashworthy performance criteria established by the older model ERMM. The proposed provision requires the manufacturer to retain and make available to FRA upon request any analysis or data relied upon to make a determination relating to the crashworthiness impacts of any upgrade or modification to an older model ERMM.

## VI. Regulatory Impact and Notices

*Executive Order 12866 and DOT Regulatory Policies and Procedures*

This proposed rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Access to the docket may also be obtained electronically through the Web site for the DOT Docket Management System at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2003–16357. FRA invites comments on this regulatory evaluation.

Event recorders have successfully improved the safety of rail operations by monitoring railroad operations and by capturing the pre-accident inputs to the train control. This impartial collection of data has improved the ability of the railroads and the railroad operating employees, the ability of the railroads and governmental agencies to investigate accidents, and the ability of FRA and the States to regulate railroad operations. These contributions have, in turn, tended to reduce the number and severity of incidents, accidents, and resulting damage and casualties. The higher standards proposed in this NPRM can be expected to produce even greater safety progress. Therefore, dilution of the existing standards or rejection of the higher standards proposed in this NPRM would create the potential for an increase in property damage, injuries, and fatalities resulting from rail accidents.

The Regulatory Impact Analysis (RIA) developed in connection with this proposed rule uses a break-even analysis approach to assessing the monetary impacts and safety benefits of this proposal. This approach is appropriate for this particular rule because event recorders do not directly prevent accidents. Event recorders may indirectly prevent future accidents by allowing for in-depth accident causation analysis to take place using complete information, thereby allowing accurate causation determinations, and the development of appropriate and effective countermeasures. Because event recorders also allow the railroad to monitor train handling performance and rules compliance in a widespread and economical way, FRA believes that event recorders might have the potential of increasing skillful train handling and encouraging rules compliance. The extent of the event recorders' contribution to accident analyses, train handling, and rules compliance is somewhat open to interpretation and argument. FRA is not in a position to claim a particular degree of improvement in these areas from event recorders. Therefore, the RIA simply states the level of effectiveness (avoided accidents, etc.) that event recorders would have to reach such that the cost of the proposed rule would be ''paid for'' by the benefits expected to be achieved. It should be noted that the accident figures used in FRA's analysis do not include the costs of environmental cleanup or evacuations related to human factor caused accidents.

FRA expects that overall the rule will not impose a significant additional cost on the rail industry over the next twenty years. FRA believes it is reasonable to expect that several accidents, injuries, and fatalities will be avoided as a result of implementing this proposed rule. FRA believes that this safety benefit alone justifies the measures proposed in this document. FRA also believes that the safety of rail operations will be compromised if this rule is not implemented. The RIA indicates that an accident reduction of approximately 2 percent (2%) annually during the first twenty years ''breaks-even'' with the expected costs of the proposed rule. In FRA's judgement this level of Human Factor Accident reduction is clearly achievable, and is likely to be exceeded. This is all the more likely if one or more of the accidents prevented is a passenger train accident. Passenger train accidents usually have more casualties than other types of train accidents, just based on the fact that more people are exposed to the dangers and damages of the accident. Also, those types of accidents tend to be much more disastrous than a typical freight train accident, such as a derailment or an accident that does not involve hazardous materials, thus costing much more than the assigned average value of a human factor accident.

Although FRA believes this proposed regulation is justified by safety benefits alone, the addition of clear and substantial business benefits makes the proposal obviously justified. For example, the estimated savings resulting from just the proposed requirement of the floating year approach to the inspection period is a total 20-year benefit of approximately $ 1.2 million. In addition to this quantified business benefit there are other benefits which may result from this proposed rule that are not quantified in the RIA. For example, the quality and quantity of information gained by recorded data resulting in increased knowledge of train handling and pre-accident inputs (events occurring just prior to impact which may have contributed to the cause) and the public perception that the railroads offer higher levels of safety and efficiency are not easily quantified benefits.

The following table presents estimated twenty-year *monetary* impacts associated with the proposed new requirement for crashworthy event recorders. The table contains the estimated costs and benefits associated with this NPRM and provides the total 20-year value as well as the 20-year net present value (NPV) for each indicated item. The dollar amounts presented in this table have been rounded to the nearest thousand. For exact estimates, interested parties should consult the

RIA that has been made part of the docket in this proceeding.

| Description | 20-year total($) | 20-year NPV($) |
|---|---|---|
| Costs: | | |
| Replacement of Magnetic Tape Recorders: | 6,310,000 | 4,976,000 |
| Crashworthy ERMM no new parameters: | 558,000 | 296,000 |
| Crashworthy ERMM new parameters: | 16,494,000 | 8,706,000 |
| Maintenance/Inspections: | 16,107,000 | 8,281,000 |
| Total Costs: | 39,469,000 | 22,258,000 |
| Benefits: | | |
| *Safety:* Reduction of Human Factor accidents and injuries (2% effectiveness): | 42,808,000 | 22,675,000 |
| *Business:* Magnetic tape inspection savings: | 1,751,000 | 1,201,000 |
| Total Benefits: | 44,559,000 | 23,876,000 |

*Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Analysis of Impact on Small Entities (AISE) that assesses the small entity impact of this proposal. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Stop 10, Federal Railroad Administration, 1120 Vermont Avenue, NW., Washington, DC 20590; please refer to Docket No. FRA–2003–16357.

''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a railroad business ''line-haul operation'' that has fewer than 1,500 employees and a ''switching and terminal'' establishment with fewer than 500 employees. SBA's ''size standards'' may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small entities'' as being railroads that meet the line-haulage revenue requirements of a Class III railroad. *See* 68 FR 24891 (May 9, 2003). Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's (STB's) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad, shipper, or contractor is a small entity. FRA uses this alternative definition of ''small entity'' for this rulemaking.

The AISE developed in connection with this NPRM concludes that this proposal would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act or Executive Order 13272.

While about 645 of the approximately 700 railroads operating in the United States are considered small businesses by FRA, this proposed rule would only apply to railroads that operate passenger or freight trains at speeds greater than 30 mph. Very few of these smaller railroads conduct operations on track that is suitable for top speeds of greater than 30 mph, i.e., track maintained above Class 2 standards; thus, FRA believes that the vast majority of small railroads would not be impacted by the proposed rule. Further, most small railroads own older locomotives and, thus, would not be affected by the new equipment requirements of this rule. FRA estimates that approximately only 350 locomotives operated by these smaller railroads would be affected by the provisions contained in this proposed rule. The AISE associated with this proposal estimates that the economic impact on these operations will have an NPV of less than $400,000 over a 20-year period. Representatives of small railroads participated in the RSAC discussion that provided the basis for this proposal. FRA seeks comments and input from all interested parties regarding the estimates contained in the AISE developed in connection with this NPRM.

*Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 229.9—Movement of Non-Complying Locomotives. | 685 Railroads | 21,000 tags | 1 minute | 350 | $12,250. |
| 229.17—Accident Reports | 685 Railroads | 1 report | 15 minutes | .25 | $10. |
| 229.21—Daily Inspection | 685 Railroads | 5,655,000 rcds. | 1 or 3 min. | 263,383 | $10,798,703. |
| Form FRA F 6180.49A Locomotive Insp/Repair Rcd. | 685 Railroads | 14,750 forms | 2 minutes | 492 | $17,220. |
| 210.31—Locomotive Noise Emission Test | 685 Railroads | 100 tests/remarks | 15 minutes | 25 | $850. |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 229.23/229.27/229.29/229.31—Periodic Inspection/Annual Biennial Tests/Main Res. Tests. | 685 Railroads | 87,000 tests | 8 hours | 696,000 | $24,360,000. |
| 229.33—Out-of Use Credit | 685 Railroads | 1,000 notations | 5 minutes | 83 | $2,822. |
| 229.25(1)—Test: Every Periodic Insp.—Written Copies of Instruction. | 685 Railroads | 200 amendments | 15 minutes | 50 | $1,700. |
| 229.25(2)—Duty Verification Readout Record. | 685 Railroads | 4,025 records | 30 minutes | 2,013 | $58,377. |
| 229.25(3)—Pre-Maintenance Test—Failures. | 685 Railroads | 700 notations | 30 minutes | 350 | $10,150. |
| 229.135(A.)—Removal From Service | 685 Railroads | 1,000 tags | 1 minute | 17 | $578. |
| 229.135(B.)—Preserving Accident Data | 685 Railroads | 100 reports | 15 minutes | 25 | $850. |
| **NEW REQUIREMENTS** | | | | | |
| 229.27—Annual Tests | 685 Railroads | 700 Test Records | 90 minutes | 1,050 | $30,450. |
| 229.135(b)(1) & (2)—Equipment Rqmnts—Mag Tap Replacements. | 685 Railroads | 850 Cert. Mem Modules. | 2 hours + 200 hours | 1,900 | Included in RIA. |
| 229.135(b)(3)—Equipment Rqmnts—Lead Locomotives. | 685 Railroads | 600 Cert. Mem Modules. | 2 hours | 1,200 | Included in RIA. |
| 229.135(b)(4)—Equipment Rqmnts—MU Locomotives. | 685 Railroads | 255 Cert. Mem Modules. | 2 hours | 510 | Included in RIA. |
| 229.135(b)(5)—Equipment Rqmnts—Other Locomotives. | 685 Railroads | 1,040 Cert. Mem Modules. | 2 hours | 2,080 | Included in RIA |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB contact Robert Brogan at 202–493–6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Comments must be received no later than September 28, 2004. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS–21, Mail Stop 17, 1120 Vermont Ave., NW., MS–17, Washington, DC 20590. Comments may also be sent to Robert Brogan via e-mail at the following address: *robert.brogan@fra.dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

*Federalism Implications*

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. This proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This proposed rule will not have federalism implications that impose any direct compliance costs on State and local governments.

FRA notes that the RSAC, which endorsed and recommended this proposed rule to FRA, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO) and the Association of State Rail Safety Managers (ASRSM). Both of these State organizations concurred with the RSAC recommendation endorsing this proposed rule. The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. To date, FRA has received no indication of concerns about the Federalism implications of this rulemaking from these representatives or of any other representatives of State government. Consequently, FRA concludes that this proposed rule has no federalism implications, other than the preemption of state laws covering the subject matter of this proposed rule, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order.

*Environmental Impact*

FRA has evaluated this regulation in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this regulation is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

(c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment. * * * The following classes of FRA actions are categorically excluded:

* * *

(20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed regulation is not a major Federal action significantly affecting the quality of the human environment.

*Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

*Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

*Privacy Act*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

**List of Subjects in 49 CFR Part 229**

Accident investigation, Data preservation, Event recorders, Locomotives, National Transportation Safety Board, Penalties, Railroad safety, Railroads, Reporting and record keeping requirements.

**The Proposed Rule**

For the reasons discussed in the preamble, the Federal Railroad Administration proposes to amend part 229 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

## PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

**Authority:** 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR1.49(c),(m).

2. Section 229.5 is revised to read as follows:

### § 229.5 Definitions.

As used in this part—

*Break* means a fracture resulting in complete separation into parts.

*Cab* means that portion of the superstructure designed to be occupied by the crew operating the locomotive.

*Carrier* means *railroad,* as that term is defined below.

*Commuter Service* means the type of railroad service described under the heading ''Commuter Operations'' in 49 CFR part 209, appendix A.

*Commuter work train* is a non-revenue service train used in the administration and upkeep service of the commuter railroad.

*Control cab locomotive* means a locomotive without propelling motors but with one or more control stands.

*Crack* means a fracture without complete separation into parts, except that castings with shrinkage cracks or hot tears that do not significantly diminish the strength of the member are not considered to be cracked.

*Cruise control* means a device that controls locomotive power output to obtain a targeted speed. A device that functions only at or below 30 miles per hour is NOT considered a ''cruise control'' for purposes of this part.

*Data element* means data point(s) or value(s) reflecting on-board train operations at a particular time. Data may be actual or ''passed through'' values or may be derived from a combination of values from other sources.

*Dead locomotive* means—

(1) A locomotive, other than a control cab locomotive, that does not have any traction device supplying tractive power; or

(2) A control cab locomotive that has a locked and unoccupied cab.

*Distributed power system* means a system that provides automatic control of a number of locomotives dispersed throughout a train from a controlling locomotive located in the lead position. The system provides control of the rearward locomotives by command signals originating at the lead locomotive and transmitted to the remote (rearward) locomotives.

*Electronic air brake* means a brake system controlled by a computer which provides the means for control of the locomotive brakes or train brakes or both.

*Event recorder* means a device, designed to resist tampering, that monitors and records data, as detailed in § 229.135(b), over the most recent 48 hours of operation of the electrical system of the locomotive on which the device is installed. However, a device, designed to resist tampering, that monitors and records the specified data only when the locomotive is in motion meets this definition if the device was installed prior to November 5, 1993 and if it records the specified data for the last eight hours the locomotive was in motion.

*Event recorder memory module* means that portion of the event recorder used to retain the recorded data as detailed in § 229.135(b).

*High voltage* means an electrical potential of more than 150 volts.

*In-service event recorder* means an event recorder that was successfully tested as prescribed in § 229.27(d) and whose subsequent failure to operate as intended, if any, is not actually known by the railroad operating the locomotive on which it is installed.

*Lead locomotive* means the first locomotive proceeding in the direction of movement.

*Lite locomotive* means a locomotive or a consist of locomotives not attached to any piece of equipment or attached only to a caboose.

*Locomotive* means a piece of on-track equipment other than hi-rail, specialized maintenance, or other similar equipment—

(1) With one or more propelling motors designed for moving other equipment;

(2) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(3) Without propelling motors but with one or more control stands.

*Mandatory directive* means any movement authority or speed restriction that affects a railroad operation.

*Modesty lock* means a latch that can be operated in the normal manner only from within the sanitary compartment, that is designed to prevent entry of another person when the sanitary compartment is in use. A modesty lock may be designed to allow deliberate forced entry in the event of an emergency.

*MU locomotive* means a multiple operated electric locomotive—

(1) With one or more propelling motors designed to carry freight or passenger traffic or both; or

(2) Without propelling motors but with one or more control stands.

*Other short-haul passenger service* means the type of railroad service described under the heading ''Other short-haul passenger service'' in 49 CFR part 209, Appendix A.

*Potable water* means water that meets the requirements of 40 CFR part 141, the Environmental Protection Agency's Primary Drinking Water Regulations, or water that has been approved for drinking and washing purposes by the pertinent state or local authority having jurisdiction. For purposes of this part, commercially available, bottled drinking water is deemed potable water.

*Powered axle* is an axle equipped with a traction device.

*Railroad* means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including commuter or other short-haul rail passenger service in a metropolitan or suburban area, and high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

*Remanufactured locomotive* means a locomotive rebuilt or refurbished from a previously used or refurbished underframe (''deck''), containing fewer than 25 percent previously used components (weighted by dollar value of the components).

*Sanitary* means lacking any condition in which any significant amount of filth, trash, or human waste is present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or of strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove waste; visible human waste residue on the floor or toilet seat that is present due to a toilet that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

*Sanitation compartment* means an enclosed compartment on a railroad locomotive that contains a toilet facility for employee use.

*Self-monitoring event recorder* means an event recorder that has the ability to monitor its own operation and to display an indication to the locomotive operator when any data required to be stored are not stored or when the stored data do not match the data received from sensors or data collection points.

*Serious injury* means an injury that results in the amputation of any appendage, the loss of sight in an eye, the fracture of a bone, or the confinement in a hospital for a period of more than 24 consecutive hours.

*Switching service* means the classification of railroad freight and passenger cars according to commodity or destination; assembling cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing locomotives and cars for repair or storage; or moving rail equipment in connection with work service that does not constitute a train movement.

*Throttle position* means any and all of the discrete output positions indicating the speed/tractive effort characteristic requested by the operator of the locomotive on which the throttle is installed. Together, the discrete output positions shall cover the entire range of possible speed/tractive effort characteristics. If the throttle has continuously variable segments, the event recorder shall capture either:

(1) The exact level of speed/tractive effort characteristic requested, on a scale of zero (0) to one hundred percent (100%) of the output variable; or

(2) A value converted from a percentage to a comparable 0 to 8 digital signal.

*Time* means either ''time-of-day'' or ''elapsed time'' (from an arbitrarily determined event) as determined by the manufacturer. In either case, the recorder must be able to convert to an accurate time-of-day with the time zone stated unless it is GMT(UTC).

*Toilet facility* means a system that automatically or on command of the user removes human waste to a place where it is treated, eliminated, or retained such that no solid or non-treated liquid waste is thereafter permitted to be released into the bowl, urinal, or room and that prevents harmful discharges of gases or persistent offensive odors.

*Transfer service* means a freight train that travels between a point of origin and a point of final destination not exceeding 20 miles and that is not performing switching service.

*Unsanitary* means having any condition in which any significant amount of filth, trash, or human waste is present in such a manner that a reasonable person would believe that the condition might constitute a health hazard; or strong, persistent, chemical or human waste odors sufficient to deter use of the facility, or give rise to a reasonable concern with respect to exposure to hazardous fumes. Such conditions include, but are not limited to, a toilet bowl filled with human waste, soiled toilet paper, or other products used in the toilet compartment, that are present due to a defective toilet facility that will not flush or otherwise remove waste; visible human waste residue on the floor or toilet seat that is present due to a toilet that overflowed; an accumulation of soiled paper towels or soiled toilet paper on the floor, toilet facility, or sink; an accumulation of visible dirt or human waste on the floor, toilet facility, or sink; and strong, persistent chemical or human waste odors in the compartment.

*Washing system* means a system for use by railroad employees to maintain personal cleanliness that includes a secured sink or basin, water, antibacterial soap, and paper towels; or antibacterial waterless soap and paper towels; or antibacterial moist towelettes and paper towels; or any other combination of suitable antibacterial cleansing agents.

3. Section 229.25 is amended by revising paragraph (e) to read as follows:

**§ 229.25 Tests: Every periodic inspection.**

* * * * *

(e) *Event Recorder.* A microprocessor-based self-monitoring event recorder, if installed, is exempt from periodic inspection under paragraphs (e)(1) through (e)(5) of this section and shall be inspected annually as required by § 229.27(d). Other types of event recorders, if installed, shall be inspected, maintained, and tested in accordance with instructions of the manufacturer, supplier, or owner thereof and in accordance with the following criteria:

(1) A written or electronic copy of the instructions in use shall be kept at the point where the work is performed and a hard-copy version, written in the English language, shall be made available upon request of a governmental agent empowered to request it.

(2) The event recorder shall be tested before any maintenance work is performed on it. At a minimum, the event recorder test shall include cycling, as practicable, all required recording elements and determining the full range of each element by reading out recorded data.

(3) If the pre-maintenance test does not reveal that the device is recording all the specified data and that all recordings are within the designed recording elements, this fact shall be noted, and maintenance and testing shall be performed as necessary until a subsequent test is successful.

(4) When a successful test is accomplished, a copy of the data-verification results shall be maintained in any medium with the maintenance records for the locomotive until the next one is filed.

(5) A railroad's event recorder periodic maintenance shall be considered effective if 90 percent of the recorders on locomotives inbound for periodic inspection in any given calendar month are still fully functional; maintenance practices and test intervals shall be adjusted as necessary to yield effective periodic maintenance.

4. Section 229.27 is amended by revising the introductory text and by adding a new paragraph (d) to read as follows:

**§ 229.27 Annual tests.**

A locomotive, except for an MU locomotive, shall be subjected to the tests and inspections prescribed in paragraphs (a), (b), and (c) of this section. An MU locomotive shall be subjected to the tests and inspections prescribed in paragraphs (b) and (c) of this section. A locomotive, including an MU locomotive, equipped with a microprocessor-based event recorder that includes a self-monitoring feature, shall be subjected to the tests and inspections prescribed in paragraph (d) of this section, at intervals that do not exceed 368 calendar days.

* * * * *

(d) A microprocessor-based event recorder with a self-monitoring feature equipped to verify that all data elements required by this part are recorded, requires further maintenance only if either or both of the following conditions exist:

(1) The self-monitoring feature displays an indication of a failure. If a failure is displayed, further maintenance and testing must be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be available at the location where the locomotive is maintained until a record of a subsequent successful test is filed.

(2) A download of the event recorder, taken within the preceding 30 days and reviewed for the previous 48 hours of locomotive operation, reveals a failure to record a regularly recurring data element or reveals that any required data element is not representative of the actual operations of the locomotive during this time period. If the review is not successful, further maintenance and testing shall be performed until a subsequent test is successful. When a successful test is accomplished, a record, in any medium, shall be made of that fact and of any maintenance work necessary to achieve the successful result. This record shall be kept at the location where the locomotive is maintained until a record of a subsequent successful test is filed. The download shall be taken from information stored in the certified crashworthy crash hardened event recorder memory module if the locomotive is so equipped.

5. Section 229.135 is revised to read as follows:

**§ 229.135 Event recorders.**

(a) *Duty to equip and record.* Except as provided in paragraphs (c) and (d) of this section, a train operated faster than 30 miles per hour shall have an in-service event recorder, of the type described in paragraph (b) of this section, in the lead locomotive. The presence of the event recorder shall be noted on Form FRA F6180–49A (by writing the make and model of event recorder with which the locomotive is equipped) under the REMARKS section, except that an event recorder designed to allow the locomotive to assume the lead position only if the recorder is properly functioning is not required to have its presence noted on Form FRA F6180–49A. For the purpose of this section, ''train'' includes a locomotive or group of locomotives with or without cars. The duty to equip the lead locomotive may be met with an event recorder located elsewhere than the lead locomotive provided that such event recorder monitors and records the required data as though it were located in the lead locomotive. The event recorder shall record the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

(b) *Equipment requirements.* Event recorders shall monitor and record data elements required by this paragraph with at least the accuracy required of the indicators displaying any of the required elements to the engineer.

(1) A lead locomotive originally manufactured before [date one (1) year after the effective date of the final rule],

including a controlling remote distributed power locomotive and an MU locomotive, except as provided in paragraphs (c) and (d) of this section, shall have an in-service event recorder that records the following data elements:

(i) Train speed;

(ii) Selected direction of motion;

(iii) Time;

(iv) Distance;

(v) Throttle position;

(vi) Applications and operations of the train automatic air brake;

(vii) Applications and operations of the independent brake;

(viii) Applications and operations of the dynamic brake, if so equipped; and

(ix) Cab signal aspect(s), if so equipped and in use.

(2) A locomotive originally manufactured before [date one (1) year after the effective date of the final rule] and equipped with an event recorder that uses magnetic tape as its recording medium shall have the recorder removed from service on or before [date six (6) years after the effective date of the final rule] and replaced with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of appendix D of this part and that records at least the same number of data elements as the recorder it replaces.

(3) A lead locomotive and a controlling remotely distributed power locomotive, other than an MU locomotive, originally ordered on or after [date one (1) year after effective date of the final rule] shall be equipped with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of appendix D of this part. The certified event recorder memory module shall be mounted for its maximum protection. (Although other mounting standards may meet this standard, an event recorder memory module mounted behind and below the top of the collision posts and above the platform level is deemed to be mounted ''for its maximum protection.'') The event recorder shall record, and the certified crashworthy event recorder memory module shall retain, the following data elements:

(i) Train speed;

(ii) Selected direction of motion;

(iii) Time;

(iv) Distance;

(v) Throttle position;

(vi) Applications and operations of the train automatic air brake, including emergency applications. The system shall record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (*e.g.*, electronic braking system controller, locomotive electronic control system, or train control computer), the system shall record, or provide a means of determining, the involvement of any such computer;

(vii) Applications and operations of the independent brake;

(viii) Applications and operations of the dynamic brake, if so equipped;

(ix) Cab signal aspect(s), if so equipped and in use;

(x) End-of-train (EOT) device loss of communication front to rear and rear to front;

(xi) Electronic controlled pneumatic braking (ECP) message (and loss of such message), if so equipped;

(xii) EOT armed, emergency brake command, emergency brake application;

(xiii) Indication of EOT valve failure;

(xiv) EOT brake pipe pressure (EOT and ECP devices);

(xv) EOT marker light on/off;

(xvi) EOT ''low battery'' status;

(xvii) Position of on/off switch for headlights on lead locomotive;

(xviii) Position of on/off switch for auxiliary lights on lead locomotive;

(xix) Horn control handle activation;

(xx) Locomotive number;

(xxi) Locomotive automatic brake valve cut in;

(xxii) Locomotive position in consist (lead or trail);

(xxiii) Tractive effort;

(xxiv) Cruise control on/off, if so equipped and in use; and

(xxv) Safety-critical train control data routed to the locomotive engineer's display with which the engineer is required to comply, specifically including text messages conveying mandatory directives, and maximum authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan submitted for the train control system under subpart H of part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

(4) An MU locomotive originally ordered on or after [date one (1) year after effective date of the final rule] shall be equipped with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of Appendix D of this part. The certified event recorder memory module shall be mounted for its maximum protection. (Although other mounting standards may meet this standard, an event recorder memory module mounted behind the collision posts and above the platform level is deemed to be mounted ''for its maximum protection.'') The event recorder shall record, and the certified crashworthy event recorder memory module shall retain, the following data elements:

(i) Train speed;

(ii) Selected direction of motion;

(iii) Time;

(iv) Distance;

(v) Throttle position;

(vi) Applications and operations of the train automatic air brake, including emergency applications. The system shall record, or provide a means of determining, that a brake application or release resulted from manipulation of brake controls at the position normally occupied by the locomotive engineer. In the case of a brake application or release that is responsive to a command originating from or executed by an on-board computer (*e.g.,* electronic braking system controller, locomotive electronic control system, or train control computer), the system shall record, or provide a means of determining, the involvement of any such computer;

(vii) Applications and operations of the independent brake, if so equipped;

(viii) Applications and operations of the dynamic brake, if so equipped;

(ix) Cab signal aspect(s), if so equipped and in use;

(x) Emergency brake application(s);

(xii) Wheel slip/slide alarm activation (with a property-specific minimum duration);

(xiii) Lead locomotive headlight activation switch on/off;

(xiv) Lead locomotive auxiliary lights activation switch on/off;

(xv) Horn control handle activation;

(xvi) Locomotive number;

(xvii) Locomotive position in consist (lead or trail);

(xviii) Tractive effort;

(xix) Brakes apply summary train line;

(xx) Brakes released summary train line;

(xxi) Cruise control on/off, if so equipped and used; and

(xxii) Safety-critical train control data routed to the locomotive engineer's display with which the engineer is required to comply, specifically including text messages conveying mandatory directives, and maximum authorized speed. The format, content, and proposed duration for retention of such data shall be specified in the product safety plan submitted for the train control system under subpart H of

part 236 of this chapter, subject to FRA approval under this paragraph. If it can be calibrated against other data required by this part, such train control data may, at the election of the railroad, be retained in a separate certified crashworthy memory module.

(5) A locomotive equipped with an event recorder that is remanufactured, as defined in this part, on or after [date two (2) years after effective date of the final rule], shall be equipped with an event recorder with a certified crashworthy event recorder memory module that meets the requirements of Appendix D to this part and is capable of recording, at a minimum, the same data as the recorder that was on the locomotive before it was remanufactured.

(c) *Removal from service.* Notwithstanding the duty established in paragraph (a) of this section to equip certain locomotives with an in-service event recorder, a railroad may remove an event recorder from service and, if a railroad knows that an event recorder is not monitoring or recording required data, shall remove the event recorder from service. When a railroad removes an event recorder from service, a qualified person shall record the date that the device was removed from service on Form FRA F6180–49A, under the REMARKS section, unless the event recorder is designed to allow the locomotive to assume the lead position only if the recorder is properly functioning.

(d) *Response to defective equipment.* Notwithstanding the duty established in paragraph (a) of this section to equip certain locomotives with an in-service event recorder, a locomotive on which the event recorder has been taken out of service as provided in paragraph (c) of this section may remain as the lead locomotive only until the next calendar-day inspection. A locomotive with an inoperative event recorder is not deemed to be in improper condition, unsafe to operate, or a non-complying locomotive under §§ 229.7 and 229.9, and, other than the requirements of appendix D of this part, the inspection, maintenance, and testing of event recorders are limited to the requirements set forth in §§ 229.25(e) and 229.27(d).

(e) *Preserving accident data.* If any locomotive equipped with an event recorder, or any other locomotive-mounted recording device or devices designed to record information concerning the functioning of a locomotive or train, is involved in an accident/incident that is required to be reported to FRA under part 225 of this chapter, the railroad that was using the locomotive at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA. This preservation requirement permits the railroad to extract and analyze such data, *provided* the original downloaded data file, or an unanalyzed exact copy of it, shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation requirement shall expire 30 days after the date of the accident unless FRA or the Board notifies the railroad in writing that the data are desired for analysis.

(f) *Relationship to other laws.* Nothing in this section is intended to alter the legal authority of law enforcement officials investigating potential violation(s) of State criminal law(s), and nothing in this chapter is intended to alter in any way the priority of National Transportation Safety Board investigations under 49 U.S.C. 1131 and 1134, nor the authority of the Secretary of Transportation to investigate railroad accidents under 49 U.S.C. 5121, 5122, 20107, 20111, 20112, 20505, 20702, 20703, and 20902.

(g) *Disabling event recorders.* Except as provided in paragraph (c) of this section, any individual who willfully disables an event recorder is subject to civil penalty and to disqualification from performing safety-sensitive functions on a railroad as provided in § 218.55 of this chapter, and any individual who tampers with or alters the data recorded by such a device is subject to a civil penalty as provided in appendix B of part 218 of this chapter and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures in part 209 of this chapter.

6. A new appendix D is added to part 229 to read as follows:

## Appendix D to Part 229—Criteria for Certification of Crashworthy Event Recorder Memory Module

Section 229.135(b) requires that certain locomotives be equipped with an event recorder that includes a certified crashworthy event recorder memory module. This appendix prescribes the requirements for certifying an event recorder memory module (ERMM) as crashworthy, including the performance criteria and test sequence for establishing the crashworthiness of the ERMM as well as the marking of the event recorder containing the crashworthy ERMM.

A. General Requirements

1. Each manufacturer that represents its ERMM as crashworthy shall, by marking it as specified in Section B of this appendix, certify that the ERMM meets the performance criteria contained in this appendix and that test verification data are available to a railroad or to FRA upon request.

2. The test verification data shall contain, at a minimum, all pertinent original data logs and documentation that the test sample preparation, test set up, test measuring devices and test procedures were performed by designated, qualified personnel using recognized and acceptable practices. Test verification data shall be retained by the manufacturer or its successor as long as the specific model of ERMM remains in service on any locomotive.

3. A crashworthy ERMM shall be marked by its manufacturer as specified in Section B of this appendix.

B. Marking Requirements

1. The outer surface of the event recorder containing a certified crashworthy ERMM shall be colored international orange. In addition, the outer surface shall be inscribed, on the surface allowing the most visible area, in black letters on an international orange background, using the largest type size that can be accommodated, with the words CERTIFIED DOT CRASHWORTHY, followed by the ERMM model number (or other such designation), and the name of the manufacturer of the event recorder. This information may be displayed as follows:

**CERTIFIED DOT CRASHWORTHY**

**Event Recorder Memory Module Model Number**

**Manufacturer's Name**

Marking ''CERTIFIED DOT CRASHWORTHY'' on an event recorder designed for installation in a railroad locomotive is the certification that all performance criteria contained in this appendix have been met and all functions performed by, or on behalf of, the manufacturer whose name appears as part of the marking, conform to the requirements specified in this appendix.

2. Retro-reflective material shall be applied to the edges of each visible external surface of an event recorder containing a certified crashworthy ERMM.

C. Performance Criteria for the ERMM

An ERMM is crashworthy if it has been successfully tested for survival under conditions of fire, impact shock, static crush, fluid immersion, and hydro-static pressure contained in one of the two tables contained in this section of appendix D. (See Tables 1 and 2 of this appendix.) Each ERMM must met the individual performance criteria in the sequence established in Section D of this appendix. Performance criteria are deemed to be met if the ERMM has preserved all of the data stored in it. The data set stored in the ERMM to be tested shall include all the recording elements required by § 229.135(b). The following tables describe alternative performance criteria that may be used when testing an ERMM's crashworthiness. A manufacturer may utilize either table during its testing but may not combine the criteria contained in the two tables.

TABLE 1.—ACCEPTABLE PERFORMANCE CRITERIA—OPTION A

| Parameter | Value | Duration | Remarks |
|---|---|---|---|
| Fire, High Temperature | 750°C (1400°F) | 60 minutes | Heat source: Oven. |
| Fire, Low Temperature | 260°C (500°F) | 10 hours. | |
| Impact Shock | 55g | 100 ms | ½ sine crash pulse. |
| Static Crush | 110kN (25,000 lbf) | 5 minutes. | |
| Fluid Immersion | #1 Diesel<br>#2 Diesel<br>Water<br>Salt Water<br>Lube Oil | Any *single* fluid, 48 hours. | |
| | Fire Fighting Fluid | 10 minutes, following immersion above. | Immersion followed by 48 hours in a dry location with out further disturbance. |
| Hydrostatic Pressure | Depth equivalent = 15 m. (50 of ft.). | 48 hours at nominal temperature of 25°c (77°F). | |

TABLE 2.—ACCEPTABLE PERFORMANCE CRITERIA—OPTION B

| Parameter | Value | Duration | Remarks |
|---|---|---|---|
| Fire, High Temperature | 1000°C (1832°F) | 60 minutes | Heat source: Open flame. |
| Fire, Low Temperature | 260°C (500°F) | 10 hours | Heat source: Oven. |
| Impact Shock—Option 1 | 23gs | 250 ms. | |
| Impact Shock—Option 2 | 55gs | 100 ms | ½ sine crash pulse. |
| Static Crush | 111.2kN (25,000lbf) | 5 minutes. | |
| | 445.5kN (10,000lbf) | (single ''squeeze'') | Applied to 25% of surface of largest face. |
| Fluid Immersion | #1 Diesel<br>#2 Diesel<br>Water<br>Salt Water<br>Lube Oil<br>Fire Fighting Fluid | 48 hours *each*. | |
| Hydrostatic Pressure | 46.62 psig (= 30.5 m. or 100 ft.) | 48 hours at nominal temperature of 25°c (77°F). | |

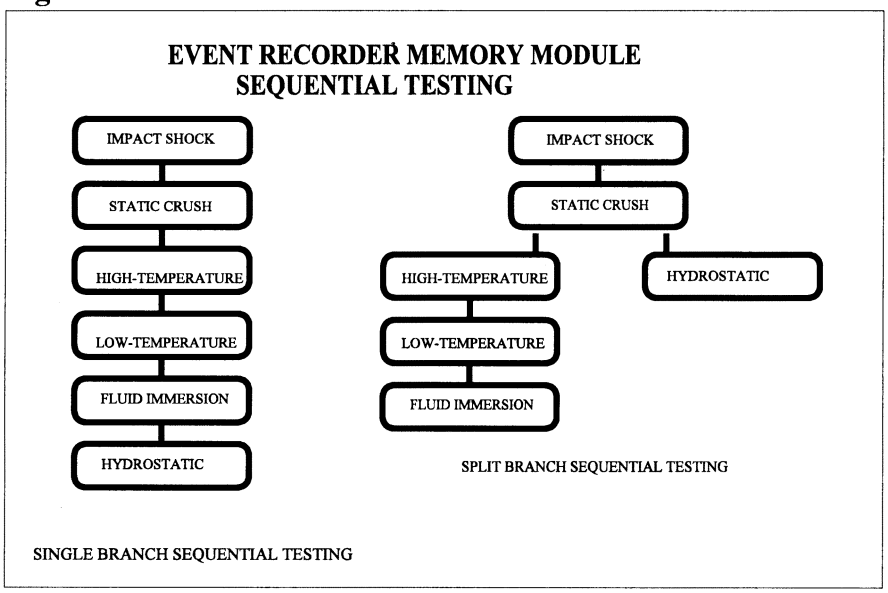
D. Testing Sequence

In order to reasonably duplicate the conditions an event recorder may encounter, the ERMM shall meet the various performance criteria, described in Section C of this appendix, in a set sequence. (See Figure 1). If all tests are done in the set sequence (single branch testing), the same ERMM must be utilized throughout. If a manufacturer opts for split branch testing, each branch of the test must be conducted using an ERMM of the same design type as used for the other branch. Both alternatives are deemed equivalent, and the choice of single branch testing or split branch testing may be determined by the party representing that the ERMM meets the standard.

E. Testing Exception

If a new model ERMM represents an evolution or upgrade from an older model ERMM that was previously tested and certified as meeting the performance criteria contained in Section C of this appendix, the new model ERMM need only be tested for compliance with those performance criteria contained in Section C of this appendix that are potentially affected by the upgrade or modification. FRA will consider a performance criteria to not be potentially affected if a preliminary engineering analysis or other pertinent data establishes that the modification or upgrade will not affect the crashworthy performance criteria established by the older model ERMM. The manufacturer shall retain and make available to FRA upon request any analysis or data relied upon to make a determination relating to the crashworthiness impacts of any upgrade or modification to an older model ERMM.

**Figure 1**




Issued in Washington, DC, on June 23, 2004.

**Betty Monro,**

*Acting Administrator, Federal Railroad Administration.*

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# Part VI

# Securities and Exchange Commission

## 17 CFR Parts 239, 240, and 274

## Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies; Final Rule

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Parts 239, 240, and 274**

**[Release Nos. 33–8433; 34–49909; IC–26486; File No. S7–08–04]**

**RIN 3235–AJ10**

## Disclosure Regarding Approval of Investment Advisory Contracts by Directors of Investment Companies

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission is adopting rule and form amendments under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company Act of 1940 to improve the disclosure provided by registered management investment companies about how their boards of directors evaluate and approve, and recommend shareholder approval of, investment advisory contracts. The amendments require a registered management investment company to provide disclosure in its reports to shareholders regarding the material factors and the conclusions with respect to those factors that formed the basis for the board's approval of advisory contracts during the most recent fiscal half-year. The amendments also are designed to encourage improved disclosure in proxy statements regarding the basis for the board's recommendation that shareholders approve an advisory contract.

**DATES:** *Effective Date:* August 5, 2004, except that the amendments to Item 12 of Form N–1A,[1] Item 18 of Form N–2,[2] and Item 20 of Form N–3 [3] are effective January 31, 2006.

*Compliance Date:* All fund reports to shareholders for periods ending on or after March 31, 2005, and all fund proxy statements on Schedule 14A filed on or after October 31, 2004, are required to comply with these amendments. Section II.C. of this release contains more information on the compliance date.

**FOR FURTHER INFORMATION CONTACT:** Deborah D. Skeens, Senior Counsel, or Paul G. Cellupica, Assistant Director, Office of Disclosure Regulation, Division of Investment Management, (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

[1] 17 CFR 239.15A and 274.11A.

[2] 17 CFR 239.14 and 274.11a–1.

[3] 17 CFR 239.17a and 274.11b.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission (''Commission'') is adopting amendments [4] to Schedule 14A,[5] the schedule used by registered investment companies and issuers registered under section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') [6] for proxy statements pursuant to section 14(a) of the Exchange Act, and Forms N–1A, N–2, and N–3, registration forms used by management investment companies to register under the Investment Company Act of 1940 (''Investment Company Act'') [7] and to offer their securities under the Securities Act of 1933 (''Securities Act'').[8]

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## I. Background

Unlike most business organizations, registered management investment companies (''funds'') [9] are typically organized by an investment adviser that is responsible for the day-to-day operations of the fund. In most cases, the investment adviser is organized as a corporation, whose shareholders may have an interest with respect to the fund that is quite different from the interests of the fund's shareholders. One of the key areas where the interests of fund shareholders and shareholders of the investment adviser diverge is fees. While fund shareholders ordinarily prefer lower fees to achieve greater returns, shareholders of the fund's investment adviser often want to maximize profits through higher fees.

The Investment Company Act relies on fund boards of directors to police conflicts of interest, including conflicts with respect to fees to be received by investment advisers. Section 15(a) makes it unlawful for any person to serve as an investment adviser to a fund, except pursuant to a written contract that has been approved by a majority vote of the fund's shareholders and that continues in effect for not more than two years, unless its continuance is approved at least annually by the board of directors or a majority vote of the shareholders.[10] In addition, section 15(c) requires that the terms of any advisory contract, and any renewal thereof, be approved by a vote of the majority of the disinterested directors.[11] Section 15(c) also requires a fund's directors to request and evaluate, and an investment adviser to a fund to furnish, such information as may reasonably be necessary to evaluate the terms of any advisory contract.[12] As part of their fiduciary duties with respect to fund fees, boards of directors are required to evaluate the material factors applicable to a decision to approve an investment advisory contract. [13]

Since 1994, we have required fund proxy statements seeking approval of an investment advisory contract to include a discussion of the material factors that form the basis of the fund board's recommendation that shareholders approve the contract.[14] In 2001, we adopted amendments requiring a fund to provide similar disclosure in its Statement of Additional Information

[4] The Commission proposed these amendments in February 2004. Investment Company Act Release No. 26350 (Feb. 11, 2004) [69 FR 7852 (Feb. 19, 2004)] (''Proposing Release'').

[5] 17 CFR 240.14a–101.

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 80a–1 *et seq.*

[8] 15 U.S.C. 77a *et seq.*

[9] Management investment companies typically issue shares representing an undivided proportionate interest in a changing pool of securities, and include open-end and closed-end companies. *See* T. Lemke, G. Lins, A. Smith III, Regulation of Investment Companies, Vol. I, ch. 4, § 4.04, at 4–5 (2002). An open-end company is a management company that is offering for sale or has outstanding any redeemable securities of which it is the issuer. A closed-end company is any management company other than an open-end company. *See* section 5 of the Investment Company Act [15 U.S.C. 80a–5]. Open-end companies generally offer and sell new shares to the public on a continuous basis. Closed-end companies generally engage in traditional underwritten offerings of a fixed number of shares and, in most cases, do not offer their shares to the public on a continuous basis.

[10] 15 U.S.C. 80a–15(a).

[11] We refer to directors who are not ''interested persons'' of the fund as ''independent directors'' or ''disinterested directors.'' The term ''interested person'' is defined in section 2(a)(19) [15 U.S.C. 80a–2(a)(19)] of the Investment Company Act.

[12] 15 U.S.C. 80a–15(c).

[13] *See, e.g., Burks* v. *Lasker,* 441 U.S. 471, 483 (1979) (''Congress consciously chose to address the conflict-of-interest problem through the [Investment Company] Act's independent-directors section.''); *Brown* v. *Bullock*, 194 F. Supp. 207, 235 (S.D.N.Y.) (''By giving the directors the right to extend and to terminate the [investment advisory] contract, the Act necessarily also imposes upon the directors the fiduciary duty to use these powers intelligently, diligently and solely for the interests of the company and its stockholders.''), *aff'd*, 294 F.2d 415 (2nd Cir. 1961).

[14] Item 22(c)(11) of Schedule 14A. *See* Investment Company Act Release No. 20614 (Oct. 13, 1994) [59 FR 52689 (Oct. 19, 1994)] (adopting amendments to Schedule 14A).

(''SAI'')[15] regarding the basis for the board's approval of an existing investment advisory contract.[16]

Recently, concerns have been raised regarding the adequacy of review of advisory contracts and management fees by fund boards. In particular, the level of fees charged by investment advisers to mutual fund clients, especially in comparison to those charged by the same advisers to pension plans and other institutional clients, has become the subject of debate.[17] In February 2004, the Commission proposed to require enhanced disclosure regarding the board's basis for approving, or recommending that shareholders approve, investment advisory contracts, in order to encourage fair and reasonable fund fees. Increased transparency with respect to investment advisory contracts, and fees paid for advisory services, will assist investors in making informed choices among funds and encourage fund boards to engage in vigorous and independent oversight of advisory contracts.[18] This proposal was part of a larger series of Commission rulemaking initiatives that have sought to improve disclosure to investors concerning fund fees and charges.[19]

The Commission received 22 comment letters relating to the proposed amendments from investors, participants in the fund industry, and others. The commenters generally supported the Commission's proposals, although some expressed concerns regarding portions of the disclosure requirements or suggested changes. Today, the Commission is adopting these proposed amendments, with modifications to address commenters' concerns.

In addition to the amendments that we are adopting in this release, we are amending the fund recordkeeping rule to require that funds retain copies of the written materials that directors considered in approving an advisory contract. This recordkeeping requirement will facilitate our compliance examiners' review of whether directors are obtaining the necessary information to make an informed assessment of the advisory contract. The release amending the fund recordkeeping rule also includes measures designed to improve the effectiveness of fund boards of directors and enhance their independence in dealing with matters such as the advisory fee.

## II. Discussion

### *A. Disclosure Requirement in Shareholder Reports*

The Commission is adopting, substantially as proposed, amendments to Forms N–1A, N–2, and N–3[20] that require fund shareholder reports to discuss, in reasonable detail, the material factors and the conclusions with respect thereto that formed the basis for the board of directors' approval of any investment advisory contract.[21] This requirement applies to shareholder reports of open- and closed-end management investment companies and insurance company managed separate accounts that offer variable annuities.

Several commenters, including investor advocacy groups and fund directors, supported the proposed requirement to include disclosure regarding the board's basis for approval of any investment advisory contract in shareholder reports, agreeing with the Commission that shareholder reports are the location where investors are more likely to read and benefit from this disclosure. However, some fund industry commenters objected to inclusion of the proposed disclosure in shareholder reports. These commenters argued that the disclosure could be lengthy, and that adding it to shareholder reports could dilute their effectiveness. In addition, these commenters noted that information in shareholder reports is subject to certification by the fund's principal executive and principal financial officers, and argued that it would be inappropriate to require fund officers to certify disclosure that explains the

[15] The SAI is part of a fund's registration statement and contains information about a fund in addition to that contained in the prospectus. The SAI is required to be delivered to investors upon request and is available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'').

[16] Item 12(b)(10) of Form N–1A (registration statement for open-end management investment companies); Item 18.13 of Form N–2 (registration statement for closed-end management investment companies); Item 20(l) of Form N–3 (registration statement for separate accounts organized as management investment companies that offer variable annuity contracts); Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734, 3744 (Jan. 16, 2001)] (adopting requirement for disclosure in SAI of basis for board's approval of advisory contract).

[17] *See, e.g.,* John P. Freeman and Stewart L. Brown, *Mutual Fund Advisory Fees: The Cost of Conflicts of Interest,* 26 Iowa Journal of Corporation Law 609, 634 (Spring 2001) (arguing that advisory fees charged by investment advisers for equity pension funds are substantially lower than advisory fees charged by investment advisers for equity mutual funds because advisory fees for pension funds are negotiated through arm's-length bargaining); *Special Report: Perils in the Savings Pool—Mutual Funds,* The Economist, Nov. 8, 2003, at 65 (arguing that fund boards tend to ''rubber-stamp'' their advisers' contracts without question); Testimony of Gary Gensler, *Hearing before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises,* 108th Cong., 1st Sess. (Mar. 12, 2003) (arguing that ''mutual fund boards fire their advisers with about the same frequency that race horses fire their jockeys''). *But see* Sean Collins, *The Expenses of Defined Benefit Pension Plans and Mutual Funds,* Investment Company Institute Perspective (Dec. 2003), *available at http://www.ici.org/statements/res/1per09–06.pdf* (contending that the management fees of mutual funds cover a broader array of services than the fees paid by pension funds to external managers, and that mutual funds and pension funds incur similar fees for similar portfolio management services); Richard M. Phillips, *Mutual Fund Independent Directors: A Model for Corporate America?*, Investment Company Institute Perspective, at 7 (Aug. 2003), *available at http://www.ici.org/statements/res/2per09–04.pdf* (arguing that the effectiveness of fund boards should not be measured by reference to the frequency with which boards terminate investment advisers).

[18] *See Statement of the Commission Regarding the Enforcement Action Against Alliance Capital Management, L.P.,* SEC Press Release 2003–176 (Dec. 18, 2003) *http://www.sec.gov/news/press/2003–176.htm* (stating Commission's view that the best way to ensure fair and reasonable fees ''is a marketplace of vigorous, independent, and diligent mutual fund boards coupled with fully-informed investors who are armed with complete, easy-to-digest disclosure about the fees paid and the services rendered'').

[19] Investment Company Act Release No. 26464 (June 7, 2004) [69 FR 33262 (June 14, 2004)] (adopting amendments that require enhanced disclosure regarding breakpoint discounts on front-end sales loads); Investment Company Act Release No. 26372 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] (adopting requirements for expense disclosure in fund shareholder reports); Investment Company Act Release No. 26341 (Jan. 29, 2004) [69 FR 6438 (Feb. 10, 2004)] (proposing point-of-sale disclosure and a new confirmation statement for brokers to use when selling fund shares); Investment Company Act Release No. 26313 (Dec. 18, 2003) [68 FR 74820 (Dec. 24, 2003)] (requesting comment on measures to improve disclosure of mutual fund transaction costs); Investment Company Act Release No. 26195 (Sept. 29, 2003) [68 FR 57760 (Oct. 6, 2003)] (adopting amendments requiring investment company advertisements to highlight the availability and importance of information on fees and charges found in the prospectus).

[20] Open-end management investment companies use Form N–1A to register under the Investment Company Act and to offer their shares under the Securities Act. Closed-end management investment companies use Form N–2, and insurance company managed separate accounts that offer variable annuities use Form N–3.

[21] Item 21(d)(6) of Form N–1A; Instruction 6.e. to Item 23 of Form N–2; Instruction 6(v) to Item 27(a) of Form N–3. The amendments to Form N–1A in this release reflect the renumbering of items in amendments that the Commission recently adopted to the requirements for fund shareholder reports, that renumber Item 6 (Management, Organization, and Capital Structure), Item 13 (Management), and Item 22 (Financial Statements) of Form N–1A as Items 5, 12, and 21, respectively. *See* Investment Company Act Release No. 26372, *supra* note 19. These recent amendments also added Item 21(d) to Form N–1A, Instruction 6 to Item 23 to Form N–2, and Instruction 6(v) to Item 27(a) of Form N–3, containing requirements for annual and semi-annual reports to shareholders for each respective registration form.

board's basis for approving an advisory contract.[22]

We continue to believe, however, that including disclosure regarding the board's basis for approving an advisory contract in shareholder reports will provide existing fund shareholders with more timely disclosure of the reasons for the board's approval of an investment advisory contract. The visibility of this disclosure, alongside other current information about a fund, such as investment performance and current period dollars and cents expense disclosure,[23] may encourage funds to provide a meaningful explanation of the board's basis for approving an investment advisory contract. This, in turn, may encourage fund boards to consider investment advisory contracts more carefully and investors to consider more carefully the costs and value of the services rendered by the fund's investment adviser.

We believe that it is appropriate to require a fund's principal executive and financial officers to certify the description of the board's evaluation process based on their knowledge.[24] A certifying officer could rely on information contained in the meeting minutes of the board and other information regarding the board's evaluation that is retained as part of the fund's records.[25] In addition, a fund's board could approve the discussion that is to be included in shareholder reports regarding its basis for approving an advisory contract, in order to assist the fund's principal executive and financial officers in meeting their obligations under the certification requirement.

As adopted, the disclosure requirement in fund shareholder reports will apply to any new investment advisory contract or contract renewal, including subadvisory contracts, approved by the board during the most recent fiscal half-year. The proposal would have excluded contracts that were approved by shareholders from the disclosure requirement. We have determined to include these contracts because we agree with commenters that this comprehensive disclosure will better enable shareholders to remain up-to-date on advisory contract approvals, regardless of whether they were involved in the original approval of the contract. We note that directors have the same duty with respect to approval of an advisory contract, whether or not the contract is also approved by shareholders. We have modified the proposed amendments to clarify that a fund is required to provide shareholder reports disclosure only regarding board approvals during the fund's most recent fiscal half-year.[26] Thus, if the board approves a contract during the first half of a fiscal year, the disclosure would be required in the semi-annual report for that period, but need not be repeated in the annual report.

Because fund shareholder reports will now contain disclosure with respect to all advisory contracts approved by the board, we are removing the existing requirement for disclosure in the SAI of Forms N–1A, N–2, and N–3 with respect to the board's approval of any existing investment advisory contract. We agree with commenters who argued that requiring discussion of the board's basis for approving an advisory contract in multiple locations is duplicative.

However, we also agree with commenters who argued that it is important for investors to have access to information about advisory contract approvals before investing in a fund. For that reason, we are requiring that a fund prospectus state that a discussion regarding the board of directors' basis for approving any investment advisory contract is available in the fund's annual or semi-annual report to shareholders, as applicable.[27] This disclosure will be required to indicate the dates covered by the relevant shareholder report, so that a shareholder may easily request the appropriate report. The disclosure will be required to appear adjacent to other prospectus disclosure about the fund's investment adviser.[28]

The amendments we are adopting today will therefore result in complementary disclosure requirements in fund shareholder reports, prospectuses, and proxy statements. The disclosure requirement in shareholder reports will provide existing fund shareholders with information about any board approval of an investment advisory contract during the most recent fiscal half-year. The prospectus disclosure requirement will inform prospective investors that this information is available in shareholder reports. Finally, the existing disclosure requirement in fund proxy statements will continue to apply to any recommendation that shareholders approve an investment advisory contract.

Several commenters recommended that funds be either encouraged or required to disclose information concerning board approval of investment advisory contracts on their Web sites. These commenters argued that Web site disclosure would provide investors with quick and easy access to this information at low cost. We note that we have recently taken steps to encourage Web site disclosure of fund shareholder reports, by proposing amendments that would require that the cover page of a fund prospectus state whether the fund makes available its shareholder reports on or through its Web site.[29]

*B. Disclosure Enhancements*

We are adopting several enhancements to the existing proxy statement disclosure requirements and are including these same enhancements in the new shareholder reports disclosure requirement. These enhancements clarify and reinforce a fund's obligation under the existing proxy disclosure requirement to discuss the material factors and the conclusions with respect thereto that formed the board's basis for recommending that the shareholders approve an advisory contract. They are intended to address our concerns that some funds do not provide adequate specificity regarding

[22] *See* rule 30a–2(a) under the Investment Company Act (requiring reports filed on Form N–CSR to require certifications in the form specified in Item 11(a)(2) of Form N–CSR); Item 1 of Form N–CSR (requiring copy of report transmitted to shareholders pursuant to rule 30e–1 under the Investment Company Act); Item 11(a)(2) of Form N–CSR (form of certification).

[23] The Commission recently adopted rules that require open-end management investment companies to include in shareholder reports Management's Discussion of Fund Performance and information regarding the dollar amount of expenses paid by investors on an ongoing basis. *See* Investment Company Act Release No. 26372, *supra* note 19.

[24] *See* Paragraph 2 of the certification of Item 11(a)(2) of Form N–CSR (requiring officer to certify ''based on his or her knowledge''). *Cf.* Item 3(a) of Form N–CSR (requiring disclosure of whether a fund's board of directors has determined that it has at least one audit committee financial expert); Item 4(h) of Form N–CSR (requiring disclosure of whether the audit committee of a fund's board has considered whether the provision of non-audit services rendered to the fund's investment adviser and certain related parties that were not pre-approved by the audit committee is compatible with maintaining the principal accountant's independence).

[25] *See* rule 31a–1(b)(4) under the Investment Company Act [17 CFR 270.31a–1(b)(4)] (requiring funds to maintain minute books of directors' or trustees' meetings). The Commission is publishing a release adopting amendments to rule 31a–2, the fund recordkeeping rule, that require that a fund retain any written information considered by the directors in approving the terms or renewal of a contract between the fund and an investment adviser.

[26] Item 21(d)(6) of Form N–1A; Instruction 6.e. to Item 23 of Form N–2; Instruction 6(v) to Item 27(a) of Form N–3.

[27] Item 5(a)(1)(iii) of Form N–1A; Item 9.1.b.(4) of Form N–2; Item 6(b)(iii) of Form N–3.

[28] Item 5(a)(1)(ii) of Form N–1A; Item 9.1.b.(3) of Form N–2; Item 6(b)(ii) of Form N–3.

[29] *See* Investment Company Act Release No. 26383 (Mar. 11, 2004) [69 FR 12752 (Mar. 17, 2004)] (proposed Item 1(b)(1) of Form N–1A, Item 1.1.d of Form N–2, and Item 1(a)(vi) of Form N–3).

the board's basis for its decision. We are adopting the enhancements substantially as proposed, with some modifications to address commenters' concerns.

*Selection of Adviser and Approval of Advisory Fee.* The amendments clarify that the fund's discussion must include factors relating to both the board's selection of the investment adviser, and its approval of the advisory fee and any other amounts to be paid under the advisory contract.[30] Two commenters objected to the use of the phrase ''selection of the investment adviser,'' arguing that this language suggests that the annual review and approval of the advisory contract is an annual opportunity to replace the investment adviser, and that it is not the role of the directors, except in the most egregious circumstances, to override the investors' choice of an adviser. We note, however, that although we would not expect that fund boards would routinely replace investment advisers, the board does have a duty to monitor the adviser's performance of its duties under the advisory contract, and to consider replacing the adviser if necessary. The directors' decision to renew an investment advisory contract, in effect, constitutes the selection of the investment adviser.

*Specific Factors.* The amendments will require a fund to include a discussion including, but not limited to, the following: (1) The nature, extent, and quality of the services to be provided by the investment adviser; (2) the investment performance of the fund and the investment adviser; (3) the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the fund; (4) the extent to which economies of scale would be realized as the fund grows; and (5) whether fee levels reflect these economies of scale for the benefit of fund investors.[31]

We are adding an instruction to clarify that if any of the enumerated factors is not relevant to the board's evaluation of an investment advisory contract, the discussion must note this and explain the reasons why that factor is not relevant.[32] This instruction is intended to address the concerns of commenters who argued that the proposal should be modified to allow for less or different disclosure with respect to advisory contracts with ''non-sponsor advisers'' (*i.e.*, investment advisers, including subadvisers, to funds that are sponsored by third parties unaffiliated with the adviser). These commenters claimed that more tailored disclosure would be appropriate for such advisory contracts because the relationship between an unaffiliated subadviser or a non-sponsor adviser and a fund is truly ''arm's-length.'' They also argued that the factors that directors would consider in approving an advisory contract with an unaffiliated subadviser or non-sponsor adviser are different.

The instruction we are adding will permit a fund, including a fund with a non-sponsor adviser, to tailor its disclosure to its particular circumstances. At the same time, it will require each fund to address each of the enumerated factors, either substantively or by explaining why the factor is not relevant. This degree of uniformity in the discussion is designed to facilitate investor understanding of board approvals of investment advisory contracts. We emphasize that it is important that a fund disclose how a board evaluated and approved all investment advisory contracts, including contracts with non-sponsor advisers, such as unaffiliated subadvisers. Under the Investment Company Act, a fund's board plays an important role in the selection and oversight of the fund's adviser and subadvisers, and the fact that these contracts are the result of ''arm's length'' negotiations does not remove the need for board oversight.[33] Unaffiliated subadvisers may, for example, have other material business arrangements with the fund's adviser or principal underwriter, which the board should consider in the course of evaluating a subadviser's contract.[34]

We note that the amendments are not intended to require disclosure of the amount of the fee paid to an unaffiliated subadviser if that information would not otherwise be required to be disclosed. For example, if a manager of managers fund is not otherwise required to disclose separately the fee paid to each subadviser, the amendments would not require this disclosure.[35]

Under the amendments, a fund's discussion is required to state how the board evaluated the costs of the services to be provided and the profits to be realized by the investment adviser and its affiliates from the relationship with the fund. One commenter argued that, to the extent that actual operating cost and profit information is required, such disclosure could have harmful competitive effects on investment advisers, and that in any event disclosure of specific cost and profit figures is not necessary to help investors understand the board's evaluation of this factor. We wish to clarify that disclosure of specific proprietary information about the operating costs and profits of the investment adviser and its affiliates is not necessary to meet this requirement.

*Comparison of Fees and Services Provided by Adviser.* The fund's discussion will be required to indicate whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or

[30] Item 21(d)(6)(i) of Form N–1A; Instruction 6.e.(i) to Item 23 of Form N–2; Instruction 6(v)(A) to Item 27(a) of Form N–3; Item 22(c)(11)(i) of Schedule 14A.

[31] *Id.* Courts have used similar factors in determining whether investment advisers have met their fiduciary obligations under section 36(b) of the Investment Company Act [15 U.S.C. 80a–35(b)]. *See, e.g., Gartenberg v. Merrill Lynch Asset Management, Inc.* 694 F.2d 923, 929 (2nd Cir. 1982) (''*Gartenberg*'') (examining several factors, including ''the adviser-manager's cost in providing the service, the nature and quality of the service, the extent to which the adviser-manager realizes economies of scale as the fund grows larger, and the volume of orders which must be processed by the manager'').

[32] Instruction 3 to Item 21(d)(6) of Form N–1A; Instruction 6.f. to Item 23 of Form N–2; Instruction 6(vi) to Item 27(a) of Form N–3; Instruction 2 to Item 22(c)(11) of Schedule 14A.

[33] *See* Investment Company Act Release No. 26230 (Oct. 23, 2003) [68 FR 61720, 61723 (Oct. 29, 2003)] (''Manager of Managers Proposing Release'') (proposing rules that would codify exemptive orders issued for ''manager of manager'' funds that permit such funds to operate without obtaining shareholder approval when the fund's principal investment adviser hires a new subadviser or replaces an existing subadviser).

[34] *See* Manager of Managers Proposing Release, *supra* note 33, 68 FR at 61723 n. 37 (noting that, in carrying out its obligations under section 15(c) of the Investment Company Act, a board should consider any material business arrangements between the adviser or principal underwriter and the subadviser, including the involvement of the subadviser in the distribution of the fund's shares).

[35] Sponsors of manager of managers funds have represented that they are able to negotiate lower fees with subadvisers if they do not have to disclose those fees separately, and in our exemptive orders we have provided them relief from our disclosure requirements. *See, e.g.*, Endeavor Series Trust, Investment Company Act Release Nos. 24054 (Sept. 27, 1999) [64 FR 53428 (Oct. 1, 1999)] (notice) and 24108 (Oct. 22, 1999) [70 SEC Docket 3081 (Nov. 23, 1999)] (order); Frank Russell Investment Company, Investment Company Act Release Nos. 21108 (June 2, 1995) [60 FR 30321 (June 8, 1995)] (notice) and 21169 (June 28, 1995) [59 SEC Docket 2105 (July 25, 1995)] (order). The Commission has proposed form amendments that, if adopted, would permit a manager of managers fund to disclose only the aggregate amount of advisory fees that it pays to subadvisers as a group, rather than the fee paid to each unaffiliated subadviser. Manager of Managers Proposing Release, *supra* note 33, 68 FR at 61722.

other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, the discussion will be required to describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved.[36]

Commenters were divided on the proposed requirement with respect to comparisons of fees and services. Several commenters supported the proposed requirement, arguing that any responsible board would at least seek to compare the terms of the contract under consideration with relevant terms for similar funds, and that by encouraging boards to compare the compensation funds pay to their advisers with the compensation that other institutional investors pay, there may be a downward pressure on fund advisory fees. By contrast, one commenter objected to the requirement insofar as it relates to comparisons with other types of clients, particularly pension funds. This commenter argued that fund boards typically do not use such comparisons as a basis for approving or renewing advisory contracts, but that, to avoid providing negative disclosure that the board did not consider the use of such comparisons, fund boards may feel compelled to consider this factor, notwithstanding its lack of relevance. We are adopting the requirement as proposed because we believe that information concerning whether and, if so, how the board relies on comparisons is important in understanding the board's decision. As adopted, the amendment requires a description of the comparisons upon which the board relied and how they assisted the board in concluding that the contract should be approved, and does not require an enumeration of the types of comparisons that the board did not use.

*Evaluation of Factors.* The existing SAI and proxy statement requirements state that conclusory statements or a list of factors will not be considered sufficient disclosure, and that a fund's discussion must relate the factors to the specific circumstances of the fund and the investment advisory contract.[37] We are clarifying this by requiring that the fund's discussion state how the board evaluated each factor. For example, it will not be sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its determination that the contract should be approved.[38]

Commenters' views on this proposed requirement were divided. On the one hand, some commenters agreed that the requirement that the discussion state how the board evaluated each factor would be useful in ensuring that the discussion has reasonable detail and does not rely on boilerplate disclosure. On the other hand, some commenters argued that detailed information regarding the factors that the board considered and the conclusions it reached is not of interest to most shareholders, and that, as a factual matter, boards typically determine whether to approve an advisory contract based on the totality of the factors considered. We believe that the proposed requirement will elicit more useful information than the existing requirement. It would be difficult for a board to reach a final conclusion as to whether to approve an advisory contract without reaching conclusions as to each material factor that forms the basis for the board's approval. Therefore, a discussion of the board's evaluation of the individual factors is important in order to help investors understand how the board reached its decision on whether to approve such a contract.[39]

### *C. Compliance Date*

The effective date for the amendments to the requirements for fund reports to shareholders and proxy statements is August 5, 2004. All fund reports to shareholders with respect to periods ending on or after March 31, 2005, and all proxy statements filed on or after October 31, 2004, will be required to comply with the amendments. We are selecting the March 31, 2005 compliance date so that a fund will only be required to comply with the new disclosure requirements prospectively, with respect to board approvals occurring on or after October 1, 2004. This will give funds sufficient time to update their recordkeeping procedures in light of the new disclosure requirements, and to determine whether additional procedures for board approval of the disclosure that will be required in shareholder reports are needed in order to enable the fund's principal executive and financial officers to certify this disclosure. All initial registration statements on Forms N–1A, N–2, and N–3, and all post-effective amendments that are annual updates to effective registration statements, filed on or after the transmission to shareholders of a report containing the required disclosure must include the prospectus disclosure stating that a discussion regarding the board's basis for approving any investment advisory contract is available in the fund's shareholder reports.

The effective date for the amendments to Item 12 of Form N–1A, Item 18 of Form N–2, and Item 20 of Form N–3 that remove the current SAI disclosure requirement with respect to the board's approval of any existing investment advisory contract is January 31, 2006. By that date, every fund should have begun providing disclosure in its shareholder reports regarding the board's decision to approve the fund's investment advisory contract. Prior to January 31, 2006, a fund may omit disclosure in its SAI with respect to any board approval of an investment advisory contract if it has previously provided the required disclosure with respect to that board approval in a shareholder report.

## III. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[40] The titles for the collections of information are: (1) ''Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies''; (2) ''Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies''; (3) ''Form N–2—Registration Statement of Closed-End Management Investment Companies''; (4) ''Form N–3—Registration Statement of Separate Accounts Organized as Management Investment Companies''; and (5) ''Rule 20a–1 under the Investment Company Act, Solicitations of Proxies, Consents,

[36] Item 21(d)(6)(i) of Form N–1A; Instruction 6.e.(i) to Item 23 of Form N–2; Instruction 6(v)(A) to Item 27(a) of Form N–3; Item 22(c)(11)(i) of Schedule 14A.

[37] *See* Instruction to Item 13(b)(10) of Form N–1A; Instruction to Item 18.13 of Form N–2; Instruction to Item 20(l) of Form N–3; Instruction to Item 22(c)(11) of Schedule 14A.

[38] Instruction 2 to Item 21(d)(6) of Form N–1A; Instruction 6.f. to Item 23 of Form N–2; Instruction 6(vi) to Item 27(a) of Form N–3; Instruction 1 to Item 22(c)(11) of Schedule 14A.

[39] In determining whether an advisory fee violates section 36(b) of the Investment Company Act, courts have similarly evaluated the evidence with respect to the individual factors enumerated in *Gartenberg* before reaching a conclusion as to the ultimate issue. *See, e.g., Gartenberg, supra* note 31; *Kalish* v. *Franklin Advisers, Inc.,* 742 F.Supp. 1222, 1228–1250 (S.D.N.Y. 1990), *aff'd,* 928 F.2d 590 (2nd Cir.), *cert. denied,* 502 U.S. 818 (1991); *Krinsk* v. *Fund Asset Management,* 715 F.Supp. 472, 486–503 (S.D.N.Y. 1988), *aff'd,* 875 F.2d 404 (2nd Cir.), *cert. denied,* 493 U.S. 919 (1989); *Schuyt* v. *Rowe Price Prime Reserve Fund, Inc.,* 663 F.Supp. 962, 973–989 (S.D.N.Y.), *aff'd,* 835 F.2d 45 (2nd Cir. 1987), *cert. denied,* 485 U.S. 1034 (1988).

[40] 44 U.S.C. 3501, *et seq.*

and Authorizations.'' 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.

Rule 30e–1 (OMB Control No. 3235–0025) was adopted under Section 30(e) of the Investment Company Act.[41] Form N–1A (OMB Control No. 3235–0307), Form N–2 (OMB Control No. 3235–0026), and Form N–3 (OMB Control No. 3235–0316) were adopted pursuant to Section 8(a) of the Investment Company Act[42] and Section 5 of the Securities Act.[43] Rule 20a–1 (OMB Control No. 3235–0158) was adopted pursuant to Section 20(a) of the Investment Company Act.[44]

We are adopting amendments to the requirements for fund shareholder reports in Forms N–1A, N–2, and N–3 that will require funds to provide disclosure regarding the material factors that formed the basis for the board of directors' approval of an investment advisory contract during the most recent fiscal half-year. The additional burden hours imposed by these amendments are reflected in the collection of information requirements for shareholder reports required by rule 30e–1 under the Investment Company Act. In addition, we are removing requirements from Forms N–1A, N–2, and N–3 that require funds to provide disclosure in the SAI of these forms with respect to the basis of the board's approval of any advisory contract, and we are adding a provision requiring funds to provide a reference in the prospectus to the availability of the new disclosure in fund shareholder reports. Finally, we are adopting amendments to Schedule 14A that will clarify and reinforce funds' existing obligation to provide disclosure in proxy statements of the board of directors' basis for a recommendation that shareholders approve an investment advisory contract.

We published notice soliciting comments on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.[45] OMB approved these collection requirements. We received no comments on the collection of information requirements.

*Shareholder Reports*

Rule 30e–1, which requires funds to include in the shareholder reports the information that is required by the fund's registration statement form, including the amendments, contains collection of information requirements.[46] The respondents to this collection of information requirement are funds registered on Forms N–1A, N–2, and N–3. Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

We estimate that there are approximately 3,800 investment companies subject to rule 30e–1. The current approved hour burden for preparing and filing semi-annual or annual shareholder reports in compliance with rule 30e–1 is 143.3 hours per report per fund, or a total of 1,088,984 annual burden hours (143.3 hours per report × 2 reports × 3,800 funds).

We currently estimate that the 3,800 funds filing annual and semi-annual shareholder reports pursuant to rule 30e–1 include 9,706 portfolios, including 8,938 portfolios of open-end management investment companies (''mutual funds'') registered on Form N–1A, 733 closed-end funds registered on Form N–2, and 35 sub-accounts of managed separate accounts registered on Form N–3.[47] We continue to estimate that the proposed amendments will increase the estimated burden hours for complying with rule 30e–1 by 2 hours per portfolio annually. Accordingly, the estimated total annual hour burden for all funds for complying with rule 30e–1 is 1,108,396 hours (1,088,984 hours + (9,706 portfolios × 2 hours)).

*Form N–1A*

Form N–1A, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are open-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements are not confidential.

The current estimated total annual hour burden for preparing registration statements on Form N–1A is 1,142,296 hours.[48] In the Proposing Release, we estimated that the proposed amendments would not increase the hour burden for filing registration statements on Form N–1A.

The Commission estimates that, on an annual basis, registrants file initial registration statements on Form N–1A covering 483 portfolios, and file post-effective amendments on Form N–1A covering 8,455 portfolios. We estimate that the amendments we are adopting to Form N–1A that remove the current requirement for a fund to provide disclosure in the SAI concerning the board's basis for approving an existing investment advisory contract will reduce the hour burden per portfolio per filing of an initial registration statement by 2 hours and will reduce the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 2 hours, thereby reducing the total annual hour burden by 17,876 hours.[49] In addition, we estimate that the amendments we are adopting that require a fund to provide a reference in its prospectus to the availability of the required disclosure in fund shareholder reports will have no impact on the hour burden for filing registration statements on Form N–1A. Thus, the estimated total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–1A will be 1,124,420 hours (1,142,296 hours − 17,876 hours).

*Form N–2*

Form N–2, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are closed-end funds registering with the Commission. Compliance with the disclosure requirements of Form N–2 is mandatory. Responses to the disclosure requirements are not confidential.

The current estimated total annual hour burden for preparing an initial registration statement on Form N–2 is

[41] 15 U.S.C. 80a–29(e).

[42] 15 U.S.C. 80a–8(a).

[43] 15 U.S.C. 77e.

[44] 15 U.S.C. 80a–20(a).

[45] *See* Proposing Release, *supra* note 1, 69 FR at 7855–7856.

[46] The amendments are to the shareholder reports requirements in Forms N–1A, N–2, and N–3. Rule 30e–1(a) under the Investment Company Act [17 CFR 270.30e–1(a)] requires funds to include in the shareholder reports the information that is required by the fund's registration statement form.

[47] The estimates of the number of mutual fund portfolios registered on Form N–1A, the number of closed-end funds registered on Form N–2, and the number of sub-accounts of managed separate accounts registered on Form N–3 are based on the Commission staff's analysis of reports filed on Form N–SAR in 2003.

[48] This number includes additional hour burdens that would be imposed if the Commission adopts its recently proposed rules relating to portfolio manager disclosure (30,998 additional hours), and disclosure of sales loads and revenue sharing in connection with the proposals for new mutual fund confirmation and point of sale disclosure (1,968 additional hours). Investment Company Act Release No. 26383 (Mar. 11, 2004) [69 FR 12752, 12759 (Mar. 17, 2004)]; Exchange Act Release No. 49148 (Jan. 29, 2004) [69 FR 6438, 6474 (Feb. 10, 2004)].

[49] This estimate is based on the following calculation: (2 hours × 483 portfolios) + (2 hours × 8,455 portfolios) = 17,876 hours.

134,844 hours.[50] In the Proposing Release, we estimated that the proposed amendments would not increase the hour burden for filing registration statements on Form N–2.

The Commission estimates that, on an annual basis, 234 closed-end funds file initial registration statements on Form N–2, and 38 closed-end funds file post-effective amendments on Form N–2. We estimate that the amendments we are adopting to Form N–2 that remove the current requirement for a fund to provide disclosure in the SAI concerning the board's basis for approving an existing investment advisory contract will reduce the hour burden per portfolio per filing of an initial registration statement by 2 hours and will reduce the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 2 hours, thereby reducing the total annual hour burden by 544 hours.[51] In addition, we estimate that the amendments we are adopting that require a fund to provide a reference in its prospectus to the availability of the required disclosure in fund shareholder reports will have no impact on the hour burden for filing registration statements on Form N–2. Thus, the estimated total annual hour burden for all closed-end funds for preparation and filing of initial registration statements and post-effective amendments to Form N–2 will be 134,300 hours (134,844 hours − 544 hours).

*Form N–3*

Form N–3, including the proposed amendments, contains collection of information requirements. The likely respondents to this information collection are separate accounts, organized as management investment companies offering variable annuities, registering with the Commission on Form N–3. Compliance with the disclosure requirements of Form N–3 is mandatory. Responses to the disclosure requirements are not confidential.

The current estimated total annual hour burden for preparing registration statements on Form N–3 is 34,832 hours.[52] In the Proposing Release, we estimated that the proposed amendments would not increase the hour burden for filing registration statements on Form N–3.

The Commission estimates that, on an annual basis, initial registration statements covering 3 portfolios are filed on Form N–3 and post-effective amendments covering 35 portfolios are filed on Form N–3. We estimate that the amendments we are adopting to Form N–3 that remove the current requirement for a fund to provide disclosure in the SAI concerning the board's basis for approving an existing investment advisory contract will reduce the hour burden per portfolio per filing of an initial registration statement by 2 hours and will reduce the hour burden per portfolio per filing of a post-effective amendment to a registration statement by 2 hours, thereby reducing the total annual hour burden by 76 hours.[53] In addition, we estimate that the amendments we are adopting that require a fund to provide a reference in its prospectus to the availability of the required disclosure in fund shareholder reports will have no impact on the hour burden for filing registration statements on Form N–3. Thus, the estimated total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments to Form N–3 will be 34,756 hours (34,832 hours − 76 hours).

*Proxy Statements*

Rule 20a–1, including the proposed amendments to Schedule 14A, contains collection of information requirements.[54] The respondents to this collection of information requirement include funds registered on Forms N–1A, N–2, and N–3. Compliance with the disclosure requirements of rule 20a–1 is mandatory. Responses to the disclosure requirements are not confidential.

The amendments to Schedule 14A will clarify and reinforce funds' existing obligation to provide disclosure in proxy statements regarding the board's basis for recommending that shareholders approve an investment advisory contract. Because funds are already required to provide disclosure in appropriate detail regarding the material factors and the conclusions with respect thereto that formed the board's basis for recommending shareholder approval of an investment advisory contract, we continue to estimate that the amendments will not increase the hour burden for complying with the requirements of rule 20a–1.

## IV. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules. The amendments that the Commission is adopting will require funds to improve the disclosure that they provide regarding the fund board's basis for approving, or recommending that shareholders approve, an investment advisory contract. Specifically, the amendments will:

- Require fund shareholder reports to discuss, in reasonable detail, the material factors and the conclusions with respect to those factors that formed the basis for the board's approval of an advisory contract during the most recent fiscal half-year;
- Require a fund to provide a statement in its prospectus about the availability of the required disclosure in fund shareholder reports; and
- Enhance the existing requirement for a fund to provide disclosure in a proxy statement seeking approval of an investment advisory contract about the board's basis for its recommendation that shareholders approve the contract.

*A. Benefits*

The amendments we are adopting will improve the disclosure provided by funds about how their boards of directors evaluate and approve, and recommend shareholder approval of, investment advisory contracts. First, the amendments will provide existing fund shareholders with more timely information about the basis for the board's approval of investment advisory contracts. The increased visibility of this disclosure resulting from its inclusion in shareholder reports may encourage funds to provide a meaningful explanation of the board's basis for approving an investment advisory contract. This, in turn, may benefit investors by encouraging them to consider more carefully the costs and value of the services rendered by the fund's investment adviser, and by enabling them to make more informed choices among funds.

In addition, the increased visibility of this disclosure in shareholder reports may encourage fund boards to engage in more vigorous and independent oversight of investment advisory contracts. This increased oversight by

[50] This number includes the additional hour burden that would be imposed if the Commission adopts its recently proposed rules relating to portfolio manager disclosure (2,492 additional hours). *See* Investment Company Act Release No. 26383, *supra* note 48.

[51] This estimate is based on the following calculation: (2 hours × 234 portfolios) + (2 hours × 38 portfolios) = 544 hours.

[52] This number includes the additional hour burden that would be imposed if the Commission adopts its recently proposed rules relating to portfolio manager disclosure (170 additional hours). *See* Investment Company Act Release No. 26383, *supra* note 48.

[53] This estimate is based on the following calculation: (2 hours × 3 portfolios) + (2 hours × 35 portfolios) = 76 hours.

[54] The amendments are to Item 22 of Schedule 14A. Rule 20a–1 requires funds to comply with Regulation 14A, Schedule 14A, and all other rules and regulations adopted pursuant to section 14(a) of the Exchange Act that would be applicable to a proxy solicitation if it were made in respect of a security registered pursuant to section 12 of the Exchange Act. The annual responses to rule 20a–1 reflect the number of proxy and information statements that are filed by funds.

fund boards will also benefit investors. The requirement that funds provide a statement in the prospectus about the availability of the new disclosure in shareholder reports will further this goal by assisting investors in finding the new disclosure.

We also are removing current requirements from Forms N–1A, N–2, and N–3 that require funds to provide disclosure in the SAI with respect to the basis of the board's approval of any advisory contract, since this disclosure will now be available in shareholder reports. For purposes of the Paperwork Reduction Act, we have estimated that the amendments to Forms N–1A, N–2, and N–3 will reduce the annual hour burden for filing each form by 17,876 hours, 544 hours, and 76 hours, respectively, for a total reduction in annual burden of 18,496 hours. We estimate that this reduction in the annual hour burden will equal total internal cost savings of $1,549,410 annually, or approximately $408 per investment company.[55] The removal of these disclosure requirements also will result in some external cost savings, but because this disclosure was included in a fund's SAI, which is typically not typeset, and is only required to be provided to shareholders upon request, we estimate that these savings will be minimal.

The amendments will also clarify and reinforce funds' obligation under the existing disclosure requirements in proxy statements to discuss the material factors and the conclusions with respect thereto that formed the basis for the board's approval of the fund's existing advisory contract, or its recommendation that shareholders approve an investment advisory contract. This improved disclosure in proxy statements will also benefit investors.

*B. Costs*

The amendments will impose new requirements on funds to provide disclosure in their shareholder reports regarding the fund board's basis for approving an investment advisory contract. We estimate that complying with the new disclosure requirements will entail a relatively small financial burden. Funds currently are required to provide similar disclosure in their SAIs and in relevant proxy statements, and the required information regarding a fund board's evaluation of each advisory contract should be readily available to management and to the fund board. Therefore, we expect that the cost of compiling this information should be minimal, and the primary costs attributable to the amendments will be those of reporting this information. These costs may include both internal costs (for attorneys and non-legal staff to prepare and review the required disclosure) and external costs (for printing, and typesetting, and mailing of the disclosure).

For purposes of the Paperwork Reduction Act, we have estimated that the new disclosure requirements will increase the annual hour burden for completing a shareholder report in compliance with rule 30e–1 under the Investment Company Act by 19,412 hours. We estimate that this additional burden will equal total internal costs of $1,626,143 annually, or approximately $428 per investment company.[56] In addition, we have estimated that the amendments to Schedule 14A will have no impact on the hour burden for complying with rule 20a–1 under the Investment Company Act.

The external costs of providing the enhanced disclosure in fund shareholder reports regarding the process by which a fund board reviews and approves an investment advisory contract are expected to be limited, but will depend on the individual circumstances of each fund and its contractual relationships with its advisers and sub-advisers, and the nature of the process by which the board determines whether to approve the fund's advisory contract. We estimate that the additional disclosure that will be required in shareholder reports may add one additional page to a fund's annual or semi-annual report, at a cost of $0.02 per page.[57] We estimate that there are approximately 257 million fund shareholder accounts which would send out 231 million reports to shareholders annually that will include the required disclosure.[58] Therefore, we estimate that the additional disclosure in shareholder reports will cost approximately $4,620,000 ((231 million shareholder reports × $0.02 per page) in external costs for funds annually.

For purposes of the Paperwork Reduction Act, we have estimated that the amendments that we are adopting that require a fund to provide a reference in its prospectus to the availability of the required disclosure in fund shareholder reports will not result in an increase in internal costs. Similarly, we expect that the external costs of providing the new prospectus disclosure will be minimal, because this disclosure will not add significant length to the prospectus.

## V. Consideration of Burden on Competition; Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. Section 23(a)(2) also prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[59] In addition, section 2(c) of the Investment Company Act,[60] section 2(b) of the Securities Act,[61] and section 3(f) of the Exchange Act[62] require the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the

[55] These figures are based on a Commission estimate that approximately 3,800 investment companies would be subject to the amendments and an estimated hourly wage rate of $83.77. The estimate of the number of investment companies is based on data derived from the Commission's EDGAR filing system. The estimated wage rate is a blended rate, based on published hourly wage rates for assistant/associate general counsels ($82.05) and programmers ($42.05) in New York City, and the estimate that staff in these categories will divide time equally on compliance with the disclosure requirements, yielding a weighted wage rate of $62.05 (($82.05 × .50) + (42.05 × .50))= $62.05). *See* Securities Industry Association, *Report on Management & Professional Earnings in the Securities Industry 2003* (Sept. 2003). This weighted wage rate was then adjusted upward by 35% for overhead, reflecting the costs of supervision, space, and administrative support, to obtain the total per hour internal cost of $83.77 ($62.05 × 1.35) = $83.77). This estimated wage rate for compliance attorneys differs from the estimate in the Proposing Release, which was based on published compensation for compliance attorneys in New York City ($74.22) contained in the Securities Industry Association's *Report on Management & Professional Earnings in the Securities Industry 2001* (Oct. 2001).

[56] *See supra* note 55.

[57] This cost per page is based on an estimate that the typical shareholder report is approximately 25 pages long and costs $.52 to print and deliver. *See* Securities Act Release No. 33–7766 (Nov. 4, 1999) [64 FR 62540, 62543 (Nov. 16, 1999)].

[58] Investment Company Institute, Mutual Fund Fact Book 65 (43rd ed. 2003), at 63 (estimating approximately 251 million shareholder accounts associated with mutual funds). In addition, we estimate that there are approximately 2 million shareholder accounts associated with closed-end funds registered on Form N–2 and approximately 4 million shareholder accounts associated with managed separate accounts registered on Form N–3. These figures are based on the Commission staff's analysis of reports filed on Form N–SAR in 2003. We estimated the number of shareholder reports by reducing the number of accounts by 10% to reflect an estimated 10% savings in the number of reports that must be delivered to shareholders due to householding rules.

[59] 15 U.S.C. 78w(a)(2).

[60] 15 U.S.C. 80a–2(c).

[61] 15 U.S.C. 77(b).

[62] 15 U.S.C. 78c(f).

protection of investors, whether the action will promote efficiency, competition, and capital formation. In the Proposing Release, we requested comment on whether the proposed amendments would promote efficiency, competition, and capital formation. We received no comments on this issue.

The amendments are designed to encourage better, more visible, and more timely disclosure to fund shareholders about the material factors, and the conclusions with respect to those factors, that formed the basis for the decision of a fund's board of directors to approve or renew an investment advisory contract, or to recommend approval of an investment advisory contract. These amendments may thereby improve efficiency. By increasing transparency with respect to advisory fees, the amendments may assist investors in making informed choices among funds and encourage fund boards to engage in vigorous and independent oversight of advisory contracts, which may promote more efficient allocation of investments by investors and more efficient allocation of assets among competing funds. These amendments may also improve competition, as enhanced transparency regarding the board's basis for approving an investment advisory contract may encourage investors to consider more carefully the costs and value of the services rendered by the fund's investment adviser. Finally, the amendments have no effect on capital formation.

As noted above, we believe that the amendments will benefit investors. We note that funds currently are required to provide similar disclosure in their SAIs and in relevant proxy statements.

## VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (''Analysis'') has been prepared in accordance with 5 U.S.C. 604, and relates to the Commission's rule and form amendments under the Securities Act, the Exchange Act, and the Investment Company Act to encourage better, more prominent, and more timely disclosure to shareholders about the basis on which the board of directors of a fund approves, and recommends shareholder approval of, investment advisory contracts. An Initial Regulatory Flexibility Analysis (''IRFA''), which was prepared in accordance with 5 U.S.C. 603, was published in the release proposing these amendments.

### *A. Reasons for, and Objectives of, Amendments*

Sections I and II of this Release describe the reasons for and objectives of the amendments. As discussed in detail above, the amendments adopted by the Commission are designed to increase the transparency of the information that a fund provides regarding the board's basis for approving an investment advisory contract, or recommending that shareholders approve an investment advisory contract.

### *B. Significant Issues Raised by Public Comment*

In the IRFA for the proposed amendments, we requested comment on any aspect of the IRFA, including the number of small entities that would be affected by the proposed amendments, the likely impact of the proposal on small entities, the nature of any impact, and we asked commenters to provide any empirical data supporting the extent of the impact. We received no comment letters on the IRFA.

### *C. Small Entities Subject to the Rule*

For purposes of the Regulatory Flexibility Act, an investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[63] Approximately 145 investment companies registered on Form N–1A meet this definition, and approximately 70 investment companies registered on Form N–2 meet this definition.[64] We estimate that few, if any, registered separate accounts registered on Form N–3 are small entities.[65]

### *D. Reporting, Recordkeeping, and Other Compliance Requirements*

These amendments will:

- Require fund shareholder reports to discuss, in reasonable detail, the material factors and the conclusions with respect to these factors that formed the basis for the board's approval of an advisory contract during the most recent fiscal half-year;
- Require a fund to provide a statement in its prospectus about the availability of the required disclosure in fund shareholder reports; and
- Enhance the existing requirements for a fund to provide disclosure in a proxy statement seeking approval of an investment advisory contract about the board's basis for its recommendation that shareholders approve the contract.

The Commission estimates some one-time formatting and ongoing costs and burdens that would be imposed on all funds, including funds that are small entities. These include the costs related to providing this disclosure in shareholder reports. These costs also could include expenses for legal fees. These amendments also require that funds provide a statement in the prospectus about the availability of this disclosure in shareholder reports. We note, with respect to the amendments to the disclosure requirements in fund proxy statements, that these amendments would clarify and reinforce funds' obligation under the existing disclosure requirements to discuss the board's basis for approving, or recommending shareholder approval of, any existing investment advisory contract. Finally, these amendments remove existing requirements that funds provide similar disclosure in the SAI. We expect that the cost of compliance with the amendments to the existing disclosure requirements in proxy statements, and the amendments requiring a reference in the fund prospectus to the new disclosure in shareholder reports, will be minimal. We believe the benefits that will result to shareholders through better information with respect to their fund board's evaluation of such advisory contracts justify these potential costs.

### *E. Agency Action To Minimize Effect on Small Entities*

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objective, while minimizing any significant adverse impact on small registrants. In connection with the amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for small entities; (iii) the use of performance rather than design standards; and (iv) an

[63] 17 CFR 270.0–10.

[64] This estimate is based on an analysis by the Division of Investment Management staff of information from databases compiled by third-party information providers, including Morningstar, Inc. and Lipper.

[65] This estimate is based on figures compiled by Division of Investment Management staff regarding separate accounts registered on Form N–3. In determining whether an insurance company separate account is a small entity for purposes of the Regulatory Flexibility Act, the assets of insurance company separate accounts are aggregated with the assets of their sponsoring insurance companies. Rule 0–10(b) under the Investment Company Act [17 CFR 270.0–10(b)].

exemption from coverage of the proposed amendments, or any part thereof, for small entities.

The Commission believes at the present time that special compliance or reporting requirements for small entities, or an exemption from coverage for small entities, would not be appropriate or consistent with investor protection. The disclosure amendments will provide shareholders with greater transparency regarding the fund board's basis for approving an investment advisory contract, or recommending that shareholders approve an investment advisory contract. Different disclosure requirements for funds that are small entities may create the risk that the shareholders in these funds would be less able to consider the costs and value of the services rendered by the fund's investment adviser, and less able to make informed choices among funds. We believe it is important for the disclosure that is required by the amendments to be provided to shareholders by all funds, not just funds that are not considered small entities.

We have endeavored through the amendments to minimize the regulatory burden on all funds, including small entities, while meeting our regulatory objectives. Small entities should benefit from the Commission's reasoned approach to the amendments to the same degree as other investment companies. Further consolidation or simplification of the proposals for funds that are small entities would be inconsistent with the Commission's concern for investor protection. Finally, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection in the present context. Based on our past experience, we believe the disclosure will be more useful to investors if there are enumerated informational requirements.

## VII. Statutory Authority

The Commission is adopting amendments to Schedule 14A pursuant to authority set forth in sections 14 and 23(a)(1) of the Exchange Act [66] and sections 20(a) and 38 of the Investment Company Act.[67] The Commission is adopting amendments to Forms N–1A, N–2, and N–3 pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [68] and sections 8, 15, 24(a), 30, and 38 of the Investment Company Act.[69]

[66] 15 U.S.C. 78n and 78w(a)(1).

[67] 15 U.S.C. 80a–20, 80a–37.

[68] 15 U.S.C. 77e, 77f, 77g, 77j, and 77s(a).

[69] 15 U.S.C. 80a–8, 80a–15, 80a–24(a), 80a–29, and 80a–37.

## List of Subjects

*17 CFR Parts 239 and 240*

Reporting and recordkeeping requirements, Securities.

*17 CFR Part 274*

Investment companies, Reporting and recordkeeping requirements, Securities.

## Text of Rule and Form Amendments

■ For the reasons set out in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

## PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 1. The general authority citation for Part 239 is revised to read as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79l, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 2. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 3. Section 240.14a–101 is amended by revising paragraph (c)(11) of Item 22 to read as follows:

### § 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

*Item 22. Information required in investment company proxy statement.*

* * * * *

(c) * * *

(11) Discuss in reasonable detail the material factors and the conclusions with respect thereto that form the basis for the recommendation of the board of directors that the shareholders approve an investment advisory contract. Include the following in the discussion:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in determining to recommend that the shareholders approve the advisory contract; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

*Instructions.* 1. Conclusory statements or a list of factors will not be considered sufficient disclosure. Relate the factors to the specific circumstances of the Fund and the investment advisory contract for which approval is sought and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its determination to recommend approval of the contract.

2. If any factor enumerated in paragraph (c)(11)(i) of this Item 22 is not relevant to the board's evaluation of the investment advisory contract for which approval is sought, note this and explain the reasons why that factor is not relevant.

* * * * *

## PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 4. The authority citation for Part 274 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78l, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 5. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:
■ a. Adding Item 5(a)(1)(iii);
■ b. Removing Item 12(b)(10), including the Instruction; and
■ c. Adding Item 21(d)(6).

The additions read as follows:

**Note:** The text of Form N–1A does not and this amendment will not appear in the *Code of Federal Regulations.*

**FORM N–1A**

* * * * *

**PART A: INFORMATION REQUIRED IN A PROSPECTUS**

* * * * *

*Item 5. Management, Organization, and Capital Structure*

(a) * * *

(1) * * *

(iii) Include a statement, adjacent to the disclosure required by paragraph (a)(1)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Fund is available in the Fund's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

* * * * *

**PART B: INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION**

* * * * *

*Item 21. Financial Statements*

* * * * *

(d) * * *

(6) *Statement Regarding Basis for Approval of Investment Advisory Contract.* If the board of directors approved any investment advisory contract during the Fund's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Fund under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Fund and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Fund; the extent to which economies of scale would be realized as the Fund grows; and whether fee levels reflect these economies of scale for the benefit of Fund investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Fund such as soft dollar arrangements by which brokers provide research to the Fund or its investment adviser in return for allocating Fund brokerage.

*Instructions.*

1. Board approvals covered by this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by this Item include subadvisory contracts.

2. Conclusory statements or a list of factors will not be considered sufficient disclosure. Relate the factors to the specific circumstances of the Fund and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract.

3. If any factor enumerated in paragraph (d)(6)(i) of this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why that factor is not relevant.

* * * * *

■ 6. Form N–2 (referenced in §§ 239.14 and 274.11a–1) is amended by:
■ a. Removing ''and'' from the end of Item 9.1.b(2);
■ b. Removing the period from the end of Item 9.1.b(3) and in its place adding ''; and'';
■ c. Adding Item 9.1.b(4);
■ d. Removing Item 18.13;
■ e. Redesignating Items 18.14 through 18.16 as Items 18.13 through 18.15;
■ f. Adding Instructions 6.e and 6.f to Item 23; and
■ g. In Instruction 8.a to Item 23, revising the reference ''Item 18.16'' to read ''Item 18.15''.

The additions read as follows:

**Note:** The text of Form N–2 does not and this amendment will not appear in the *Code of Federal Regulations.*

**FORM N–2**

* * * * *

**PART A: INFORMATION REQUIRED IN A PROSPECTUS**

* * * * *

*Item 9. Management*

1. * * *

b. * * *

(4) a statement, adjacent to the disclosure required by paragraph 1.b.(3) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Registrant is available in the Registrant's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report.

* * * * *

**PART B: INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION**

* * * * *

*Item 23. Financial Statements*

* * * * *

*Instructions.*

* * * * *

6. * * *

e. If the Registrant's board of directors approved any investment advisory contract during the Registrant's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

(i) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Registrant under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Registrant and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Registrant; the extent to which economies of scale would be realized as the Registrant grows; and whether fee levels reflect these economies of scale for the benefit of the Registrant's

investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(ii) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating the Registrant's brokerage.

f. Board approvals covered by Instruction 6.e. to this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by Instruction 6.e. include subadvisory contracts. Conclusory statements or a list of factors will not be considered sufficient disclosure under Instruction 6.e. Relate the factors to the specific circumstances of the Registrant and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract. If any factor enumerated in Instruction 6.e.(i) to this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why that factor is not relevant.

* * * * *

■ 7. Form N–3 (referenced in §§ 239.17a and 274.11b) is amended by:

■ a. Removing ''and'' from the end of Item 6(b)(i);

■ b. At the end of Item 6(b)(ii), adding ''and'';

■ c. Adding Item 6(b)(iii);

■ d. Removing Item 20(l);

■ e. Redesignating Items 20(m) through 20(o) as Items 20(l) through 20(n);

■ f. Removing ''and'' from the end of Instruction 6(iii) to Item 27(a);

■ g. Removing the period from the end of Instruction 6(iv) to Item 27(a) and in its place adding a semi-colon;

■ h. Adding Instructions 6(v) and 6(vi) to Item 27(a); and

■ i. In Instruction 8(i) to Item 27(a), revising the reference ''Item 20(o)'' to read ''Item 20(n)''.

The additions read as follows:

**Note:** The text of Form N–3 does not and this amendment will not appear in the *Code of Federal Regulations*.

**FORM N–3**

* * * * *

**PART A: INFORMATION REQUIRED IN A PROSPECTUS**

* * * * *

*Item 6. Management*

* * * * *

(b) * * *

(iii) a statement, adjacent to the disclosure required by paragraph (b)(ii) of this Item, that a discussion regarding the basis for the board of directors approving any investment advisory contract of the Registrant is available in the Registrant's annual or semi-annual report to shareholders, as applicable, and providing the period covered by the relevant annual or semi-annual report;

* * * * *

**PART B: INFORMATION REQUIRED IN A STATEMENT OF ADDITIONAL INFORMATION**

* * * * *

*Item 27. Financial Statements*

(a) * * *

*Instructions:*

* * * * *

6. * * *

(v) If the Registrant's board of managers approved any investment advisory contract during the Registrant's most recent fiscal half-year, discuss in reasonable detail the material factors and the conclusions with respect thereto that formed the basis for the board's approval. Include the following in the discussion:

(A) Factors relating to both the board's selection of the investment adviser and approval of the advisory fee and any other amounts to be paid by the Registrant under the contract. This would include, but not be limited to, a discussion of the nature, extent, and quality of the services to be provided by the investment adviser; the investment performance of the Registrant and the investment adviser; the costs of the services to be provided and profits to be realized by the investment adviser and its affiliates from the relationship with the Registrant; the extent to which economies of scale would be realized as the Registrant grows; and whether fee levels reflect these economies of scale for the benefit of the Registrant's investors. Also indicate in the discussion whether the board relied upon comparisons of the services to be rendered and the amounts to be paid under the contract with those under other investment advisory contracts, such as contracts of the same and other investment advisers with other registered investment companies or other types of clients (*e.g.*, pension funds and other institutional investors). If the board relied upon such comparisons, describe the comparisons that were relied on and how they assisted the board in concluding that the contract should be approved; and

(B) If applicable, any benefits derived or to be derived by the investment adviser from the relationship with the Registrant such as soft dollar arrangements by which brokers provide research to the Registrant or its investment adviser in return for allocating the Registrant's brokerage; and

(vi) Board approvals covered by Instruction 6(v) to this Item include both approvals of new investment advisory contracts and approvals of contract renewals. Investment advisory contracts covered by Instruction 6(v) include subadvisory contracts. Conclusory statements or a list of factors will not be considered sufficient disclosure under Instruction 6(v). Relate the factors to the specific circumstances of the Registrant and the investment advisory contract and state how the board evaluated each factor. For example, it is not sufficient to state that the board considered the amount of the investment advisory fee without stating what the board concluded about the amount of the fee and how that affected its decision to approve the contract. If any factor enumerated in Instruction 6(v)(A) to this Item is not relevant to the board's evaluation of an investment advisory contract, note this and explain the reasons why that factor is not relevant.

* * * * *

By the Commission.

Dated: June 23, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–14755 Filed 6–29–04; 8:45 am]

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Cuban assets control regulations:

Commission for Assistance to a Free Cuba, recommendations; implementation; published 6-16-04

## COMMENTS DUE NEXT WEEK

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**Agricultural Marketing Service**

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

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Multispecies fishery; comments due by 7-6-04; published 6-21-04 [FR 04-13941]

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**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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Hazardous waste combustors; comments due by 7-6-04; published 4-20-04 [FR 04-07858]

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Service-Disabled Veteran-Owned Small Business Concerns Procurement Program; comments due by 7-6-04; published 5-5-04 [FR 04-09752]

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Manufacture and distribution; authorization; comments due by 7-9-04; published 5-10-04 [FR 04-10497]

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Rolls-Royce Corp.; comments due by 7-6-04; published 5-7-04 [FR 04-10385]

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**National Highway Traffic Safety Administration**

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Occupant crash protection; comments due by 7-5-04; published 4-6-04 [FR 04-07795]

**TREASURY DEPARTMENT**

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Litigation management; comments due by 7-6-04; published 5-6-04 [FR 04-10205]

## 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/public_laws/public_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. 1822/P.L. 108–239**
To designate the facility of the United States Postal Service located at 3751 West 6th Street in Los Angeles, California, as the "Dosan Ahn Chang Ho Post Office". (June 25, 2004; 118 Stat. 673)

**H.R. 2130/P.L. 108–240**
To redesignate the facility of the United States Postal Service located at 121 Kinderkamack Road in River Edge, New Jersey, as the "New Bridge Landing Post Office". (June 25, 2004; 118 Stat. 674)

**H.R. 2438/P.L. 108–241**
To designate the facility of the United States Postal Service located at 115 West Pine Street in Hattiesburg, Mississippi, as the "Major Henry A. Commiskey, Sr. Post Office Building". (June 25, 2004; 118 Stat. 675)

**H.R. 3029/P.L. 108–242**
To designate the facility of the United States Postal Service located at 255 North Main Street in Jonesboro, Georgia, as the "S. Truett Cathy Post Office Building". (June 25, 2004; 118 Stat. 676)

**H.R. 3059/P.L. 108–243**
To designate the facility of the United States Postal Service located at 304 West Michigan Street in Stuttgart, Arkansas, as the "Lloyd L. Burke Post Office". (June 25, 2004; 118 Stat. 677)

**H.R. 3068/P.L. 108–244**
To designate the facility of the United States Postal Service located at 2055 Siesta Drive in Sarasota, Florida, as the "Brigadier General (AUS-Ret.) John H. McLain Post Office". (June 25, 2004; 118 Stat. 678)

**H.R. 3234/P.L. 108–245**
To designate the facility of the United States Postal Service located at 14 Chestnut Street in Liberty, New York, as the "Ben R. Gerow Post Office Building". (June 25, 2004; 118 Stat. 679)

**H.R. 3300/P.L. 108–246**
To designate the facility of the United States Postal Service located at 15500 Pearl Road in Strongsville, Ohio, as the "Walter F. Ehrnfelt, Jr. Post Office Building". (June 25, 2004; 118 Stat. 680)

**H.R. 3353/P.L. 108–247**
To designate the facility of the United States Postal Service located at 525 Main Street in Tarboro, North Carolina, as the "George Henry White Post Office Building". (June 25, 2004; 118 Stat. 681)

**H.R. 3536/P.L. 108–248**
To designate the facility of the United States Postal Service located at 210 Main Street in Malden, Illinois, as the "Army Staff Sgt. Lincoln Hollinsaid Malden Post Office". (June 25, 2004; 118 Stat. 682)

**H.R. 3537/P.L. 108–249**
To designate the facility of the United States Postal Service located at 185 State Street in Manhattan, Illinois, as the "Army Pvt. Shawn Pahnke Manhattan Post Office". (June 25, 2004; 118 Stat. 683)

**H.R. 3538/P.L. 108–250**
To designate the facility of the United States Postal Service

located at 201 South Chicago Avenue in Saint Anne, Illinois, as the ''Marine Capt. Ryan Beaupre Saint Anne Post Office''. (June 25, 2004; 118 Stat. 684)

**H.R. 3690/P.L. 108–251**

To designate the facility of the United States Postal Service located at 2 West Main Street in Batavia, New York, as the ''Barber Conable Post Office Building''. (June 25, 2004; 118 Stat. 685)

**H.R. 3733/P.L. 108–252**

To designate the facility of the United States Postal Service located at 410 Huston Street in Altamont, Kansas, as the ''Myron V. George Post Office''. (June 25, 2004; 118 Stat. 686)

**H.R. 3740/P.L. 108–253**

To designate the facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, as the ''Oscar Scott Woody Post Office Building''. (June 25, 2004; 118 Stat. 687)

**H.R. 3769/P.L. 108–254**

To designate the facility of the United States Postal Service located at 137 East Young High Pike in Knoxville, Tennessee, as the ''Ben Atchley Post Office Building''. (June 25, 2004; 118 Stat. 688)

**H.R. 3855/P.L. 108–255**

To designate the facility of the United States Postal Service located at 607 Pershing Drive in Laclede, Missouri, as the ''General John J. Pershing Post Office''. (June 25, 2004; 118 Stat. 689)

**H.R. 3917/P.L. 108–256**

To designate the facility of the United States Postal Service located at 695 Marconi Boulevard in Copiague, New York, as the ''Maxine S. Postal United States Post Office''. (June 25, 2004; 118 Stat. 690)

**H.R. 3939/P.L. 108–257**

To redesignate the facility of the United States Postal Service located at 14-24 Abbott Road in Fair Lawn, New Jersey, as the ''Mary Ann Collura Post Office Building''. (June 25, 2004; 118 Stat. 691)

**H.R. 3942/P.L. 108–258**

To redesignate the facility of the United States Postal Service located at 7 Commercial Boulevard in Middletown, Rhode Island, as the ''Rhode Island Veterans Post Office Building''. (June 25, 2004; 118 Stat. 692)

**H.R. 4037/P.L. 108–259**

To designate the facility of the United States Postal Service located at 475 Kell Farm Drive in Cape Girardeau, Missouri, as the ''Richard G. Wilson Processing and Distribution Facility''. (June 25, 2004; 118 Stat. 693)

**H.R. 4176/P.L. 108–260**

To designate the facility of the United States Postal Service located at 122 West Elwood Avenue in Raeford, North Carolina, as the ''Bobby Marshall Gentry Post Office Building''. (June 25, 2004; 118 Stat. 694)

**H.R. 4299/P.L. 108–261**

To designate the facility of the United States Postal Service located at 410 South Jackson Road in Edinburg, Texas, as the ''Dr. Miguel A. Nevarez Post Office Building''. (June 25, 2004; 118 Stat. 695)

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