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RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV06–923–1 FIR]

Sweet Cherries Grown in Designated Counties in Washington; Removal of Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that removed the container regulations prescribed under the Washington sweet cherry marketing order. Specifically, this rule finalizes the removal of the requirement that dark-colored sweet cherries be handled in containers having a certain net weight. The marketing order regulates the handling of fresh sweet cherries grown in designated counties in the State of Washington, and is administered locally by the Washington Cherry Marketing Committee (Committee). By eliminating the container requirements, this regulatory relaxation provides handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging. This is expected to enhance industry marketing flexibility and efficiency.

DATES: *Effective Date:* August 23, 2006.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204–2807; Telephone: (503) 326–2724; Fax: (503) 326–7440.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone (202) 720–2491; Fax: (202) 720–8938; or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule finalizes the removal of the requirement that dark-colored sweet cherries be handled in containers having a certain net weight. This relaxation in the regulations provides handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging, thereby enhancing industry marketing flexibility and efficiency.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of sweet cherries grown in the production area. Section 923.52(a)(3) specifically authorizes the establishment of the container regulations found in § 923.322. Section 923.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 923.52.

Authority to regulate the size, capacity, weight, dimension, markings or pack of containers used in the handling of fresh sweet cherries was included in the order when promulgated in 1957. This authority was included in the order to facilitate container standardization and thus help establish orderly marketing conditions and increase producer returns.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of any regulatory requirements for Washington sweet cherries that are issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews the Committee recommendations along with any supportive information submitted by the Committee, as well as information from other available resources, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 28, 2006, meeting, the Committee recommended that the container regulations be entirely removed from the handling regulations. The Committee recommended that this rule be effective as early as May 1, 2006, to ensure that the earliest shipments of sweet cherries benefit from the relaxed regulations, and that container manufacturers have adequate time prior to the beginning of the shipping season to retool if new containers are ordered by the industry.

The container requirements provide the Washington cherry industry with container standardization to help ensure orderly marketing conditions and increased producer returns. Section 923.322(d) provided that: ''No handler shall handle any lot of cherries, except

cherries of the Rainier, Royal Anne, and similar varieties commonly referred to as ''light sweet cherries'', unless such cherries are in containers which meet each of the following applicable requirements:

(1) The net weight of loose packed (jumble-filled) cherries in any container shall be 12 pounds or less, or 20 pounds or more. The net weight of face packed cherries in any container shall be 15 pounds, or 12 pounds or less: *Provided,* That containers with a net weight of 12 pounds or less may be packed together with like containers in a master shipping container.

(2) Subject to the provisions of paragraphs (b)(2)(i) and (ii) of this section, shipments of cherries may be handled in such experimental containers as have been approved by the Washington Cherry Marketing Committee.''

Paragraph (2) above refers to the provisions of § 923.322(b)(2)(i) and (ii), which specified that: ''(i) All shipments handled in such containers shall be under the supervision of the committee; and (ii) at least 90 percent, by count, of the cherries in any lot of such containers shall measure not less than 54/64 inch in diameter, and not more than 5 percent, by count, may be less than 52/64 inch in diameter.'' Since the provisions of (b)(2)(i) and (ii) referred to experimental containers exempt under 923.322(d)(2), this rule also finalizes the removal of both paragraphs from the handling regulations.

Comments made at the public meeting indicate that container standardization has contributed to orderly marketing in the past. Due to the changing dynamics in the fresh produce industry, however, buyers—at the wholesale, retail and consumer level—are seeking many more packaging options than have been available in the past. Handlers report that buyers are increasingly interested in non-traditional packaging options designed for better handling and greater consumer acceptance. Handlers also desire greater latitude in choosing the optimum weight for a particular type of pack. Of specific concern to this industry is the ability to pack cherries in containers with net weights of between 12 and 20 pounds—a weight range specifically barred under the removed container regulation.

Although § 923.322(d)(2) provided for experimental container exemptions, those handlers who have utilized this exemption in the past felt that the process was too cumbersome and time-consuming, thus failing to provide the optimal flexibility they need under current marketing conditions.

Regardless of the size, capacity, or type containers the industry may eventually use, the Committee believes that the Washington cherry industry desires flexibility in packaging dark-colored sweet cherries. This action provides the industry with needed flexibility.

This rule not only finalizes the removal of the container regulations (§ 923.322(d)), but also finalizes necessary conforming changes through the removal of § 923.322(b)(2)(i) and (ii), as well as references to container requirements in § 923.322(f)(1)(ii) and § 923.322(g).

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,500 cherry producers within the regulated production area and approximately 53 regulated handlers. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

For the 2005 shipping season, the Washington Agricultural Statistics Service prepared a preliminary report showing that the total 113,000 ton fresh market sweet cherry utilization sold for an average of $2,830 per ton. Based on the number of producers in the production area, the average producer revenue from the sale of sweet cherries in 2005 is estimated at approximately $213,200 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than $6,500,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

At its February 28, 2006, meeting the Committee recommended that the container regulations in § 923.322(d) be removed from the order's rules and regulations. Section 923.52(a)(3) of the order specifically authorizes the establishment of container regulations. Further, § 923.53 authorizes the modification, suspension, or termination of regulations issued pursuant to § 923.52. This relaxation in the regulations provides handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging, thus enhancing industry marketing flexibility and efficiency.

The Committee anticipates that this rule will not negatively impact small businesses. This rule finalizes the removal of the container requirements found under § 923.322(d) of the order's rules and regulations, and, thus, should provide the industry with greater marketing opportunities. The Committee believes that any additional costs this action may have on the industry would be associated with the development and use of new containers. Such costs would likely be offset by new marketing opportunities.

The Committee discussed alternatives to its recommendation to remove the container regulations. The Committee explored the option of leaving the container regulations intact without change. This option was rejected as being an inadequate response to the demand for greater flexibility in the packaging of fresh cherries. Temporary suspension of the regulations was considered, and then discarded, as also being inadequate for the current marketing situation.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

The Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee

meetings, the February 28, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule regarding this action was published in the **Federal Register** on April 10, 2006. Committee staff ensured that copies of the rule were made available to Committee members and Washington sweet cherry industry members. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. The interim final rule provided for a 60-day comment period that ended June 9, 2006. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalization of the interim final rule, without change, as published in the **Federal Register** (71 FR 17982, April 10, 2006) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ Accordingly, the interim final rule amending 7 CFR part 923 which was published at 71 FR 17982 on April 10, 2006, is adopted as a final rule without change.

Dated: July 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11736 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. PY–06–001]

Amendment to Egg Research and Promotion Rules and Regulations

AGENCY: Agricultural Marketing Service.

ACTION: Interim final rule with request for comments.

SUMMARY: This action will amend the Egg Research and Promotion Rules and Regulations by changing the State composition of the six geographic areas on the American Egg Board. The Board approved this change and requested that the Secretary amend the Rules and Regulations accordingly. This adjustment is based on changing geographic trends in egg production and would become effective beginning with the 2007–08 membership term.

DATES: Effective July 25, 2006. Comments must be received by August 23, 2006.

ADDRESSES: Written comments are to be mailed to Angela C. Snyder, Chief, Research and Promotion, Poultry Programs, AMS, USDA, Stop 0256, 1400 Independence Avenue, SW., Washington, DC 20090–6456; or by fax to (202) 720–5631. Alternatively, comments may be submitted electronically to: *angie.snyder@usda.gov*. Comments may also be submitted electronically to: *AMSPYDockets@usda.gov* or *http://www.regulations.gov*. State that your comments refer to Docket No. PY–06–001. Comments should be submitted in duplicate. Comments received may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments received also will be made available over the Internet in the rulemaking section of the AMS Web site *http://www.ams.usda.gov/rulemaking*. A copy of this interim final rule may be found at: *http://www.ams.usda.gov/poultry/regulations/rulemaking/index.htm*.

FOR FURTHER INFORMATION CONTACT: Angela C. Snyder, (202) 720–5131.

SUPPLEMENTARY INFORMATION: The Egg Research and Promotion Order (Order) is issued under the Egg Research and Consumer Information Act (Act), as amended [7 U.S.C. 2701 *et seq.*].

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 14 of the Act, a person subject to an order may file provisions of such Order or any obligations imposed in connection with such Order are not in accordance with law; and requesting a modification of the Order or an exemption there from. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after date of the entry of the ruling.

Regulatory Flexibility Act

The Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule imposes no new burden on the industry but merely adjusts area distribution to reflect geographic shifts in production since the last review. In accordance with the provisions of the Act and section 1250.328 of the Order, the area grouping of the 48 contiguous States are to be reviewed by the Board at least every 5 years. Based on the latest review, the Board has recommended adjustment of area distribution to reflect sustained geographic shifts in egg production. Total United States table egg production was 76.98 billion in 2005, representing a 9% increase in exports and continued increases in domestic per capita consumption.

There are approximately 260 egg producers required to pay assessments to the Board under the Act. The Act exempts producers owning less than 75,000 laying hens from paying assessments; therefore, the nation's smallest producers are exempt from the program. The Small Business Administration (SBA) [13 CFR 121.201] defines small agricultural producers as those having receipts of $750,000 or less annually and small agricultural service firms as those having receipts of $6.5 million or less annually. None of the 260 producers subject to the Act are believed to be categorized by the SBA as small agricultural producers.

Paperwork Reduction Act

Information collection requirements and recordkeeping provisions contained in 7 CFR part 1250 have been previously approved by the Office of Management and Budget and assigned OMB Control

No. 0581–0093 under the Paperwork Reduction Act of 1980.

Background and Proposed Change

The Egg Research and Promotion Order (7 CFR 1250.301—1250.363) established pursuant to the Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701 *et seq.*), provides in section 1250.328(d) that any changes in representation on the American Egg Board be determined by the percentage of total U.S. egg production in each of the six geographic areas. The Board has 18 members, and representation in each of the 6 areas is based on egg production in the area. The Order further provides in section 1250.328(e) that the Board or designated person or agency shall conduct periodic reviews of production by geographic area at any time, not to exceed 5 years. This ensures that representation on the Board, insofar as is practicable, is fair and equal.

During the development process of the Order in 1975, the 48 contiguous States of the United States and the District of Columbia were divided into 6 geographic areas for purposes of determining proportionate representation on the Board. The areas corresponded with those used by the National Agriculture Statistics Service, USDA.

The Order provides in section 1250.328(d) that Board membership in each area be determined by calculating the percentage of U.S. egg production in the area, multiplying that total by 18 (total Board membership), and rounding to the nearest whole number.

For the 2003 review, the American Egg Board 2002 production data were reconciled with the 2002 data from USDA to verify the shifts in production trends. The review showed the South Atlantic, East North Central, West North Central, South Central, and Western areas are no longer equitably represented on the Board.

Therefore, the Board submitted a recommendation to the Secretary in accordance with section 1250.328(e) of the Order to redistrict the six areas. The following changes will be made accordingly:

STATE COMPOSITION

Current	Revisions
I—North Atlantic	
Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, District of Columbia.	None.
II—South Atlantic	
Alabama, Florida, Georgia, Kentucky, North Carolina, South Carolina, Tennessee.	Add Arkansas, Louisiana, Mississippi, Oklahoma; Remove Kentucky, Tennessee.
III—East North Central	
Indiana, Michigan, Ohio	Add Kentucky, Missouri, Tennessee; Remove Indiana.
IV—West North Central	
Illinois, Iowa, Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin.	Add Colorado, Idaho, Indiana, Montana, Wyoming; Remove Iowa, Nebraska.
V—South Central	
Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Texas.	Add Iowa, Nebraska; Remove Arkansas, Colorado, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Texas.
VI—Western	
Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming.	Add New Mexico, Texas; Remove Idaho, Montana, Wyoming.

The change is based on production in the redistricted areas and application of the formula in section 1250.328(d) of the Order that states that changes to the Board shall be accomplished by determining the percentage of United States egg production in each area times 18 (total Board membership) and rounding to the nearest whole number, as follows:

Redistricted area	Reported cases	% of total production	% of total production times 18	Board membership[1]
I—North Atlantic	41,440,000	15.26	2.75	3
II—South Atlantic	39,900,000	14.70	2.65	3
III—East North Central	43,980,000	16.20	2.92	3
IV—West North Central	47,670,000	17.56	3.16	3
V—South Central	50,100,000	18.45	3.32	3
VI—Western	48,400,000	17.83	3.21	3
Total U.S. Production	271,490,000	100	18.01	18

[1] Based on rounding to the nearest whole number [§ 1250.328(d)].

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the Board adjustment provided for in this interim final rule needs to be effective as soon as possible in order to complete 2007–2008 Board appointments.

List of Subjects in 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, CFR part 1250 is amended as follows:

PART 1250—EGG RESEARCH AND PROMOTION

■ 1. The authority citation for part 1250 continues to read as follows:

Authority: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

■ 2. Section 1250.510 is revised to read as follows:

§ 1250.510 Determination of Board Membership.

(a) Pursuant to § 1250.328 (d) and (e) of the Order, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; Area 2 (South Atlantic States)—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina; Area 3 (East North Central States)—Kentucky, Michigan, Missouri, Ohio, Tennessee; Area 4 (West North Central States)—Colorado, Idaho, Illinois, Indiana, Minnesota, Montana, North Dakota, South Dakota, Wisconsin, Wyoming; Area 5 (South Central States)—Iowa, Kansas, Nebraska; Area 6 (Western States)—Arizona, California, Nevada, New Mexico, Oregon, Texas, Utah, and Washington.

(b) Board representation among the 6 geographic areas is apportioned to reflect the percentages of United States egg production in each area times 18 (total Board membership). The distribution of members of the Board is: Area 1–3, Area 2–3, Area 3–3, Area 4–3, Area 5–3, and Area 6–3. Each member will have an alternate appointed from the same area.

Dated: July 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11738 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23157; Airspace Docket No. 05–ANM–15]

Amendment to Class E Airspace; Kalispell, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the Class E airspace at Kalispell, MT. Additional controlled airspace is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing the published Instrument Landing System (ILS) approach procedures to the newly extended runway at Kalispell/Glacier Park International Airport, Kalispell, MT.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA, 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On December 28, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise Class E airspace at Kalispell, MT (71 FR 16250). This action would provide additional controlled airspace for the safety of IFR aircraft executing the published ILS approach procedures to the newly extended runway at Kalispell/Glacier Park International Airport, Kalispell, MT. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9O, effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Kalispell, MT. Additional controlled airspace is necessary for the safety of IFR aircraft executing the published ILS approach procedures to the newly extended runway at Kalispell/Glacier Park International Airport, Kalispell, MT.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9O, Airspace Designations and Reporting Points, updated yearly, effective September 15, 2006, is amended as follows:

Paragraph 6002—Class E Airspace Designated As a Surface Area.

* * * * *

ANM MT E Kalispell, MT [Revised]

Kalispell/Glacier Park International Airport, MT
(lat. 48°18′38″ N., long. 114°15′22″ W.)
Smith Lake NDB
(lat. 48°06′30″ N., long. 114°27′40″ W.)

Within a 4.3-mile radius of the Kalispell/Glacier Park International Airport, and within 1.8 miles each side of the 035° bearing from the Smith Lake NDB extending southwest from the 4.3-mile radius to the Smith Lake NDB.

* * * * *

Issued in Seattle, Washington, on July 13, 2006.

Clark Desing,

System Support, Western Service Area.

[FR Doc. E6–11649 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–23361; Airspace Docket No. 05–ANM–17]

Revision of Class E Airspace; Pinedale, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revise the Class E airspace at Pinedale, WY. Additional controlled airspace is necessary to accommodate aircraft executing a new Area Navigation (RNAV) Global Positioning System (GPS) approach procedure at Pinedale/Ralph Wenz Field. This action will improve the safety of Instrument Flight Rules (IFR) aircraft executing this new procedure at Pinedale/Ralph Wenz Field, Pinedale, WY.

DATES: *Effective Date:* 0901 UTC, September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA, 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On February 27, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to revise Class E airspace at Pinedale, WY, (71 FR 9740). This action would improve the safety of Instrument Flight Rules (IFR) aircraft executing this new procedure at Pinedale/Ralph Wenz Field, Pinedale, WY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. The NPRM described the Wenz NDB bearings ''to'' the facility instead of ''from'' the facility, which is standard practice. This rule makes an editorial change to describe the bearings from the NDB. Except for this editorial change, this rule is the same as proposed in the NPRM.

Class E airspace designations are published in paragraph 6002 of FAA Order 7400.9O, effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at Pinedale, WY. Additional controlled airspace is necessary to accommodate IFR aircraft executing a new RNAV (GPS) approach procedure at Pinedale/Ralph Wenz Field, Pinedale, WY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9O, Airspace Designations and Reporting Points, updated yearly, effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WY E5 Pinedale, WY [Revised]

Pinedale/Ralph Wenz Field, WY
(Lat. 42°47′44″ N., long. 109°48′26″ W.)
Big Piney VOR/DME
(Lat. 42°34′46″ N., long. 110°06′33″ W.)
Wenz NDB
(Lat. 42°47′50″ N., long. 109°48′13″ W.)

That airspace extending upward from 700 feet above the surface within 4.3 miles each side of a direct line between the Big Piney VOR/DME and the Wenz NDB extending from the VOR/DME to a point 4.3 miles northeast of the NDB, and within 3.1 miles each side of the 143° bearing and 4.0 miles each side of the 123° bearing from the Wenz NDB extending to 13 miles southeast of the NDB, and 4.0 miles either side of the 303° bearing from the Wenz NDB extending to 10 miles northwest of the NDB; that airspace extending upward from 1,200 feet above the surface beginning at Lat. 43°00′00″ N., long. 110°30′00″ W., thence east to Lat. 43°00′00″ N., long. 109°45′00″ W., thence southeast to Lat. 42°30′00″ N., long. 109°11′00″ W., thence southwest to Lat. 42°00′00″ N., long. 109°50′00″ W., thence west to Lat. 42°00′00″ N., long. 110°00′00″ W., thence northwest to point of beginning.

* * * * *

Issued in Seattle, Washington, on July 13, 2006.

Clark Desing,

System Support, Western Service Area.

[FR Doc. E6–11648 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23926; Airspace Docket No. 06–AAL–10]

RIN 2120–AA66

Modification of the Norton Sound Low Offshore Airspace Area; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Norton Sound Low Offshore Airspace Area in Alaska. Specifically, this action modifies the Norton Sound Low

Offshore Airspace Area in the vicinity of the Shishmaref Airport, AK, by lowering the offshore airspace floor to 1,200 feet mean sea level (MSL) within a 30-mile radius of the airport. Additionally, this action modifies the airspace in the vicinity of Nome Airport, AK, by lowering the airspace floor to 700 feet MSL within a 25-mile radius of the airport, and 1,200 feet MSL within a 77.4-mile radius of the Nome VORTAC. The FAA is taking this action to provide additional controlled airspace for aircraft instrument flight rules (IFR) operations at the Nome and Shishmaref Airports.

DATES: Effective September 28, 2006.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On May 11, 2006, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the Norton Sound Low offshore airspace area in Alaska (71 FR 27430). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received. In the notice of proposed rulemaking the description was described from west to north/east to south. In the final rule the description is reversed and described from west to south/east to north for the ease of digitizing the description. With the exception of this editorial change, this amendment is the same as that published in the notice.

Offshore Airspace Areas are published in paragraph 6007 of FAA Order 7400.9O dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Offshore Airspace Areas listed in this document will be published subsequently in the Order.

The Rule

This action amends to Title 14 Code of Federal Regulations (14 CFR) part 71 modifying the Norton Sound Low Offshore Airspace Area, AK, by lowering the floor to 1,200 feet MSL within a 30-mile radius of two geographic points near the Shishmaref Airport, AK. Additionally, this action lowers the controlled airspace floor to 700 feet MSL within a 25-mile radius of the Nome Airport and to 1,200 feet MSL within a 77.4-mile radius of the Nome VORTAC. The purpose of this action is to establish controlled airspace to support IFR operations at the Nome and Shishmaref Airports, Alaska. Additional controlled airspace extending upward from 700 feet and 1,200 feet MSL above the surface in international airspace is created by this action.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this rule relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator was consulted with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9O, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 16, 2006, is amended as follows:

Paragraph 6007 Offshore Airspace Areas

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 700 feet MSL within a 25-mile radius of the Nome Airport; and that airspace extending upward from 1,200 feet MSL within a 45-mile radius of Deering Airport, AK, within a 35-mile radius of Lat. 60°21′17″ N., long. 165°04′01″ W., within a 30-mile radius of Lat. 66°09′58″ N., long. 166°30′03″ W., within a 30-mile radius of Lat. 66°19′55″ N., long. 165°40′32″ W. and within a 77.4-mile radius of the Nome VORTAC; and that airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at Lat. 59°59′57″ N., long. 168°00′08″ W., to 57°45′57″ N., long. 161°46′08″ W., to Lat. 58°06′57″ N.; long. 160°00:00″ W.; to Lat. 56°42′59″ N., long. 160°00′00″ W.; thence by a line 12 miles from and parallel to the shoreline at Lat. 68°00′00″ N., long.

168°58′23″ W., to 65°00′00″ N., long.
168°58′23″ W., to 62°35′00″ N., long.
175°00′00″ W., to point of beginning.

* * * * *

Issued in Washington, DC, on July 14, 2006.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E6–11487 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–090]

Drawbridge Operation Regulations; Hutchinson River, Bronx, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the AMTRAK Pelham Bay Bridge, across the Hutchinson River, mile 0.5, at New York City, New York. This deviation allows the bridge to remain in the closed position from 5 a.m. to 9 p.m. on July 23, 30, August 13, 20, and 27, 2006. This deviation is necessary to facilitate scheduled bridge maintenance.

DATES: This deviation is effective from July 23, 2006 through August 27, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The AMTRAK Pelham Bay Bridge, across the Hutchinson River, mile 0.5, at New York City, New York, has a vertical clearance in the closed position of 8 feet at mean high water and 15 feet at mean low water. The existing regulation, 33 CFR 117.793, requires the bridge to open on demand.

The owner of the bridge, National Railroad Passenger Corporation (AMTRAK), requested a temporary deviation to facilitate scheduled structural bridge repairs, replacement of the track and tread plates. In order to perform the above repairs the bridge must remain in the closed position.

Under this temporary deviation the AMTRAK Pelham Bay Bridge across the Hutchinson River, mile 0.5, at New York City, New York, need not open for the passage of vessel traffic from 5 a.m. to 9 p.m. on July 23, 30, August 13, 20, and 27, 2006.

Vessels that can pass under the draw without a bridge opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 14, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–11729 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–06–093]

Drawbridge Operation Regulations; Thames River, New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Bridge, across the Thames River, mile 3.0, at New London, Connecticut. This deviation, in effect from July 14, 2006 through September 11, 2006, allows the bridge to remain in the closed position except during specific time periods when the bridge will remain open for the passage of vessel traffic. This deviation is necessary to facilitate unscheduled bridge repairs.

DATES: This deviation is effective from July 14, 2006 through September 11, 2006.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the First Coast Guard District, Bridge Branch Office, One South Street, New York, New York, 10004, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District Bridge Branch Office maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, across the Thames River, mile 3.0, at New London, Connecticut, has a vertical clearance in the closed position of 30 feet at mean high water and 33 feet at mean low water. The existing regulation is listed at 33 CFR 117.224.

The owner of the bridge, National Railroad Passenger Corporation (AMTRAK), requested a temporary deviation to facilitate unscheduled structural bridge repairs.

On June 29, 2006, the bridge owner discovered that one of the main bridge piers had shifted as a result of pile driving for the new adjacent Amtrak Bridge.

In order to perform corrective repairs, minimize structural impingement, and continue to provide for rail traffic, the bridge must remain in the closed position except during specific time periods during which the bridge will remain in the full open position for the passage of vessel traffic.

Therefore, under this temporary deviation in effect from July 14, 2006 through September 11, 2006, the Amtrak Bridge across the Thames River, mile 3.0, at New London, Connecticut, shall remain in the full open position for the passage of vessel traffic as follows:

Monday through Friday: 5 a.m. to 5:40 a.m.; 11:20 a.m. to 11:55 a.m.; 3:34 p.m. to 4:15 p.m.; and 8:30 p.m. to 8:57 p.m.

Saturday: 8:30 a.m. to 9:10 a.m.; 12:36 p.m. to 1:05 p.m.; 3:40 p.m. to 4:10 p.m.; 5:34 p.m. to 6:07 p.m.; and 7:33 p.m. to 8:40 p.m.

Sunday: 8:30 a.m. to 9:20 a.m.; 11:35 a.m. to 12:15 p.m.; 1:27 p.m. to 1:55 p.m.; 6:27 p.m. to 7:13 p.m.; and 8:28 p.m. to 9:16 p.m.

At all other times the draw shall remain in the closed position. Vessels that can pass under the draw without a bridge opening may do so at all times.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for this deviation; however, this deviation was approved because the repairs are necessary repairs that must be performed with undue delay in order to assure the continued safe reliable operation of the bridge.

In accordance with 33 CFR 117.35(c), this work will be performed with all due

speed in order to return the bridge to normal operation as soon as possible.

Should the bridge maintenance authorized by this temporary deviation be completed before the end of the effective period published in this notice, the Coast Guard will rescind the remainder of this temporary deviation, and the bridge shall be returned to its normal operating schedule. Notice of the above action shall be provided to the public in the Local Notice to Mariners and the **Federal Register**, where practicable. This deviation from the operating regulations is authorized under 33 CFR 117.35(b).

Dated: July 14, 2006.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E6–11730 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN–200602; FRL–8197–2]

Approval and Promulgation of Air Quality Implementation Plans; Tennessee; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Notice of administrative change.

SUMMARY: EPA is publishing this action to provide the public with notice of the update to the Tennessee State Implementation Plan (SIP) compilation. In particular, materials submitted by Tennessee that are incorporated by reference (IBR) into the Tennessee SIP are being updated to reflect EPA-approved revisions to Tennessee's SIP that have occurred since the last update. In this action EPA is also notifying the public of the correction of certain typographical errors.

DATES: This action is effective July 24, 2006.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303; the EPA, Air and Radiation Docket and Information Center, Air Docket (6102), 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460, 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.*

FOR FURTHER INFORMATION CONTACT: Ms. Stacy DiFrank at the above Region 4 address or at (404) 562–9042.

SUPPLEMENTARY INFORMATION: Each state has a SIP containing the control measures and strategies used to attain and maintain the national ambient air quality standards (NAAQS). The SIP is extensive, containing such elements as air pollution control regulations, emission inventories, monitoring networks, attainment demonstrations, and enforcement mechanisms.

Each state must formally adopt the control measures and strategies in the SIP after the public has had an opportunity to comment on them and then submit the SIP to EPA. Once these control measures and strategies are approved by EPA, after notice and comment, they are incorporated into the federally approved SIP and are identified in part 52 ''Approval and Promulgation of Implementation Plans,'' Title 40 of the Code of Federal Regulations (40 CFR part 52). The full text of the state regulation approved by EPA is not reproduced in its entirety in 40 CFR part 52, but is ''incorporated by reference.'' This means that EPA has approved a given state regulation with a specific effective date. The public is referred to the location of the full text version should they want to know which measures are contained in a given SIP. The information provided allows EPA and the public to monitor the extent to which a state implements a SIP to attain and maintain the NAAQS and to take enforcement action if necessary.

The SIP is a living document which the state can revise as necessary to address the unique air pollution problems in the state. Therefore, EPA from time to time must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997, (62 FR 27968), EPA revised the procedures for incorporating by reference, into the Code of Federal Regulations, materials submitted by states in their EPA-approved SIP revisions. These changes revised the format for the identification of the SIP in 40 CFR part 52, stream-lined the mechanisms for announcing EPA approval of revisions to a SIP, and stream-lined the mechanisms for EPA's updating of the IBR information contained for each SIP in 40 CFR part 52. The revised procedures also called for EPA to maintain ''SIP Compilations'' that contain the federally-approved regulations and source specific permits submitted by each state agency. These SIP Compilations are contained in 3-ring binders and are updated primarily on an annual basis. Under the revised procedures, EPA is to periodically publish an informational document in the rules section of the **Federal Register** when updates are made to a SIP Compilation for a particular state. EPA's 1997 revised procedures were formally applied to Tennessee on June 30, 1999 (64 FR 35009).

This action represents EPA's publication of the Tennessee SIP Compilation update, appearing in 40 CFR part 52. In addition, notice is provided of the following typographical corrections to Table 1 of § 52.2220, as described below, and modifying the IBR Table format of Table 1.

1. Correcting typographical errors listed in Table 1 of § 52.2220(c), as described below:

A. Change in **Federal Register** citations to reflect the beginning page of the preamble as opposed to that of the regulatory text.

B. Chapter 1200–3–5–.03 title is revised to read ''Method of Evaluating and Recording.''

C. Chapter 1200–3–5–.11 EPA approved date is corrected to read ''07/16/02.''

D. Chapter 1200–3–9–.05, ''Appeal of Permit Application Denials and Permit Conditions,'' is changed to Chapter 1200–3–9–.06, and a new Chapter 1200–3–8–.05 is added and ''Reserved.''

EPA has determined that today's action falls under the ''good cause'' exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation, and section 553(d)(3), which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs and corrects typographical errors appearing in the **Federal Register**. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' and ''contrary to the public interest'' since the codification (and typographical corrections) only reflect existing law. Immediate notice of this action in the **Federal Register** benefits the public by providing the public

notice of the updated Tennessee SIP Compilation and notice of typographical corrections to the Tennessee ''Identification of Plan'' portion of the **Federal Register**.

Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this administrative action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This administrative action also does 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), nor will it 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 administrative action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This administrative action does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The administrative action also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This administrative action does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these Statutes and Executive Orders for the underlying rules are discussed in previous actions taken on the State's rules.

B. Submission to Congress and the Comptroller General

The Congressional Review Act (CRA) (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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. Today's administrative action simply codifies (and corrects) provisions which are already in effect as a matter of law in Federal and approved state programs. 5 U.S.C. 808(2). These announced actions were effective when EPA approved them through previous rulemaking actions. EPA will submit a report containing this action 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 action in the **Federal Register**. This update to Tennessee's SIP Compilation and correction of typographical errors is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

EPA has also determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. This action is simply an announcement of prior rulemakings that have previously undergone notice and comment rulemaking. Prior EPA rulemaking actions for each individual component of the Tennessee SIP compilation previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action.

List of Subjects in 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.

Dated: June 23, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220 is amended by revising paragraph (b), and revising table 1 in paragraph (c) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraph (c) of this section with an EPA approval date prior to January 1, 2006, for Tennessee (Table 1 of the Tennessee State Implementation Plan), January 1, 2003 for Memphis Shelby County (Table 2 of the Tennessee State Implementation Plan), March 1, 2005, for Knox County (Table 3 of the Tennessee State Implementation Plan), April 1, 2005 for Chattanooga (Table 4 of the Tennessee State Implementation Plan), April 1, 2005, for Nashville-Davidson County (Table 5 of the Tennessee State Implementation Plan) and paragraph (d) with an EPA approval date prior to December 1, 1998, was approved for incorporation by reference by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) of this section with EPA approval dates after January 1, 2006, for Tennessee (Table 1 of the Tennessee State Implementation Plan), January 1, 2003 for Memphis Shelby County (Table 2 of the Tennessee State Implementation Plan), March 1, 2005, for Knox County (Table 3 of the Tennessee State Implementation Plan), April 1, 2005 for Chattanooga (Table 4 of the Tennessee State Implementation Plan), April 1, 2005, for Nashville-Davidson County (Table 5 of the Tennessee State Implementation Plan) and paragraph (d) with an EPA approval date after December 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 4 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State implementation plan as of the dates referenced in paragraph (b)(1).

(3) Copies of the materials incorporated by reference may be inspected at the Region 4 EPA Office at 61 Forsyth Street, SW., Atlanta, GA 30303; the EPA, Air and Radiation Docket and Information Center, Air Docket, 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) * * *

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
CHAPTER 1200–3–1 GENERAL PROVISIONS				
Section 1200–3–1–.01	General Rules	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–1–.02	Severability	10/12/79	06/24/82, 47 FR 27267	
CHAPTER 1200–3–2 DEFINITIONS				
Section 1200–3–2–.01	General Definitions	06/26/93	09/16/02, 67 FR 46594	
Section 1200–3–2–.02	Abbreviations	02/09/77	03/29/85, 50 FR 12540	
CHAPTER 1200–3–3 AIR QUALITY STANDARDS				
Section 1200–3–3–.01	Primary Air Quality Standards	02/09/77	03/29/85, 50 FR 12539	
Section 1200–3–3–.02	Secondary Air Quality Standards	02/09/77	03/29/85, 50 FR 12539	
Section 1200–3–3–.03	Tennessee's Ambient Air Quality Standards	12/05/84	03/29/85, 50 FR 12539	
Section 1200–3–3–.04	Nondegradation	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–3–.05	Achievement	08/02/83	04/07/93, 58 FR 18011	
CHAPTER 1200–3–4 OPEN BURNING				
Section 1200–3–4–.01	Purpose	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–4–.02	Open Burning Prohibited	03/21/79	06/24/82, 47 FR 27268	
Section 1200–3–4–.03	Exceptions to Prohibition	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–4–.04	Permits for Open Burning	06/21/79	06/24/82, 47 FR 27268	
CHAPTER 1200–3–5 VISIBLE EMISSION REGULATIONS				
Section 1200–3–5–.01	General Standards	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.02	Exceptions	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.03	Method of Evaluating and Recording	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.04	Exemption	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.05	Standard for Certain Existing Sources	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.06	Wood-Fired Fuel Burning Equipment	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.07	Repealed	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.08	Titanium Dioxide (TiO_2) Manufacturing	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.09	Kraft Mill and Soda Mill Recovery	04/06/98	09/16/02, 67 FR 46594	
Section 1200–3–5–.10	Choice of Visible Emission Standard for Certain Fuel Burning Equipment.	06/07/92	08/15/97, 62 FR 43643	
Section 1200–3–5–.11	Repealed	04/06/98	09/16/02, 62 FR 46594	
Section 1200–3–5–.12	Coke Battery Underfire (combustion) Stacks	06/07/92	08/15/97, 62 FR 43643	
CHAPTER 1200–3–6 NON-PROCESS EMISSION STANDARDS				
Section 1200–3–6–.01	General Non-Process Emissions	06/21/79	06/24/82, 47 FR 27267	
Section 1200–3–6–.02	Non-Process Particulate Emission Standards	09/08/80	06/24/82, 47 FR 27267	
Section 1200–3–6–.03	General Non-Process Gaseous Emissions	06/21/79	06/24/82, 47 FR 27267	
Section 1200–3–6–.04	(Deleted)	06/21/79	06/24/82, 47 FR 27267	
Section 1200–3–6–.05	Wood-Fired Fuel Burning Equipment	05/30/87	11/23/88, 53 FR 47530	
CHAPTER 1200–3–7 PROCESS EMISSION STANDARDS				
Section 1200–3–7–.01	General Process Particulate Emission Standards	03/02/79	06/24/82, 47 FR 27267	
Section 1200–3–7–.02	Choice of Particulate Emission Standards—Existing Process.	04/12/78	06/07/79, 44 FR 32681	
Section 1200–3–7–.03	New Processes	06/21/79	06/24/82, 47 FR 27267	
Section 1200–3–7–.04	Limiting Allowable Emissions	03/21/79	06/07/79, 44 FR 32681	
Section 1200–3–7–.05	Specific Process Emission Standards	06/07/74	06/07/79, 44 FR 32681	
Section 1200–3–7–.06	Standards of Performance for New Stationary Sources.	06/07/74	06/07/79, 44 FR 32681	
Section 1200–3–7–.07	General Provisions and Applicability for Process Gaseous Emission Standards.	01/22/82	06/12/96, 61 FR 29666	

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1200–3–7–.08	Specific Process Emission Standards	09/22/80	01/31/96, 61 FR 3318	
Section 1200–3–7–.09	Sulfuric Acid Mist	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–7–.10	Grain Loading Limit for Certain Existing Sources	03/21/79	06/24/82, 47 FR 27267	
Section 1200–3–7–.11	Carbon Monoxide, Electric Arc Furnaces	10/25/79	06/24/82, 47 FR 27267	
Section 1200–3–7–.12	Carbon Monoxide, Catalytic Cracking Units	01/22/82	06/21/82, 47 FR 26621	
CHAPTER 1200–3–8 FUGITIVE DUST				
Section 1200–3–8–.01	Fugitive Dust	07/11/80	06/24/82, 47 FR 27267	
Section 1200–3–8–.02	Special Nonattainment Area Fugitive Dust Requirements.	03/21/79	06/24/82, 47 FR 27267	
CHAPTER 1200–3–9 CONSTRUCTION AND OPERATING PERMITS				
Section 1200–3–9–.01	Construction Permits	01/26/99	07/19/99, 64 FR 38580	
Section 1200–3–9–.02	Operating Permits	09/21/94	02/13/97, 62 FR 6724	
Section 1200–3–9–.03	General Provisions	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–9–.04	Exemptions	08/28/95	08/29/02, 67 FR 55320	
Section 1200–3–9–.05	Reserved.			
Section 1200–3–9–.06	Appeal of Permit Application Denials and Permit Conditions.	11/16/79	06/24/82 47 FR 27269	
CHAPTER 1200–3–10 REQUIRED SAMPLING, RECORDING, AND REPORTING				
Section 1200–3–10–.01	Sampling Required to Establish Contaminant Emission Levels.	12/14/81	03/19/96, 61 FR 11136	
Section 1200–3–10–.02	Monitoring of Source Emissions, Recording, Reporting of the Same are Required.	02/14/96	01/07/00, 65 FR 1070	
Section 1200–3–10–.04	Sampling, Recording, and Reporting Required for Major Stationary Sources.	09/12/94	01/19/00, 65 FR 2880	
CHAPTER 1200–3–12 METHODS OF SAMPLING AND ANALYSIS				
Section 1200–3–12–.01	General	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–12–.02	Procedures for Ambient Sampling and Analysis	01/18/80	06/24/82, 47 FR 27270	
Section 1200–3–12–.03	Source Sampling and Analysis	08/01/84	03/29/85, 50 FR 12539	
Section 1200–3–12–.04	Monitoring Required for Determining Compliance of Certain Large Sources.	12/28/96	01/07/00, 65 FR 1070	
CHAPTER 1200–3–13 VIOLATIONS				
Section 1200–3–13–.01	Violation Statement	06/07/74	06/07/79, 44 FR 32681	
CHAPTER 1200–3–14 CONTROL OF SULFUR DIOXIDE EMISSIONS				
Section 1200–3–14–.01	General Provisions	08/01/84	04/07/93, 58 FR 18011	
Section 1200–3–14–.02	Non-Process Emission Standards	08/01/84	04/07/93, 58 FR 18011	
Section 1200–3–14–.03	Process Emission Standards	03/21/93	03/19/96, 61 FR 11136	
CHAPTER 1200–3–15 EMERGENCY EPISODE REQUIREMENTS				
Section 1200–3–15–.01	Purpose	02/09/77	03/29/85, 50 FR 12540	
Section 1200–3–15–.02	Episode Criteria	06/26/93	09/15/94, 59 FR 47256	
Section 1200–3–15–.03	Required Emissions Reductions	05/15/81	06/24/82, 47 FR 27267	
CHAPTER 1200–3–17 CONFLICT OF INTEREST				
Section 1200–3–17–.01	Purpose and Intent	09/18/96	10/28/02, 67 FR 55322	
Section 1200–3–17–.02	Conflict of Interest on the Part of the Board and Technical Secretary.	09/18/96	10/28/02, 67 FR 55322	
Section 1200–3–17–.03	Conflict of Interest in the Permitting of Municipal Solid Waste Incineration Units.	09/18/96	10/28/02, 67 FR 55322	
CHAPTER 1200–3–18 VOLATILE ORGANIC COMPOUNDS				
Section 1200–3–18–.01	Definitions	01/12/98	06/03/03, 68 FR 33008	
Section 1200–3–18–.02	General Provisions and Applicability	02/23/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.03	Compliance Certification, Recordkeeping, and Reporting Requirements for Coating and Printing Sources.	02/08/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.04	Compliance Certification, Recordkeeping, and Reporting Requirements for Non-Coating and Non-Printing Sources.	02/08/96	07/18/96, 61 FR 37387	

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1200–3–18–.05	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.06	Handling, Storage, Use, and Disposal of Volatile Organic Compounds (VOC).	06/04/96	08/27/96, 61 FR 43972	
Section 1200–3–18–.07	Source-Specific Compliance Schedules	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.08	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.09	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.10	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.11	Automobile and Light-Duty Truck Coating Operations	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.12	Can Coating	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.13	Coil Coating	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.14	Paper and Related Coating	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.15	Fabric Coating	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.16	Vinyl Coating	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.17	Coating of Metal Furniture	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.18	Coating of Large Appliances	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.19	Coating of Magnet Wire	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.20	Coating of Miscellaneous Metal Parts	01/26/99	11/03/99, 64 FR 59628	
Section 1200–3–18–.21	Coating of Flat Wood Paneling	02/08/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.22	Bulk Gasoline Plants	12/29/04	08/26/05, 70 FR 50199	
Section 1200–3–18–.23	Bulk Gasoline Terminals	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.24	Gasoline Dispensing Facility—Stage I and Stage II Vapor Recovery.	12/29/04	08/26/05, 70 FR 50199	
Section 1200–3–18–.25	Leaks from Gasoline Tank Trucks	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.26	Petroleum Refinery Sources	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.27	Leaks from Petroleum Refinery Equipment	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.28	Petroleum Liquid Storage in External Floating Roof Tanks.	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.29	Petroleum Liquid Storage in Fixed Roof Tanks	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.30	Leaks from Natural Gas/Gasoline Processing Equipment.	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.31	Solvent Metal Cleaning	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.32	Cutback and Emulsified Asphalt	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.33	Manufacture of Synthesized Pharmaceutical Products	02/21/95	07/18/96, 61 FR 37387	
Section 1200–3–18–.34	Pneumatic Rubber Tire Manufacturing	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.35	Graphic Arts Systems	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.36	Petroleum Solvent Dry Cleaners	02/08/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.37	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.38	Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment.	02/08/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.39	Manufacture of High Density Polyethylene, Polypropylene, and Polystyrene Resins.	05/08/97	07/29/97, 62 FR 40458	
Section 1200–3–18–.40	Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.41	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.42	Wood Furniture Finishing and Cleaning Operations	04/25/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.43	Offset Lithographic Printing Operations	04/22/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.44	Surface Coating of Plastic Parts	06/03/96	08/27/96, 61 FR 43972	
Section 1200–3–18–.45	Standards of Performance for Commercial Motor Vehicle and Mobile Equipment Refinishing Operations.	06/03/96	08/27/96, 61 FR 43972	
Section 1200–3–18–.48	Volatile Organic Liquid Storage Tanks	06/03/96	08/27/96, 61 FR 43972	
Sections 1200–3–18–.49–.77.	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.78	Other Facilities That Emit Volatile Organic Compounds (VOC's) of Fifty Tons Per Year.	02/08/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.79	Other Facilities That Emit Volatile Organic Compounds (VOC's) of One Hundred Tons Per Year.	02/08/96	07/18/96, 61 FR 37387	
Section 1200–3–18–.80	Test Methods and Compliance Procedures: General Provisions.	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.81	Test Methods and Compliance Procedures: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks.	05/08/97	07/29/97, 62 FR 40458	
Section 1200–3–18–.82	Test Methods and Compliance Procedures: Alternative Compliance Methods for Surface Coating.	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.83	Test Methods and Compliance Procedures: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements.	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.84	Test Methods and Compliance Procedures: Determining the Destruction or Removal Efficiency of a Control Device.	05/18/93	02/27/95, 60 FR 10504	

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1200–3–18–.85	Test Methods and Compliance Procedures: Leak Detection Methods for Volatile Organic Compounds (VOC's).	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.86	Performance Specifications for Continuous Emission Monitoring of Total Hydrocarbons.	06/03/96	04/14/97, 62 FR 18046	
Section 1200–3–18–.87	Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS).	05/18/93	02/27/95, 60 FR 10504	
Section 1200–3–18–.88–.99	(Reserved)	05/18/93	02/27/95, 60 FR 10504	
CHAPTER 1200–3–19 EMISSION STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE AND SULFUR DIOXIDE NONATTAINMENT AREAS				
Section 1200–3–19–.01	Purpose	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.02	General Requirements	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.03	Particulate and Sulfur Dioxide Nonattainment Areas within Tennessee.	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.04	(Reserved)	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.05	Operating Permits and Emission Limiting Conditions	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.06	Logs for Operating Hours	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.07–.10	(Reserved)	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.11	Particulate Matter Emission Regulations for the Bristol Nonattainment Area.	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.12	Particulate Matter Emission Regulations for Air Contaminant Sources in or Significantly Impacting the Particulate Nonattainment Areas in Campbell County.	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.13	Particulate Emission Regulations for the Bull Run Nonattainment Area and Odoms Bend Nonattainment Area.	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.14	Sulfur Dioxide Emission Regulations for the New Johnsonville Nonattainment Area.	04/16/97	09/13/99, 64 FR 49397	
Section 1200–3–19–.15	Particulate Matter Monitoring Requirements for Steam Electric Generating Units in the Bull Run and Odoms Bend Nonattainment Areas.	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.16–.18	(Reserved)	04/30/96	07/30/97, 62 FR 40734	
Section 1200–3–19–.19	Sulfur Dioxide Regulations for the Copper Basin Nonattainment Area.	11/30/96	09/13/99, 64 FR 49398	
CHAPTER 1200–3–20 LIMITS ON EMISSIONS DUE TO MALFUNCTIONS, START-UPS, AND SHUTDOWNS				
Section 1200–3–20–.01	Purpose	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.02	Reasonable Measures Required	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.03	Notice Required When Malfunction Occurs	12/09/81	06/24/82, 47 FR 27272	
Section 1200–3–20–.04	Logs and Reports	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.05	Copies of Log Required	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.06	Scheduled Maintenance	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.07	Report Required Upon The Issuance of Notice of Violation.	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.08	Special Reports Required	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.09	Rights Reserved	02/13/79	02/06/80, 45 FR 8004	
Section 1200–3–20–.10	Additional Sources Covered	11/23/79	06/24/82, 47 FR 27272	
CHAPTER 1200–3–21 GENERAL ALTERNATE EMISSION STANDARD				
Section 1200–3–21–.01	General Alternate Emission Standard	01/22/82	06/24/82, 47 FR 27272	
Section 1200–3–21–.02	Applicability	03/22/93	04/18/94, 59 FR 18310	
CHAPTER 1200–3–22 LEAD EMISSION STANDARDS				
Section 1200–3–22–.01	Definitions	03/18/85	08/12/85, 50 FR 32412	
Section 1200–3–22–.02	General Lead Emission Standards	12/05/84	08/12/85, 50 FR 32412	
Section 1200–3–22–.03	Specific Emission Standards for Existing Sources of Lead.	01/26/00	10/29/01, 66 FR 44632	
Section 1200–3–22–.04	Standards for New and Modified Sources of Lead	12/05/84	08/12/85, 50 FR 32412	
Section 1200–3–22–.05	Source Sampling and Analysis	12/05/84	08/12/85, 50 FR 32412	
Section 1200–3–22–.06	Lead Ambient Monitoring Requirements	12/05/84	08/12/85, 50 FR 32412	
CHAPTER 1200–3–23 VISIBILITY PROTECTION				
Section 1200–3–23–.01	Purpose	12/19/94	07/02/97, 62 FR 35681	
Section 1200–3–23–.02	Definitions	12/19/94	07/02/97, 62 FR 35681	
Section 1200–3–23–.03	General Visibility Protection Standards	12/19/94	07/02/97, 62 FR 35681	

TABLE 1.—EPA APPROVED TENNESSEE REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 1200–3–23–.04	Specific Emission Standards for Existing Stationary Facilities.	12/19/94	07/02/97, 62 FR 35681	
Section 1200–3–23–.05	Specific Emission Standards for Existing Sources	12/19/94	07/02/97, 62 FR 35681	
Section 1200–3–23–.06	Visibility Standards for New and Modified Sources	12/19/94	07/02/97, 62 FR 35681	
Section 1200–3–23–.07	Visibility Monitoring Requirements	12/19/94	07/02/97, 62 FR 35681	
Section 1200–3–23–.08	Exemptions from BART Requirements	12/19/94	07/02/97, 62 FR 35681	
CHAPTER 1200–3–24 GOOD ENGINEERING PRACTICE STACK HEIGHT REGULATIONS				
Section 1200–3–24–.01	General Provisions	08/18/86	10/19/88, 53 FR 40881	
Section 1200–3–24–.02	Definitions	08/18/86	10/19/88, 53 FR 40881	
Section 1200–3–24–.03	Good Engineering Practice Stack Height Regulations Standards.	08/18/86	10/19/88, 53 FR 40881	
Section 1200–3–24–.04	Specific Emission Standards	08/18/86	10/19/88, 53 FR 40881	
CHAPTER 1200–3–27 NITROGEN OXIDES				
Section 1200–3–27–.01	Definitions	06/14/93	07/29/96, 61 FR 39326	
Section 1200–3–27–.02	General Provisions and Applicability	11/23/96	10/28/02, 67 FR 55320	
Section 1200–3–27–.03	Standards and Requirements	04/29/96	07/29/96, 61 FR 39326	
Section 1200–3–27–.04	Standards for Cement Kilns	07/23/03	01/22/04, 69 FR 3015	
Section 1200–3–27–.06	NO_X Trading Budget for State Implementation Plans	07/23/03	01/22/04, 69 FR 3015	
Section 1200–3–27–.09	Compliance Plans for NO_X Emissions From Stationary Internal Combustion Engines.	11/14/05	12/27/05, 70 FR 76401	
CHAPTER 1200–3–29 LIGHT-DUTY MOTOR VEHICLE INSPECTION AND MAINTENANCE				
Section 1200–3–29–.01	Purpose	07/08/94	07/28/95, 60 FR 38694	
Section 1200–3–29–.02	Definitions	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.03	Motor Vehicle Inspection Requirements	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.04	Exemption From Motor Vehicle Inspection Requirements.	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.05	Motor Vehicle Emission Performance Test Criteria	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.06	Motor Vehicle Anti-Tampering Test Criteria	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.07	Motor Vehicle Emissions Performance Test Methods	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.08	Motor Vehicle Anti-Tampering Test Methods	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.09	Motor Vehicle Inspection Program	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.10	Motor Vehicle Inspection Fee	12/29/94	08/26/05, 70 FR 50199	
Section 1200–3–29–.12	Area of Applicability	12/29/94	08/26/05, 70 FR 50199	
CHAPTER 1200–3–34 CONFORMITY				
Section 1200–3–34–.01	Conformity of Transportation Plans, Programs, and Projects.	03/21/02	05/16/03, 68 FR 25495	
CHAPTER 1200–3–36 MOTOR VEHICLE TAMPERING				
Section 1200–3–36–.01	Purpose	12/29/04	08/26/05, 70 FR 50199	
Section 1200–3–36–.02	Definitions	12/29/04	08/26/05, 70 FR 50199	
Section 1200–3–36–.03	Motor Vehicle Tampering Prohibited	12/29/04	08/26/05, 70 FR 50199	
Section 1200–3–36–.04	Recordkeeping Requirements	12/29/04	08/26/05, 70 FR 50199	
Section 1200–3–36–.05	Exemptions	12/29/04	08/26/05, 70 FR 50199	

* * * * *

[FR Doc. E6–11615 Filed 7–21–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060314069–6069–01; I.D. 071806D]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship Scallop Access Area to Scallop Vessels

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Nantucket Lightship Scallop Access Area (NLCA) to scallop vessels until June 15, 2007. This closure, effective 0001 hours on July 20, 2006, is based on a determination by the Northeast Regional Administrator (RA) that scallop vessels may attain the yellowtail flounder (YT) bycatch total allowable catch (TAC) for the NLCA on July 20, 2006. This action is being taken to prevent the scallop fleet from exceeding the YT bycatch TAC allocated to the NLCA for the 2006 scallop fishing year in accordance with the regulations implementing the Atlantic Sea Scallop Fishery Management Plan (FMP), Northeast (NE) Multispecies FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the NLCA to all scallop vessels is effective 0001 hr local time, July 20, 2006, until June 15, 2007.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Commercial scallop vessels fishing in access areas are allocated 9.8–percent of the annual YT TACs established in the Northeast (NE) Multispecies FMP. Given current fishing effort by scallop vessels in the NLCA, the RA has made a determination that the NLCA YT TAC is projected to be attained on July 20, 2006. Pursuant to 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii), this **Federal Register** action notifies scallop vessel owners that, effective 0001 hours on July 20, 2006, scallop vessels are prohibited from declaring or initiating a trip into the NLCA until June 15, 2007.

If a vessel with a limited access scallop permit has an unused trip(s) into the NLCA, it will be allocated 4.9 additional open areas days-at-sea (DAS) for each unused trip. If a vessel has an unused compensation trip(s), it is allocated additional open area DAS based on estimated catch rates for the NLCA. The conversion rate from access area DAS to open area DAS for the NLCA is 0.41 per open area DAS. An access area DAS is equal to 1,500 lbs. A separate letter will be sent to notify vessel owners of their allocations for unused complete and/or compensation trips in the NLCA.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes NLCA to scallop vessels until June 15, 2007. The regulations at 50 CFR 648.59(a)(5)(ii)(C) and 648.85(c)(3)(ii) require such action to ensure that scallop vessels do not take more YT than set aside for the scallop fishery. The NLCA opened for the 2006 fishing year on June 15, 2006. Data indicating the scallop fleet has taken, or is projected to take, all of the NLCA YT TAC has only recently become available. To allow scallop vessels to continue to take trips in the NLCA during the period necessary to publish and receive comments on a proposed rule would result in vessels taking much more YT than allocated to the scallop fleet. Excessive YT harvest from the NLCA would result in excessive fishing effort on the Southern New England/Mid-Atlantic YT stock, where tight effort controls are critical for the rebuilding program. Should excessive fishing effort occur, future management measures may need to be more restrictive. Based on the above, under 5 U.S.C. 553(d)(3), proposed rule making is waived because it would be impracticable and contrary to the public interest to allow a period for public comment. Furthermore, for the same reasons, there is good cause under 5 U.S.C 553(d)(3) to waive the 30-day delayed effectiveness period for this action.

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

Dated: July 18, 2006.

Alan D. Risenhoover,

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

[FR Doc. 06–6428 Filed 7–19–06; 2:04 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216045–6045–01; I.D. 071806A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the yellowfin sole initial total allowable catch (ITAC) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective July 24, 2006 through 2400 hrs, Alaska local time, December 31, 2006. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, August 7, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Walsh. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- FAX to 907–586–7557;
- E-mail to *bsairelys@noaa.gov* and include in the subject line of the e-mail comment the document identifier: bsairelys; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management

Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2006 ITAC of yellowfin sole in the BSAI was established as 81,346 metric tons by the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006). The Acting Administrator, Alaska Region, NMFS, has determined that the ITAC for yellowfin sole in the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 7,500 mt from the non-specified reserve of groundfish to the yellowfin sole ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specification of the acceptable biological catch in the 2006 and 2007 final harvest specifications for groundfish in the BSAI (71 FR 10894, March 3, 2006).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the yellowfin sole fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 11, 2006.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until August 7, 2006.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: July 18, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–11751 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 141
Monday, July 24, 2006

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. AO–254–A10; FV06–915–2]

Avocados Grown in South Florida; Hearing on Proposed Amendments to Marketing Agreement and Order No. 915

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Order No. 915 (order), which regulates the handling of avocados grown in south Florida. The amendments are proposed by the Florida Avocado Administrative Committee (Committee), which is responsible for local administration of the order. The proposed amendments would: Provide the Committee authority to borrow funds, revise the voting requirements for changing the assessment rate, allow District I nominations to be conducted by mail, and provide the Committee authority to accept voluntary contributions. The proposed amendments are intended to improve the operation and functioning of marketing order program.

DATES: The hearing will be held on August 16, 2006, in Homestead, Florida, beginning at 8:30 a.m. until completed.

ADDRESSES: The hearing location is: University of Florida, IFAS Conference Room, 18905 SW. 280 Street, Homestead, Florida 33031–3314; telephone: (305) 246–7001.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; telephone: (435) 259–7988, Fax: (435) 259–4945; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the U.S. Department of Agriculture (Department) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The public hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are the result of the Committee's review of the order. The Committee met several times in 2005, and drafted proposed amendments to the order and presented them at industry meetings. The proposed amendments were then unanimously approved by the Committee.

The Committee's request for a public hearing was submitted to the Department on May 1, 2006. The Committee's proposed amendments to the order are summarized below.

1. Amend the order to provide the Committee authority to borrow funds. This proposal would amend § 915.41, Assessments.

2. Amend the order by revising the voting requirements for Committee recommendations for assessment rate changes from eight concurring votes to a two-thirds majority vote of those Committee members or alternate Committee members in attendance at meetings. This proposal would amend § 915.30, Procedure.

3. Amend the order to allow District 1 nominations, in addition to District 2 nominations, to be conducted by mail. This proposal would amend § 915.22, Nomination.

4. Add authority to the order for the Committee to accept voluntary contributions. This proposal would add a new § 915.43, Contributions.

The Committee works with the Department in administering the order. The Committee's proposed amendments have not received the approval of the Department. The Committee believes that the proposed changes would improve the functioning of the order.

The Department proposes to make any changes to the order as may be necessary to conform with any amendments thereto that may result from the hearing.

The public hearing is being held for the purpose of:

(i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order;

(ii) Determining whether there is a need for the proposed amendments to the order; and

(iii) Determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals Submitted by Florida Avocado Administrative Committee

Proposal Number 1

3. Amend § 915.41 by revising paragraph (b) to read as follows:

§ 915.41 Assessments.

* * * * *

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment, in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance, or borrow money on a short-term basis. The authority of the committee to borrow money may be used only to meet financial obligations as they occur and to allow the committee to adjust its reserve funds to meet any additional obligations.

Proposal Number 2

4. Amend § 915.30 by revising paragraph (c) to read as follows:

§ 915.30 Procedure.

* * * * *

(c) For any recommendation of the committee for an assessment rate change, a two-thirds majority of those in attendance is required.

Proposal Number 3

5. Amend § 915.22 by revising paragraph (b)(1) to read as follows:

§ 915.22 Nomination.

* * * * *

(b) *Successor members.* (1) The committee shall hold or cause to be held a meeting or meetings of growers and handlers in each district to designate nominees for successor members and alternate members of the committee; or the committee may conduct nominations Districts 1 and 2 by mail in a manner recommended by the committee and approved by the Secretary. Such nominations shall be submitted to the Secretary by the committee not later than March 1 of each year. The committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nomination.

* * * * *

Proposal Number 4

6. Add a new § 915.43 to read as follows:

§ 915.43 Contributions.

The Committee may accept voluntary contributions. Such contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

Proposal by Fruit and Vegetable Programs, Agricultural Marketing Service

Proposal Number 5

Make such changes as may be necessary to make the marketing agreement and the order conform with any amendments thereto that may result from the hearing.

Dated: July 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11739 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–06–01]

Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would adjust the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the Board was reapportioned in 2003, which became effective with 2004 nominations. These adjustments are required by the Soybean Promotion and Research Order (Order) and would result in an increase in Board membership from 64 to 68 effective with the Secretary's 2007 nominations and appointments.

DATES: Written comments must be received by August 23, 2006.

ADDRESSES: Send any written comments to Kenneth R. Payne, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2638–S; STOP 0251; Washington, DC 20090–0251. Comments may be sent by facsimile to 202/720–1125 or via e-mail at *soybeancomments@usda.gov* or *http://www.regulations.gov.* State that your comments refer to Docket No. LS–06–01. Comments will be available for public inspection during regular business hours between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays or on the Internet at *http://www.ams.usda.gov/lsg/mpb/rp-soybean.htm.*

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, 202/720–1115 or via e-mail at *Kenneth.Payne@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

The Agricultural Marketing Service has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 2003. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened. As such, these changes will not impact on persons subject to the program.

There are an estimated 663,800 soybean producers and an estimated 10,000 first purchasers who collect the assessment, most of whom would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.601).

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S. C. Chapter 35], the information collection and recordkeeping requirements contained in the Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581–0093.

Background and Proposed Changes

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each three (3) year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit.

Section 1220.201(d) of the Order provides that at the end of each three (3) year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

Proposed representation on the Board, which would be 68 members, is based on average production levels for the years 2001–2005 (excluding the crops in years in which production was the highest and in which production was the lowest) as reported by the Department of Agriculture's National Agricultural Statistics Service in the ''Crop Production 2005 Summary'', which was published in January 2006.

The number of geographical units would remain at 30. As a result of Florida recently being decertified as a Qualified State Soybean Board, Florida will become a part of the Eastern Region.

This proposed rule would adjust representation on the Board as follows:

State	Current representation	Proposed representation
Nebraska	3	4
North Dakota	2	3
Pennsylvania	1	2
Virginia	1	2

Board adjustments as proposed by this rulemaking would become effective, if adopted, with the 2007 nominations and appointments.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural

research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, part 1220 be amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311.

2. In § 1220.201, the table immediately following paragraph (a) is revised to read as follows:

§ 1220.201 Membership of board.

* * * * *

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Nebraska	4
Missouri	4
Ohio	3
Arkansas	3
South Dakota	3
Kansas	3
Michigan	3
North Dakota	3
Mississippi	2
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Pennsylvania	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1
Alabama	1
Delaware	1
Texas	1
Oklahoma	1
New York	1
Eastern Region (Florida, Massachusetts, New Jersey Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

* * * * *

Dated: July 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11737 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–23007; Directorate Identifier 2005–NM–013–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310–200 and –300 Series Airplanes

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

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) for certain Airbus Model A310–200 and –300 series airplanes. The proposed AD would have required repetitive inspections for cracks and corrosion of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door, and repair of any cracked or corroded part. The proposed AD also would have required repetitive inspections for cracks of the holes of the corner doublers, the fail-safe ring, and the door frames of the passenger/crew door structures. Since the proposed AD was issued, we have determined that that the proposed inspections and terminating action are essentially identical to those of another existing AD. Accordingly, the proposed AD is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC. This docket number is FAA–2005–23007; the directorate identifier for this docket is 2005–NM–013–AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for a new AD for certain Airbus Model A310–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on November 21, 2005 (70 FR 70048). The NPRM would have required repetitive inspections for cracks and corrosion of the areas behind the scuff plates below the passenger/crew doors and bulk cargo door, and repair of any cracked or corroded part. The NPRM also would have required repetitive inspections for cracks of the holes of the corner doublers, the fail-safe ring, and the door frames of the passenger/crew door structures. The NPRM resulted from reports of corrosion behind the scuff plates at passenger/crew doors and the bulk cargo door and fatigue cracks on the corner doublers of the forward and aft passenger/crew door frames. The proposed actions were intended to prevent such corrosion and fatigue cracking, which could result in reduced structural integrity of the door surroundings.

Actions Since NPRM Was Issued

Since we issued the NPRM, we realized that we had previously issued AD 98–16–06, amendment 39–10682 (63 FR 40819, July 31, 1998), for all Airbus Model A310 series airplanes. That AD requires inspections of the lower door surrounding structure to detect cracks and corrosion, and repair if necessary. That AD also requires inspections to detect cracking of the holes of the corner doublers, the fail-safe ring, and the door frames of the door structures; and repair if necessary. In addition, that AD also provides for an optional terminating action for certain inspections.

FAA's Conclusions

Upon further consideration, we have determined that the inspections and terminating action in AD 98–16–06 are essentially identical to those specified in the NPRM. We are considering superseding AD 98–16–06 to mandate the optional terminating action and refer to the latest service information. Accordingly, the NPRM is withdrawn.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2005–23007, Directorate Identifier 2005–NM–013–AD, which was published in the **Federal Register** on November 21, 2005 (70 FR 70048).

Issued in Renton, Washington, on July 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11711 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25421; Directorate Identifier 2006–NM–074–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Model A310 airplanes. This proposed AD would require revising the Limitations section of the airplane flight manual by incorporating restrictions for high altitude operations. This proposed AD results from several incidents of pitch oscillations with high vertical loads that occurred during turbulence at high altitudes. We are proposing this AD to prevent pitch oscillations during turbulence, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by August 23, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25421; Directorate Identifier 2006–NM–074–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on all A310 airplanes. The DGAC advises that several incidents of pitch oscillations with high vertical loads occurred during turbulence at high altitudes. Investigation revealed that this is due to a combination of certain altitude and weight conditions when the autopilot is disconnected or severe turbulence is encountered. This condition, if not corrected, could result in reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Temporary Revision (TR) 2.03.00/21 to the Airbus A310 Airplane Flight Manual (AFM). The TR, dated April 11, 2005, defines limitations on the flight envelope at high altitudes in order to reduce the risks of pitch over-control in case of heavy turbulence. The DGAC approved the TR and issued French airworthiness directive F–2005–114, dated July 6, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and French Airworthiness Directive.''

Difference Between the Proposed AD and French Airworthiness Directive

The proposed AD would differ from the parallel French airworthiness

directive in that it would require revising the AFM within 10 days after the effective date of this AD. In developing an appropriate compliance time for this AD, the FAA considered not only the DGAC's recommendation of revising the AFM as of the effective date of the French airworthiness directive, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the revision (less than one hour). In light of all of these factors, the FAA finds a 10-day compliance time for completing the required AFM revision to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

This proposed AD would affect about 62 airplanes of U.S. registry, it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $4,960, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2006–25421; Directorate Identifier 2006–NM–074–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 23, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A310 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from several incidents of pitch oscillations with high vertical loads that occurred during turbulence at high altitudes. We are issuing this AD to prevent pitch oscillations during turbulence, which could result in reduced controllability of the airplane.

Compliance

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

Revision of Airplane Flight Manual (AFM)

(f) Within 10 days after the effective date of this AD, revise the Limitations section of the Airbus A310 AFM to include the information in Temporary Revision (TR) 2.03.00/21, dated April 11, 2005. This may be done by inserting a copy of the TR into the AFM. When the TR has been included in the general revisions of the AFM, those general revisions may be inserted into the AFM, provided the relevant information in the general revisions is identical to that in the TR.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) French airworthiness directive F–2005–114, dated July 6, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11722 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25422; Directorate Identifier 2006–NM–095–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all EMBRAER Model EMB–135 and EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This proposed AD would require inspecting the fuel quantity indication system (FQIS) wire harness and the DC fuel pump wire harness to determine if the harnesses are properly attached at their respective attachment points and

properly separated from one another, and performing corrective actions if necessary. This proposed AD results from a report that the FQIS wire harness may not be properly attached at its attachment points or properly separated from the DC fuel pump wire harness. We are proposing this AD to prevent chafing between those harnesses or chafing of the harnesses against adjacent airplane structure or components, which could present a potential ignition source that could result in a fire or explosion.

DATES: We must receive comments on this proposed AD by August 23, 2006.

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

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25422; Directorate Identifier 2006–NM–095–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The Departamento de Aviação Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model EMB–135 and EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The DAC advises that the fuel quantity indication system (FQIS) wire harness may not be properly attached at its attachment points and may not be properly separated from the DC fuel pump wire harness, due to the design of the area. This condition, if not corrected, could allow chafing between those harnesses or chafing of those harnesses against adjacent airplane structure or components, which could present a potential ignition source that could result in a fire or explosion.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–28–0025, Revision 04, dated November 7, 2005. The service bulletin describes procedures for a one-time visual inspection of the FQIS harness and DC fuel pump wire harness to determine if the harnesses are properly attached at their respective attachment points and properly separated from one another. The inspection involves examining the condition of the harness attachment points, making sure the harnesses cannot chafe against each other or against adjacent structure or components, and making sure that the harnesses are not attached to each other. As a corrective action if a discrepancy is found, the service bulletin describes procedures for rerouting the DC fuel pump wire harness if any harness is not properly attached or separated.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2006–03–01, dated April 19, 2006, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

EMBRAER Service Bulletin 145–28–0025, Revision 04, does not specify a corrective action if a broken, frayed, cracked, or damaged wire, or a damaged harness, is found. This proposed AD would require that any such damage be repaired in accordance with relevant sections of the standard wiring practices manual.

Costs of Compliance

This proposed AD would affect about 494 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $39,520, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–25422; Directorate Identifier 2006–NM–095–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 23, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report that the fuel quantity indication system (FQIS) wire harness may not be properly attached or separated from the DC fuel pump wire harness. We are issuing this AD to prevent chafing between those harnesses or chafing of the harnesses against adjacent airplane structure or components, which could present a potential ignition source that could result in a fire or explosion.

Compliance

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

Inspecting Harnesses for Proper Attachment and Separation

(f) Within 5,000 flight hours after the effective date of this AD: Do a one-time general visual inspection of the FQIS wire harness and the DC fuel pump wire harness to determine if the harnesses are properly attached at their respective attachment points and properly separated from one another, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0025, Revision 04, dated November 7, 2005. All applicable corrective actions must be done before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Further Corrective Actions

(g) If any broken, frayed, cracked, or damaged wire, or a damaged harness, is found: Before further flight, repair the damaged wire or harness in accordance with relevant sections of the standard wiring practices manual.

Actions Accomplished Previously

(h) Actions done before the effective date of this AD in accordance with one of the service bulletins identified in Table 1 of this AD are acceptable for compliance with the corresponding actions required by this AD.

TABLE 1.—PREVIOUS ISSUES OF THE SERVICE INFORMATION

EMBRAER Service Bulletin	Revision level	Date
145–28–0025	None	April 19, 2004.
145–28–0025	01	June 9, 2004.
145–28–0025	02	November 8, 2004.
145–28–0025	03	April 28, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) Brazilian airworthiness directive 2006–03–01, dated April 19, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on July 14, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–11724 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 505

[FHWA Docket No. FHWA–05–23393]

RIN 2125–AF08

Projects of National and Regional Significance Evaluation and Rating

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: Section 1301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59; 119 Stat. 1144) established a program to provide grants to States for Projects of National and Regional Significance (PNRS) to improve the safe, secure, and efficient movement of people and goods throughout the United States and to improve the health and welfare of the national economy. Section 1301 requires the Secretary of Transportation (Secretary) to establish regulations on the manner in which the proposed projects will be evaluated and rated, in order to determine which projects shall receive grant funding. This proposed rule would establish the required evaluation and rating guidelines for proposed projects. If this rule were adopted, a proposed project would become eligible to be funded under this program only if the Secretary finds that the project meets the requirements of the rule. In making such findings, the Secretary will evaluate and rate each project as ''highly recommended,'' ''recommended,'' or ''not recommended'' based on the results of preliminary engineering, the project justification criteria, and the degree of non-Federal financial commitment.

DATES: Comments must be received on or before September 22, 2006. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Docket Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit,* or fax comments to (202) 366–7909.

Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov.* All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). 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.*

FOR FURTHER INFORMATION CONTACT: Mr. Edward Strocko, Office of Freight Management and Operations, HOFM–1, (202) 366–2997, Ms. Alla Shaw, Office of the Chief Counsel, (202) 366–1042, or Ms. Diane Mobley, Office of the Chief Counsel, (202) 366–1372, Federal Highway Administration, 400 Seventh St., SW., Washington, DC 20590. Office Hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Electronic submission and retrieval help and guidelines are available under the help section of the Web site. Alternatively, internet users may access all comments received by the U.S. DOT Docket Facility by using the universal resource locator (URL) *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at *http://www.gpoaccess/gov/nara.*

Background

Section 1301 of SAFETEA–LU establishes a program to finance critical, high-cost transportation infrastructure facilities that address critical national economic and transportation needs. These projects often involve multiple levels of government, agencies, modes of transportation, and transportation goals and planning processes that are not easily addressed or funded within existing surface transportation program categories. Projects of National and Regional Significance would have national and regional benefits, including improving economic productivity by facilitating international trade, relieving congestion, and improving transportation safety by facilitating passenger and freight movement. Additionally, this program would further the goals of the Secretary's Congestion Initiative.[1]

The benefits of PNRS would accrue beyond local areas and States to the Nation as a whole. A program dedicated to constructing PNRS would improve the safe, secure, and efficient movement of people and goods throughout the United States as well as improve the health and welfare of the national economy. The FHWA specifically invites comments that contribute to an understanding and a quantification of the term national and/or regional economic benefits.

Under the proposed regulations, a State seeking a grant for a proposed PNRS would submit to the Secretary an application that demonstrates the ability of the proposed project to enhance the national transportation system, generate national economic benefits, reduce congestion, improve transportation safety, and attract non-Federal investment.

The Secretary shall evaluate and rate each proposed project as ''highly recommended,'' ''recommended,'' or ''not recommended'' based on the results of preliminary engineering, the project justification criteria, and degree of non-Federal financial commitments. If the Secretary finds that the proposed project meets the requirements of the regulations, and there is a reasonable likelihood that the project will continue to meets such requirements, the Secretary may issue a letter of intent to obligate an amount from future available budget authority specified in law or execute a full funding grant agreement

[1] Speaking before the National Retail Foundation's annual conference on May 16, 2006, in Washington, DC, U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rail and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion and is available at the following URL: *http://isddc.dot.gov/OLPFiles/OST/012988.pdf.*

with a State. A full funding grant agreement would establish the terms of Federal participation in the project, maximum amount of Federal financial assistance, cover the period of time for completing the project, and cover the timely and efficient management of the project in accordance with applicable Federal statutes, regulations, and policy, including oversight roles and responsibilities, and other terms and conditions.

All the funds authorized by section 1101(a)(15) of SAFETEA–LU are fully designated to the 25 projects in section 1301(m). There are no funds available for distribution beyond those already designated. The 25 projects designated in subsection (m) of section 1301 of SAFETEA–LU are not subject to the criteria established in this part and they will not be subject to the evaluation and rating as proposed in this part. However, all grant recipients for the projects designated in subsection (m) of section 1301 of SAFETEA–LU must submit to the FHWA Office of Operations, through the State Department of Transportation and the FHWA Division Office of the State in which a project is located, a project description prior to the release of designated funds. The FHWA Division Office will review and comment on the project description and forward the description to the FHWA Office of Operations. The FHWA guidance on section 1301 grant recipient project description submission procedures is available from the FHWA Division Offices or the FHWA Office of Operations, and is available at *http://www.ops.fhwa.dot.gov/freight/policy.htm.*

Section-by-Section Discussion of the Proposals

Section 505.1 Purpose

The purpose of this part is to implement the requirements of SAFETEA–LU section 1301(f)(6) which directs the Secretary to establish evaluation and rating guidelines for proposed Projects of National and Regional Significance (PNRS). A proposed project may be funded under this program only if the Secretary finds that the project meets the requirements of this regulation.

Section 505.3 Policy

Under current law, surface transportation programs rely primarily on formula capital apportionments to States. Despite the significant increase for surface transportation program funding in the Transportation Equity Act of the 21st Century, current levels of investment are insufficient to fund critical high-cost transportation infrastructure facilities that address critical national economic and transportation needs. Critical high-cost transportation infrastructure facilities often include multiple levels of government, agencies, modes of transportation, and transportation goals and planning processes that are not easily addressed or funded within existing surface transportation program categories. Projects of National and Regional Significance have national and regional benefits, including improving economic productivity by facilitating international trade, relieving congestion, and improving transportation safety by facilitating passenger and freight movement. The benefits of projects described above accrue to local areas, States, and the Nation as a result of the effect such projects have on the national transportation system. A program dedicated to constructing Projects of National and Regional Significance is necessary to improve the safe, secure, and efficient movement of people and goods throughout the United States and improve the health and welfare of the national economy.

Section 505.5 Definitions

The specific terms that have special significance to a proposal under the Projects of National and Regional Significance program are defined in this section. An ''Applicant'' for grants shall be limited to State departments of transportation.

The FHWA proposes to define ''eligible projects'' in a flexible manner. Specifically, because of the national and regional scope of the projects to be funded under this section, and because this section is explicitly intended to provide funding for high-cost transportation infrastructure facilities that often include multiple modes of transportation and affect multiple jurisdictions, the FHWA proposes to include those projects that are intended to be multi-modal. The FHWA further proposes to define the term ''eligible project costs'' to include costs associated with non-highway facilities, though the portions of the projects funded through grants awarded under this program must be otherwise eligible under title 23, United States Code.

''Full funding grant agreements'' (FFGA) will be used to define the project scope and scale, and time period, and will establish Federal funding levels under title 23 U.S.C. for Projects of National and Regional Significance.

Section 505.7 Eligibility

This section establishes the minimum size for projects considered to be nationally or regionally significant as having eligible project costs that are reasonably anticipated to equal or exceed the lesser of $500 million or 75 percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located. For those projects that are proposed by multiple States, the FHWA is considering establishing the minimum size for projects as those having eligible project costs that are equal to or exceed the lesser of $500 million or 75 percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located that has the largest apportionment.

Section 505.9 Criteria for Grants

Under proposed section 505.9(a), a proposal must include, in its project description, evidence that the project is eligible to receive the Secretary's recommendation for funding. The proposal should: (1) Document the results of preliminary engineering; (2) Demonstrate that the project will generate national economic benefits, including creating jobs, expanding business opportunities, and impacting the gross domestic product, including, for example, a detailed project Cost-Benefit Analysis (CBA) including estimates of regional and national economic benefits expected to result from the project; (3) Demonstrate that the project will reduce congestion in the form of statements of current traffic volume, value, weight, volume to capacity (V/C) ratios, congestion levels, transit times (by time of day), and delays in the affected region and corridor, and projections of each for both the build and no-build scenarios; and (4) Demonstrate that the project will improve transportation safety in the form of statements of the number of crashes, injuries and fatalities in the affected region and corridor, and projections of each for both the build and no-build scenarios.

Under proposed section 505.9(b), the grant applicant must disclose to the Secretary any public-private partnership agreements in place or anticipated to be used to support the project. The grant applicant must identify areas where new technologies, including intelligent transportation systems that enhance the efficiency of the project, will be incorporated in the project. Finally, the grant applicant must provide

documentation of the results of environmental analysis.

Under proposed section 505.9(c), grant applicants must further provide evidence that the proposed project plan provides for the availability of contingency amounts reasonable to cover unanticipated cost increases, that each proposed non-Federal source of capital and operating financing is stable, reliable, and available within the proposed project timetable, and that the project has a non-Federal financial commitment that equals or exceeds the required non-Federal share of the cost of the project.

Section 505.11 Project Evaluation and Rating

This section describes the rating system the Secretary will use to determine whether a proposed project may be funded under the program. In making such determinations, the Secretary shall evaluate and rate the project as ''highly recommended,'' ''recommended,'' or ''not recommended'' based on the results of preliminary engineering, the project justification criteria, and the degree of non-Federal financial commitment.

Section 505.13 Federal Government's Share of Project Cost

This section establishes the Federal share for projects funded under this section at 80 percent, unless the grant recipient requests a lesser amount of Federal funding. However, under section 1964 of SAFETEA–LU, Alaska, Montana, Nevada, North Dakota, Oregon, and South Dakota are permitted to use the provisions of 23 U.S.C. 120(b) for determining the non-Federal match requirements for projects listed in section 1301.

Section 505.15 Full Funding Grant Agreement

This section establishes that a project financed under this subsection shall be carried out through a full funding grant agreement.

Section 505.17 Applicability of Title 23, U.S. Code

This section provides that funds made available to carry out this program shall be available for obligation in the same manner as if they were apportioned under chapter 1 of title 23, United States Code. This section also prohibits the transfer of funds between agencies.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would be a significant rulemaking action within the meaning of Executive Order 12866 and would be significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. This rulemaking proposes evaluation and rating procedures for Projects of National and Regional Significance as mandated in section 1301 of SAFETEA–LU.

The Projects of National and Regional Significance Program is a newly created and complex program, receiving substantial Federal funding. This action is considered significant because of the substantial State and local government, and public interest in the administration of this newly created program. Because this program is dedicated to constructing critical high-cost transportation infrastructure facilities that address critical national economic and transportation needs, it is essential for the FHWA to develop evaluations and rating criteria to ensure that selected projects will further the goals of the program.

This rule is not anticipated to adversely affect, in a material way, any sector of the economy. This rulemaking sets forth evaluation and ratings criteria for project proposals in the Projects of National and Regional Significance program, which will result in only minimal cost to program applicants. In addition, this proposed rule would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 60l–612) we have evaluated the effects of this proposed action on small entities and have determined that the proposed action would not have a significant economic impact on a substantial number of small entities.

The proposed rule addresses evaluation and rating procedures for States wishing to submit project proposals for Projects of National and Regional Significance. As such, it affects only States and States are not included in the definition of small entity set forth in 5 U.S.C. 601. Therefore, the Regulatory Flexibility Act does not apply, and the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any 1 year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector. Additionally, the definition of ''Federal Mandate'' in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program. Accordingly, the FHWA solicits comments on this issue.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined preliminarily that this proposal does not contain collection of information requirements for the purposes of the PRA. The FHWA does not anticipate receiving project proposals from ten or more States in any given year because of the nature of the projects eligible under the PNRS program. These projects are critical high-cost transportation infrastructure facilities that often include multiple levels of government, agencies, modes of transportation, and transportation goals and planning processes that are not easily addressed or funded within existing surface transportation program categories. In fact, the Congress has identified only 25 such projects for funding over the 5-year authorization period currently established for this program.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that the establishment of the evaluation and rating procedures for proposed Projects of National and Regional Significance, as required by the Congress in SAFETEA–LU, would not have any effect on the quality of the environment.

Executive Order 12630 (Taking of Private Property)

The FHWA has analyzed this proposed rule under Executive Order 12630, Governmental Actions and Interface with Constitutionally Protected Property Rights. The FHWA does not anticipate that this proposed action would affect a taking of private property or otherwise have taking implications under Executive Order 12630.

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 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FHWA certifies that this proposed action would not cause any environmental risk to health or safety that might disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses evaluation and rating procedures for the Projects of National and Regional Significance Program and would not impose any direct compliance requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use dated May 18, 2001. We have determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 505

Grant programs-transportation, Highways and roads, Intermodal transportation.

Issued on: July 18, 2006.

Frederick G. Wright, Jr.,

Federal Highway Executive Director.

In consideration of the foregoing, the FHWA proposes to add a new part 505 to title 23, Code of Federal Regulations, to read as follows:

PART 505—PROJECTS OF NATIONAL AND REGIONAL SIGNIFICANCE EVALUATION AND RATING

Sec.
505.1 Purpose.
505.3 Policy.
505.5 Definitions.
505.7 Eligibility.
505.9 Criteria for grants.
505.11 Project evaluation and rating.
505.13 Federal government's share of project cost.
505.15 Full funding grant agreement.
505.17 Applicability of Title 23, U.S. Code.

Authority: Section 1301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59; 119 Stat. 1144); 23 U.S.C. 315; 49 CFR 1.48.

§ 505.1 Purpose.

The purpose of this part is to establish evaluation, rating, and selection guidelines for funding proposed Projects of National and Regional Significance (PNRS).

§ 505.3 Policy.

A Project of National and Regional Significance should be of national and regional significance, and shall cause quantitatively projected improvements in economic productivity by facilitating international trade and providing congestion relief, and should improve transportation safety by facilitating passenger and freight movement.

§ 505.5 Definitions.

Unless otherwise specified in this part, the definitions contained in 23 U.S.C. 101(a) are applicable to this part. In addition, the following definitions apply:

Applicant means a State Department of Transportation.

Eligible Project means any surface transportation project eligible for Federal assistance under title 23, United States Code, including freight railroad projects and activities eligible under such title.

Eligible Project Costs means the costs of:

(1) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, preliminary engineering and design work, and other preconstruction activities; and

(2) Construction, reconstruction, rehabilitation, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, acquisition of equipment, and operational improvements.

Full funding grant agreement (FFGA) means the agreement used to provide Federal financial assistance under title

23 U.S.C. for Projects of National and Regional significance. An FFGA defines the scope of the project, establishes the maximum amount of Government financial assistance for the project, covers the period of time for completion of the project, facilitates the efficient management of the project in accordance with applicable Federal statutes, regulations, and policy, including oversight roles and responsibilities, and other terms and conditions.

§ 505.7 Eligibility.

To be eligible for assistance under this program, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(a) $500,000,000; or

(b) 75 percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

§ 505.9 Criteria for grants.

(a) The Secretary will approve a grant for a Project of National and Regional Significance project only if the Secretary determines, based upon information submitted by the applicant, that the project:

(1) Is based on the results of preliminary engineering;

(2) Is supported by an acceptable degree of non-Federal financial commitments, including evidence of stable and dependable financing sources to construct, maintain, and operate the infrastructure facility; and

(3) Is justified based on the ability of the project:

(i) To generate national and/or regional economic benefits, including creating jobs, expanding business opportunities, and impacting the gross domestic product;

(ii) To reduce congestion, including impacts in the State, region, and Nation;

(iii) To improve transportation safety, including reducing transportation accidents, injuries, and fatalities;

(iv) To otherwise enhance the national transportation system; and

(v) To garner support for non-Federal financial commitments and provide evidence of stable and dependable financing sources to construct, maintain, and operate the infrastructure facility.

(b) In selecting projects under this section, the Secretary will consider the extent to which the project:

(1) Leverages Federal investment by encouraging non-Federal contributions to the project, including contributions from public-private partnerships;

(2) Uses new technologies, including intelligent transportation systems, that enhance the efficiency of the project; and

(3) Helps maintain or protect the environment.

(c) In evaluating a non-Federal financial commitment under paragraph (a)(2) of this section, the Secretary shall require that:

(1) The proposed project plan provides for the availability of contingency amounts that the Secretary determines to be reasonable to cover unanticipated cost increases; and

(2) Each proposed non-Federal source of capital and operating financing is stable, reliable, and available within the proposed project timetable. In assessing the stability, reliability, and availability of proposed sources of non-Federal financing, the Secretary will consider:

(i) Existing financial commitments;

(ii) The degree to which financing sources are dedicated to the purposes proposed;

(iii) Any debt obligation that exists or is proposed by the recipient for the proposed project; and

(iv) The extent to which the project has a non-Federal financial commitment that exceeds the required non-Federal share of the cost of the project.

§ 505.11 Project evaluation and rating.

(a) A proposed project may not be funded under this program unless the Secretary finds that the project meets the requirements of this part and there is a reasonable likelihood that the project will continue to meet such requirements.

(b) In making such findings, the Secretary shall evaluate and rate the proposed project as ''highly recommended,'' ''recommended,'' or ''not recommended'' based on the criteria in § 505.9 of this part. Individual ratings of ''highly recommended,'' ''recommended,'' or ''not recommended'' for each of the criteria will also be provided to the applicant.

§ 505.13 Federal government's share of project cost.

(a) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the project's eligible costs.

(b) A grant for the project shall be for 80 percent of the eligible project cost, unless the grant recipient requests a lower grant percentage. A refund or reduction of the remainder may only be made if a refund of a proportional amount of the grant of the Federal Government is made at the same time.

§ 505.15 Full funding grant agreement.

In general, a project financed under this section shall be carried out through a full funding grant agreement. The Secretary shall enter into a full funding grant agreement based on the evaluations and ratings required herein, and in accordance with the terms specified in section 1301(g)(2) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (Pub. L. 109–59; 119 Stat. 1144).

§ 505.17 Applicability of Title 23, U.S. Code.

Funds made available to carry out this section shall be available for obligation in the same manner as if such funds were apportioned under chapter 1 of title 23, United States Code; except that such funds shall not be transferable to other agencies and shall remain available until expended and the Federal share of the cost of a Project of National and Regional Significance shall be as provided in § 505.13.

[FR Doc. E6–11731 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[EPA–HQ–OW–2006–0141; FRL–8202–7]

RIN A2040–AE86

Extension of Public Comment Period for the National Pollutant Discharge Elimination System (NPDES) Water Transfers Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the public comment period.

SUMMARY: On Wednesday, June 7, 2006, the Environmental Protection Agency published a proposed rule entitled ''National Pollutant Discharge Elimination System (NPDES) Water Transfers Proposed Rule.'' As initially published in the **Federal Register** on June 7, 2006, written comments on the proposed rulemaking were to be submitted to EPA on or before July 24, 2006 (a 45-day public comment period). Since publication, EPA has received several requests for additional time to submit comments. Therefore, the public comment period is being extended for 14 days and will now end on August 7, 2006.

DATES: Comments must be received on or before August 7, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

OW–2006–0141 by one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. EPA prefers to receive comments submitted electronically.

(2) E-mail: *ow-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2006–0141.

(3) Mail: Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2006–0141.

(4) Hand Delivery: Deliver your comments to: EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC, Attention: Docket ID No. EPA–HQ–OW–2006–0141. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2006–0141. 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.regulations.gov,* 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 regulations.gov or e-mail. 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 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 Regulations index at *http://www.regulations.gov/.* 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 at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. 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, and the telephone number for the Water Docket is (202) 566–2426.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's**Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *http://www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: For additional information contact Jeremy Arling, Water Permits Division, Office of Wastewater Management (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–2218, e-mail address: *arling.jeremy@epa.gov.*

Dated: July 19, 2006.

Brent A. Fewell,

Acting Assistant Administrator for Water.

[FR Doc. E6–11702 Filed 7–21–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 71, No. 141
Monday, July 24, 2006

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

Agricultural Marketing Service

[Docket No. FV–06–327]

United States Standards for Grades of Canned Sweet Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the United States Standards for Grades of Canned Sweet Potatoes. The change was requested to reflect newer varieties, new sorting techniques, and canning processes.

DATES: Effective August 23, 2006.

FOR FURTHER INFORMATION: Chere L. Shorter, Inspection and Standardization Section, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; fax (202) 690–1527, e-mail *Chere.Shorter@usda.gov.* The United States Standards for Grades of Canned Sweet Potatoes are available either through the address cited above or by accessing the AMS Web site on the Internet at *http://www.ams.usda.gov/fv/ppb.html.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. Those United States Standards for Grades of Fruits and Vegetables no longer appear in the Code of Federal Regulations but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is revising the U.S. Standards for Grades of Canned Sweet Potatoes using the procedures that appear in Part 36 of Title 7 of the Code of Federal Regulations (7 CFR Part 36).

Background

The Food Products Association (FPA) sent petitions from two FPA member food processors to AMS requesting revision of the United States Standards for Grades of Canned Sweet Potatoes. The FPA requested that the USDA revise the definition of the style of ''Whole'' to reflect newer varieties, new sorting techniques, and canning processes. In particular, the ''Beauregard'' variety, a variety now widely used in canned sweet potatoes, is oddly shaped and must be cut and trimmed to give the appearance of a whole sweet potato. This variety may or may not be tapered on one end and because of mechanical trimming may not meet the definition of whole.

The current definition for the style of ''Whole'' states that, ''Whole means the canned sweet potatoes have the appearance of being essentially whole or almost whole in that the units retain the approximate shape of whole sweet potatoes.''

The petitioners want AMS to revise the definition for canned whole sweet potatoes to allow for those that are cylindrical in shape, two inches plus or minus 0.5 inches in length, by 1.5 inches plus or minus 0.25 inches in diameter for 404 × 307 and 603 × 700 can sizes and 1.0 inch plus or minus 0.25 inches in diameter for smaller can sizes.

Prior to undertaking research and other work associated with revising the grade standards, AMS sought public comments on the petitions. A notice requesting comments on the petitions to revise the United States Standards for Grades of Canned Sweet Potatoes was published in the March 12, 2003, **Federal Register** (68 FR 11802).

In response to our request for comments, AMS received one comment from one of the processors that had petitioned for the revision to the standards. This commenter reconsidered its position and did not favor the proposed revision of the standard, noting that the use of a length and diameter requirement to describe a whole sweet potato would be a severe disadvantage to canners. The commenter observed, ''that environmental influences make potatoes longer or shorter in years due to natural weather conditions, soil types, and varietal differences.'' ''This variation in size could result,'' according to the commenter, ''in products not meeting the length and diameter standards for a portion of the canning season.'' The commenter further suggested that the term ''Almost Whole'' be removed from the standards, arguing that ''processors are merely trimming the fibrous ends from the sweet potato that the consumer would have to do themselves.'' The commenter further suggested that the definition for ''whole'' should change to ''practically represents a whole sweet potato.''

AMS decided to proceed with developing the proposed revision to the standards. In reviewing the standards AMS noted that the term ''Whole'' implies that a sweet potato has not been cut into smaller pieces and the term ''Almost whole'' implies that a sweet potato unit should resemble a whole unit with one or both ends trimmed to remove fibrous ends. AMS noted that larger sized sweet potatoes would require excessive trimming to meet the suggested size requirement, as stated in the petition. AMS decided that the better approach to revising the grade standards was to leave the style description for ''Whole'' unchanged without specific reference to length and size. AMS further decided to remove the style of ''Sections,'' which is not commercially packed, reducing the confusion between ''Sections'' and ''Pieces, cuts, or cut'' styles. The style ''Other'' was added to account for styles not specifically mentioned in the grade standard. These changes were suggested in order to more clearly delineate the difference between ''whole'' and ''pieces, cuts, or cut'' styles, thereby promoting uniformity in grading canned sweet potatoes.

In March 2004 a discussion draft that included these changes was sent to FPA and they agreed with the proposed changes to the grade standards. AMS then published the proposed changes in the May 16, 2005, **Federal Register** (70 FR 25804). Only one comment was

received in response to this notice. The comment was in favor of the proposed change.

Accordingly, AMS believes that the revised U.S. grade standards will provide a common language for trade; a means of measuring value in the marketing of canned sweet potatoes, and provide for the effective utilization of canned sweet potatoes. A copy of the proposed grade standards was posted on the AMS website located at *http://www.ams.usda.gov/fv/ppb.html* and is also available at the address cited above under ''For Further Information.''

The official grade of a lot of canned sweet potatoes covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.1–52.83).

The revised U.S. Standards for Grades of Canned Sweet Potatoes will become effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621–1627.

Dated: July 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11734 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–06–314]

United States Standards for Grades of Parsley

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Parsley. At a meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the fresh fruit and vegetable grade standards for usefulness in serving the industry. As a result, AMS has identified the United States Standards for Grades of Parsley for possible revision.

AMS is considering proposed revisions that would allow that percentages be determined by count and not weight and eliminate the unclassified category. AMS is seeking comments regarding these changes as well as any other revisions to the parsley standards that may be necessary to better serve the industry.

DATES: Comments must be received by September 22, 2006.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Parsley are available either through the address cited above or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, at the above address or call (202) 720–2185; e-mail *Cheri.Emery@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is considering revisions to the voluntary United States Standards for Grades of Parsley using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised on July 30, 1930.

Background

At a meeting with the Fruit and Vegetable Industry Advisory Committee, AMS was asked to review the fresh fruit and vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Parsley for possible revision. Prior to undertaking detailed work to develop proposed revisions to the standards, AMS is soliciting comments on the proposed revisions and any other comments on the United States Standards for Grades of Parsley to better serve the industry.

Currently, parsley is packed and marketed by count and weight. Taking into account these marketing practices, AMS is considering changing the current standards to determine the percentages for tolerances, defects, and the like to be determined by count and not weight. AMS would also eliminate the ''Unclassified'' category. This section is being removed in all standards when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary. Additionally, AMS is seeking comments regarding any other revisions that may be necessary to better serve the industry.

This notice provides for a 60-day comment period for interested parties to comment on the proposed changes to the United States Standards for Grades of Parsley. Should AMS conclude that revisions are needed it will develop a proposed revised standard that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: July 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11735 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–06–306]

United States Standards for Grades of Peppers (Other Than Sweet Peppers)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on the proposed voluntary United States Standards for Grades of Peppers (Other Than Sweet Peppers). This action is being taken at the request of the Fruit and Vegetable Industry

Advisory Committee, which asked AMS to identify commodities that needed grade standards developed to facilitate commerce. The proposed standards would provide industry with a common language and uniform basis for trading, thus promoting the orderly and efficient marketing of peppers that are not sweet peppers.

DATES: Comments must be received by September 22, 2006.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661, South Building, Stop 0240, Washington, DC 20250–0240, fax (202) 720–8871, e-mail *FPB.DocketClerk@usda.gov.* Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours and on the Internet.

The draft of the proposed United States Standards for Grades of Peppers (Other Than Sweet Peppers) is available either from the above address or by accessing AMS, Fresh Products Branch website at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, at the above address or call (202) 720–2185, e-mail *Cheri.Emery@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables that are not requirements of Federal Marketing Orders or U.S. Import Requirements, no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

AMS is proposing to establish voluntary United States Standards for Grades of Peppers (Other Than Sweet Peppers) using the procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

At a meeting of the Fruit and Vegetable Industry Advisory Committee, AMS was asked to identify fresh fruit and vegetables that may be better served if grade standards are developed. As a result, AMS identified peppers that were not sweet peppers as possibly in need of official grade standards. Such standards are used by the fresh produce industry to describe the product they are trading, thus facilitating the marketing of the product.

Prior to undertaking research and other work associated to develop the standards, AMS published a notice in the **Federal Register** (71 FR 9514), on February 24, 2006, soliciting comments on the possible development of United States Standards for Grades of Peppers (Other Than Sweet Peppers). In response to the request for comments, AMS received two comments, one comment was from an industry group, and one from a pepper shipper. Both comments were in support of developing the standards. The comments are available by accessing AMS, Fresh Products Branch Web site: *http://www.ams.usda.gov/fvfpbdocketlist.htm.*

Based on the comments received and information gathered, AMS has developed proposed grade standards for peppers other than sweet peppers. This proposal would establish the following grades, as well as a tolerance for each grade: U.S. Fancy, U.S. No. 1 and U.S. No. 2. In addition, there are proposed ''Tolerances,'' ''Application of Tolerances,'' and ''Size'' sections. AMS is proposing to define ''Injury,'' ''Damage,'' and ''Serious Damage,'' with specific basic requirements and definitions for defects, along with definitions for color, diameter, and length. AMS is soliciting comments on the proposed voluntary United States Standards for Grades of Peppers (Other Than Sweet Peppers).

The adoption of these proposed standards would provide industry with U.S. grade standards similar to those extensively in use by the fresh produce industry to assist in orderly marketing of other commodities.

The official grade of a lot or shipment of fresh vegetables covered by U.S. standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on the proposed United States Standards for Grades of Peppers (Other Than Sweet Peppers).

Authority: 7 U.S.C. 1621–1627.

Dated: July 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–11740 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

WTO Agricultural Safeguard Trigger Levels

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of product coverage and trigger levels for safeguard measures provided for in the World Trade Organization (WTO) Agreement on Agriculture.

SUMMARY: This notice lists updated quantity trigger levels for products, which may be subject to additional import duties under the safeguard provisions of the WTO Agreement on Agriculture. This notice also includes the relevant period applicable for the trigger levels on each of the listed products.

DATES: *Efffective Date:* July 24, 2006.

FOR FURTHER INFORMATION CONTACT: Charles R. Bertsch, Multilateral Trade Negotiations Division, Foreign Agricultural Service, Room 5524—South Building, U.S. Department of Agriculture, Washington, DC 20250–1022, telephone at (202) 720–6278, or e-mail *charles.bertsch@usda.gov.*

SUPPLEMENTARY INFORMATION: Article 5 of the WTO Agreement on Agriculture provides that additional import duties may be imposed on imports of products subject to tariffication as a result of the Uruguay Round if certain conditions are met. The agreement permits additional duties to be charged if the price of an individual shipment of imported products falls below the average price for similar goods imported during the years 1986–88 by a specified percentage. It also permits additional duties to be imposed if the volume of imports of an article exceeds the average of the most recent 3 years for which data are available by 5, 10, or 25 percent, depending on the article. These additional duties may not be imposed on quantities for which minimum or current access commitments were made during the Uruguay Round negotiations, and only one type of safeguard, price or

quantity, may be applied at any given time to an article.

Section 405 of the Uruguay Round Agreements Act requires that the President cause to be published in the **Federal Register** information regarding the price and quantity safeguards, including the quantity trigger levels, which must be updated annually based upon import levels during the most recent 3 years. the President delegated this duty to the Secretary of Agriculture in Presidential Proclamation No. 6763, QUANTITY-BASED SAFEGUARD TRIGGER, dated December 23, 1994. The Secretary of Agriculture further delegated the duty to the Administrator of the Foreign Agricultural Service (7 CFR 2.43 (a)(2)). The Annex to this notice contains the updated quantity trigger levels.

Additional information on the products subject to safeguards and the additional duties which may apply can be found in subchapter IV of Chapter 99 of the Harmonized Tariff Schedule of the United States and in the Secretary of Agriculture's Notice of Safeguard Action, published in the **Federal Register** at 60 FR 427, January 4, 1995.

Notice: As provided in section 405 of the Uruguay Round Agreements Act, consistent with Article 5 of the Agreement on agriculture, the safeguard quantity trigger levels previously notified are superceded by the levels indicated in the Annex to this notice. The definitions of these products were provided in the Notice of Safeguard Action published in the **Federal Register**, at 60 FR 427, January 4, 1995.

Issued at Washington, DC this 3rd day of July, 2006.

Michael W. Yost.

Administrator, Foreign Agricultural Service.

ANNEX: QUANTITY-BASED SAFEGUARD TRIGGER

Product	Trigger level	Period
Beef	447,684 mt	January 1, 2006 to December 31, 2006.
Mutton	3,242 mt	January 1, 2006 to December 31, 2006.
Cream	4,298,187 liters	January 1, 2006 to December 31, 2006.
Evaporated or Condensed Milk	6,930,879 kilograms	January 1, 2006 to December 31, 2006.
Nonfat Dry Milk	898,525 kilograms	January 1, 2006 to December 31, 2006.
Dried Whole Milk	3,987,868 kilograms	January 1, 2006 to December 31, 2006.
Dried Cream	40,235 kilograms	January 1, 2006 to December 31, 2006.
Dried Whey/Buttermilk	70,736 kilograms	January 1, 2006 to December 31, 2006.
Butter	11,548,913 kilograms	January 1, 2006 to December 31, 2006.
Butter Oil and Butter Substitutes	8,745,001 kilograms	January 1, 2006 to December 31, 2006.
Dairy Mixtures	37,038,485 kilograms	January 1, 2006 to December 31, 2006.
Blue Cheese	5,047,654 kilograms	January 1, 2006 to December 31, 2006.
Cheddar Cheese	12,356,363 kilograms	January 1, 2006 to December 31, 2006.
American-Type Cheese	15,606,654 kilograms	January 1, 2006 to December 31, 2006.
Edam/Gouda Cheese	8,318,776 kilograms	January 1, 2006 to December 31, 2006.
Italian-Type Cheese	23,130,918 kilograms	January 1, 2006 to December 31, 2006.
Swiss Cheese with Eye Formation	34,767,209 kilograms	January 1, 2006 to December 31, 2006.
Gruyere Process Cheese	8,355,381 kilograms	January 1, 2006 to December 31, 2006.
Lowfat Cheese	3,603,811 kilograms	January 1, 2006 to December 31, 2006.
NSPF Cheese	55,111,280 kilograms	January 1, 2006 to December 31, 2006.
Peanuts	15,699 mt	April 1, 2006 to March 31, 2007.
Peanut Butter/Paste	3,637 mt	January 1, 2006 to December 31, 2006.
Raw Cane Sugar	1,096,324 mt	October 1, 2005 to September 30, 2006.
	1,172,199 mt	October 1, 2006 to September 30, 2007.
Refined Sugar and Syrups	36,661 mt	October 1, 2005 to September 30, 2006.
	73,889	October 1, 2006 to September 30, 2007.
Blended Syrups	59 mt	October 1, 2005 to September 30, 2006.
	36 mt	October 1, 2006 to September 30, 2007.
Articles Over 65% Sugar	170 mt	October 1, 2005 to September 30, 2006.
	358 mt	October 1, 2006 to September 30, 2007.
Articles Over 10% Sugar	12,067 mt	October 1, 2005 to September 30, 2006.
	18,297 mt	October 1, 2006 to September 30, 2007.
Sweetened Cocoa Powder	660 mt	October 1, 2005 to September 30, 2006.
	1,008 mt	October 1, 2006 to September 30, 2007.
Chocolate Crumb	8,542,963 kilograms	January 1, 2006 to December 31, 2006.
Lowfat Chocolate Crumb	229,080 kilograms	January 1, 2006 to December 31, 2006.
Infant Formula Containing Oligosaccharides	53,153 kilograms	January 1, 2006 to December 31, 2006.
Mixes and Doughs	78 mt	October 1, 2005 to September 30, 2006.
	101 mt	October 1, 2006 to September 30, 2007.
Mixed Condiments and Seasonings	98 mt	October 1, 2005 to September 30, 2006.
	0 mt	October 1, 2006 to September 30, 2007.
Ice Cream	1,636, 297 liters	January 1, 2006 to December 31, 2006.
Animal Feed Containing Milk	157,978 kilograms	January 1, 2006 to December 31, 2006.
Short Staple Cotton	20,042 kilograms	September 20, 2005 to September 19, 2006.
	29,945 kilograms	September 20, 2006 to September 19, 2007.
Harsh or Rough Cotton	0 mt	August 1, 2005 to July 31, 2006.
	0 mt	August 1, 2006 to July 31, 2007.
Medium Staple Cotton	1,571,375 kilograms	August 1, 2005 to July 31, 2006.
	2,361,931 kilograms	August 1, 2006 to July 31, 2007.
Extra Long Staple Cotton	9,736,417 kilograms	August 1, 2005 to July 31, 2006.
	8,109,615 kilograms	August 1, 2006 to July 31, 2007.
Cotton Waste	5,125 kilograms	September 20, 2005 to September 19, 2006.
	7,692 kilograms	Sepember 20, 2006 to September 19, 2007.
Cotton, Processed, Not Spun	80,208 kilograms	September 11, 2005 to September 10, 2006.

ANNEX: QUANTITY-BASED SAFEGUARD TRIGGER—Continued

Product	Trigger level	Period
	26,883 kilograms	September 11, 2006 to September 10, 2007.

[FR Doc. 06–6406 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Public Attitudes, Beliefs, and Values About National Forest System Land Management

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection—Public Attitudes, Beliefs, and Values About National Forest System Land Management.

DATES: Comments must be received in writing on or before September 22, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: Dr. Daniel W. McCollum, Rocky Mountain Research Station, 2150–A Centre Ave., Suite 350, Fort Collins, CO 80526.

Comments also may be submitted via facsimile to (970) 295–5959 or by e-mail to: *dmccollum@fs.fed.us.*

The public may inspect comments received at Rocky Mountain Research Station, 2150–A Centre Ave., Suite 350, Fort Collins, CO 80526, Room 347 during normal business hours. Visitors are encouraged to call ahead to (970) 295–5951 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel W. McCollum, Rocky Mountain Research Station, (970) 295–5962. Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Public Attitudes, Beliefs, and Values About National Forest System Land Management.

OMB Number: 0596–New.

Type of Request: New.

Abstract: Surveys have been developed for the purpose of providing natural forest land managers and planners with scientifically credible information from a broad and diverse representation of the public, as well as from specific stakeholder groups. The intent of this collection is to obtain information on public attitudes, beliefs, and values that people have for public land and public land use, how those values are affected by public land management, and acceptable tradeoffs in developing alternative management plans. This information is critical to planning and implementing public policy related to national forests in the Southwestern Region.

Legal authority for information collection in support of the forest plan revision process in the Southwestern Region comes from several sources: The National Environmental Policy Act of 1969, the National Forest Management Act of 1976, and the 2005 NFMA Planning Rule.

While social science and economic analyses are not explicitly mentioned in very many places, their use and relevance is implied in many places in natural resource management related legislation. Social science and economics can provide information about public values, preferences, and expectations that needs to be incorporated into the planning and decision making process. Further, social science and economics can provide qualitative and quantitative metrics with which management alternatives and agency performance can be evaluated.

Data collected with these survey instruments will provide a baseline from which to monitor national forest use and management as affected by changes in social and economic conditions. In addition, a comparison between response rates to mail-based and web-based surveys will be studied.

Estimate of Annual Burden: Mail or web-based survey—30 minutes (20,000 respondents); telephone survey of non-respondents to mail and web-based survey—8 minutes (200 respondents).

Type of Respondents: General public in two different geographical areas. A region-wide survey (Regional Survey) will be administered to the general public within the administrative boundaries of the Forest Service, Region 3 (New Mexico, Arizona, and a few counties in Texas and Oklahoma). The second survey (Test Survey) will be administered to the general public in areas specifically adjacent to four national forests (two in New Mexico, two in Arizona).

Estimated Annual Number of Respondents: 20,200.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10,027 burden hours annually.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 17, 2006.

Frederick Norbury,

Associate Deputy Chief, NFS.

[FR Doc. E6–11677 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comment; Visitor Permit and Visitor Registration Card

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of information collection 0596–0019 (Visitor Permit and Visitor Registration Card). This information will help the

Forest Service ensure that visitors' use of National Forest System lands is in the public interest and compatible with the mission of the agency.

DATES: Comments must be received in writing on or before September 22, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Wilderness Program Manager; Wilderness and Wild and Scenic River Staff, Mail Stop 1125, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20090–1125.

Comments also may be submitted via facsimile to (202) 205–1145 or by e-mail to *sboutcher@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Wilderness and Wild and Scenic River Staff, 201 14th Street, SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to (202) 205–0818 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Steven Boutcher, Wilderness Information Manager, Wilderness and Wild and Scenic River Staff at (802) 951–6771 x1210 or *sboutcher@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Visitor Permit and Visitor Registration Card.

OMB Number: 0596–0019.

Expiration Date of Approval: December 31, 2006.

Type of Request: Extension of a currently approved collection.

Abstract: The Organic Administration Act (16 U.S.C. 473), the Wilderness Act (16 U.S.C. 1131), Wild and Scenic Rivers Act (16 U.S.C. 1271) and Executive Order 11644 (Use of Off-Road Vehicles in the Public Lands), require the Forest Service manage the forests to benefit both land and people. The information collected from the Visitor's Permit Form (FS–2300–30) and Visitor Registration Card Form (FS–2300–32) will help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and is compatible with the mission of the agency. Information will be collected from National Forest System land visitors, who will be asked to describe their intended use of the land and their estimated duration of use.

The Visitor's Permit Form (FS–2300–30) is required for visitors to enter many special management areas on National Forest System Lands, including Wilderness Areas, Wild and Scenic Rivers, restricted off-road vehicle areas, and campgrounds where use is controlled through reservation and permit systems. The permit is only used where public use levels must be managed and monitored to prevent resource damage, to preserve the quality of the experience, or to maintain public safety. The personal contact generated by issuance of the permit results in improved visitor education and information about proper camping techniques, fire prevention, safety, and sanitation. The information collected from the Visitor's Permit Form may also be used to respond to indicators or standards in a Forest Plan or Wilderness Management Plan. The Visitor's Permit Form captures the visitor's name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group. The Visitor's Permit is usually issued by Forest Service employees at an office location. Visitors may obtain the permit in person or call ahead and provide the required information over the phone. The information collection does not involve the use of automated, electronic, mechanical, or other technological collection techniques.

The Visitor Registration Card Form (FS–2300–32) is a voluntary registration card, which provides Forest Service managers with an inexpensive means of gathering visitor use information required by management plans, without imposing mandatory visitor permit regulations. Moreover, the information collected can be used to respond to indicators or standards in a Forest Plan or Wilderness Management Plan without requiring a mandatory permit system to gather and record the data. Use of the Visitor Registration Card Form is one of the most efficient means of collecting data from visitors. It allows the Forest Service to collect data in remote locations, where it is not feasible to have permanent staffing. The Visitor Registration Card Form (FS–2300–32) is normally made available at un-staffed entry locations such as trailheads, and is completed by the visitor without Forest Service assistance. The Visitor Registration Card Form provides information from wilderness and special management area visitors including name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group, and number of watercraft or vehicles. The information is collected once from visitors during their visit, and later gathered by Forest Service employees who then analyze the information.

The use of these two forms allows managers to identify heavily used areas, to prepare restoration and monitoring plans that reflect where use is occurring, and in extreme cases, to develop plans to move forest users to lesser impacted areas. They also provide managers with information useful in locating lost forest visitors. Not being able to use these forms could result in overuse and site deterioration in some environmentally sensitive areas. Furthermore, without these forms, the Forest Service would be required to undertake special studies to collect use data, and could be pressed to make management decisions based on insufficient or inaccurate data. The information collected will not be shared with other organizations inside or outside the government.

Estimate of Annual Burden: 3 minutes (FS–2300–30), 3 minutes (FS–2300–32).

Type of Respondents: Individuals and groups requesting use of National Forest System Wilderness and special management areas.

Estimated Annual Number of Respondents: 386,400 respondents.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 19,320 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 14, 2006.

Gloria Manning,

Associate Deputy Chief.

[FR Doc. E6–11732 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Wasatch-Cache National Forest; Utah; Ogden Travel Plan Revision

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement to the Ogden Travel Plan Revision.

SUMMARY: The USDA Forest Service announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) to the Ogden Travel Plan Revision Final Environment Impact Statement (FEIS). The Ogden Travel Plan Revision FEIS evaluated six alternatives for possible travel management of motorized trails and roads.

DATES: Scoping will not be conducted in accordance with 40 CFR 1502.9(c)(4). The draft supplemental environmental impact statement is expected in December 2006 and the final supplemental environmental impact statement is expected in March 2007.

ADDRESSES: Send written comments to Chip Sibbernsen, Ogden District Ranger, 507 25th Street, Ogden, Utah 84401.

FOR FURTHER INFORMATION CONTACT: Chip Sibbernsen, District Ranger, (801) 625–5112, Ogden Ranger District, 507 25th Street, Ogden, Utah, 84401.

SUPPLEMENTARY INFORMATION:

Proposed Action

On March 20, 2006, District Ranger Chip Sibbernsen made a decision designating routes open for motorized travel use, seasonal and other closures, development of two gravel sources, improvements to two concentrated use areas, and new trail construction on the Ogden Ranger District. The decision also allowed limited use of motor vehicles within 150 feet of designated roads to access dispersed camping sites.

The Record of Decision was appealed by four separate parties. Upon review the Appeal Deciding Officer Forest Supervisor Faye Krueger reversed the decision made by Ranger Chip Sibbernsen. The ruling was based on her finding that the environmental analysis and supporting information in the project record were not adequate to support the decision in regard to cumulative effects analysis. The SEIS will be limited in its scope and focus on cumulative environmental impacts directly related to the decision made in March 2006.

Responsible Official

Chip Sibbernsen, Ogden District Ranger, Ogden Ranger District, 507 25th Street, Ogden, Utah, 84401.

Dated: July 18, 2006.

Chip Sibbersen,

District Ranger.

[FR Doc. 06–6422 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Record of Decision for the Little Red River Irrigation Project Environmental Impact Statement

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Record of decision.

SUMMARY: This notice presents the Record of Decision (ROD) regarding the Natural Resources Conservation Service (NRCS) implementation for a Water Management Project located in White County, Arkansas, that provides agricultural water for irrigation, and the enhancement of fish and wildlife habitat. NRCS prepared a Final Plan/Environmental Impact Statement (FPEIS) in cooperation with the Little Red River Regional Irrigation Water District. A Notice of Availability (NOA) of the Little Red River Irrigation Project FPEIS was published in the **Federal Register** on May 26, 2006, and all agencies and persons on the FPEIS distribution list were notified individually as well. Printed and CD–ROM versions of the FPEIS were made available and delivered to all those who requested. This Decision Notice summarizes the environmental, social, and economic impacts of the Little Red River Irrigation Project alternatives identified in the FPEIS that were considered in making this decision, and explains why NRCS selected the Preferred Alternative—Conservation/Surface Source Alternative—Canals and Pipelines (Alternative 4) for providing supplemental irrigation water and better utilizing the existing water resources while improving the overall environmental quality of the project area.

FOR FURTHER INFORMATION CONTACT: Mr. Kalven Trice, USDA/NRCS Room 3416, Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, (501) 301–3100 or e-mail: *Kalven.Trice@ar.usda.gov.*

Record of Decision—Little Red River Irrigation Project; White County, Arkansas

1. *Purpose*—As state conservationist for the Natural Resources Conservation Service, I am the Responsible Federal Official for all Natural Resources Conservation Service projects in Arkansas.

The recommended plan for the Little Red River Irrigation Project involves works of improvement to be installed by the Natural Resources Conservation Service. This project includes the installation of a pumping station, 38 miles of canal, 41 miles of pipeline, and associated land treatment practices, such as tailwater recovery systems, irrigation storage reservoirs, pumping plants, irrigation pipelines and water control structures.

The Little Red River Irrigation Project plan was prepared as a program neutral plan by the Natural Resources Conservation Service in cooperation with the Little Red River Regional Irrigation Water District. A scoping meeting, held on August 15, 2002, established the Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, as lead agency, with the Arkansas Natural Resource Commission, Arkansas Game and Fish Commission, Arkansas Natural Heritage Commission, and U.S. Fish and Wildlife Service as contributing agencies.

2. Measures taken to comply with national environmental policies—The Little Red River Irrigation project has been planned in accordance with existing Federal legislation concerned with the preservation of environmental values. The following actions were taken to ensure that the Little Red River Irrigation Project plan is consistent with national goals and polices.

A preliminary environmental evaluation was completed by an interdisciplinary team under the direction of NRCS in 2002 before the scoping meeting. It concluded that significant impacts on the human environment might occur because of the complexity and public interest of the proposed action. As RFO, I directed that a draft environmental impact statement (EIS) be prepared.

The interdisciplinary environmental evaluation of the Little Red River Irrigation project was conducted by NRCS with the assistance of the NRCS National Water Management Center, and with input from the contributing agencies. The interdisciplinary team included engineers, biologists,

economists, conservationists, an ecologist, and an environmental specialist. Preliminary alternatives were developed by the interdisciplinary team, with limited input from other local, State and Federal agencies. These preliminary alternatives were presented to the Sponsor, landowners, agencies, environmental groups, and other interested parties at public meetings. Comments, suggestions, and proposed modifications to the alternatives were considered, evaluated, and included, when considered to improve the overall project plan.

Public Meetings were held on July 18, 2002, August 15, 2002, September 4, 2003, and August 17, 2004 to solicit public participation in the environmental evaluation, to assure that all interested parties had sufficient information to understand how their concerns are affected by water resource problems, to afford local interests the opportunity to express their views regarding the plans that can best solve these problems, and to provide all interests an opportunity to participate in the plan selection. More than 50 parties were notified by mail of the joint public meetings. The records of the meetings were developed and are on file.

Testimony and recommendations were received relative to the following subjects:

a. The Little Red River Irrigation Water District was commended for their collaboration efforts with other agencies and organizations, which allowed their interest to be considered during the scoping process.

b. Careful consideration of environmental impacts was requested during identification of the problems and the development of the purpose of the project.

c. Additional financial assistance for more on-farm management, water conservation, water savings and improved rice management techniques was recommended with consideration of eliminating the main pumping station.

d. Alternative funding sources for land retirement and restoration was recommended which would allow farmers to enroll land with critically low water levels into such programs.

e. Development of the Little Red River Irrigation Project as a model project of farm efficiency, irrigation efficiency, profits, and environmental sustainability was recommended.

A draft environmental impact statement was prepared in February 2006 and made available for public review. The recommendations and comments obtained from public meetings held during project planning and assessment were considered in the preparation of the statement. Projects of other agencies were included only when they related to the Little Red River Irrigation project, and they were not evaluated with regard to their individual merit.

More than 40 copies of the draft environmental impact statement were distributed to agencies, conservation groups, organizations, and individuals for comment. The Notice of Availability (NOA) of the draft environmental impact statement was published by the Environmental Protection Agency on March 10, 2006. The comment period ended April 24, 2006. Additional comments received after the comment period have been addressed and filed in the administrative record.

The NOA of the final environmental impact statement was published by the Environmental Protection Agency on May 26, 2006. The waiting period ended on June 26, 2006.

Existing data and information pertaining to the project's probable environmental consequences were obtained from numerous agencies, independent organizations and individuals. The views of interested Federal, State, and local agencies, concerned individuals and organizations were sought. This process continued until the information for a comprehensive, reliable assessment had been gathered.

A complete picture of the project's current and probable future environmental setting was assembled to determine the proposed project's impact and identify unavoidable adverse environmental impacts that might be produced. During this phase of the evaluation, it became apparent that there were differences of opinion and conclusions leading to differing views of the project's environmental impact. After consulting with persons qualified in the appropriate disciplines, the most reasonable scientific theories and conclusions were adopted.

The consequences of a full range of reasonable and viable alternatives to specific project features were considered, studied, and analyzed. In reviewing these alternatives, courses of action that could reasonably accomplish the project purposes were considered. Attempts were made to identify the economic, social, and environmental values affected by each alternative. Both structural and nonstructural alternatives were considered.

The alternatives considered to be reasonable and to accomplish the project's objectives were (1) A surface water diversion (import) alternative, (2) a combination conservation/surface water diversion (import) alternative, utilizing pipeline conveyance, (3) the NED plan—a combination of conservation/surface water diversion (import) alternative utilizing canal and flume conveyance. Other project alternatives analyzed but not fully developed include the ''no project'' alternative, alternative crops alternative, and cropland ''retirement'' alternative. These alternatives were eliminated early in the planning process due to economic considerations, physical limitations and/or acceptability concerns. Variations of these alternatives were included in the alternatives selected for final analysis.

3. *Conclusion*—The following conclusions were reached after carefully reviewing the proposed Little Red River Irrigation Project in light of national goals and policies, particularly those expressed in the National Environmental Policy Act, and after evaluating the overall merit of possible alternatives to the project:

a. The Little Red River Irrigation Project will employ reasonable and practicable means to meet the project's objectives and remain consistent with the National Environmental Policy Act. These means include, but are not limited to, the development of a project planned to minimize adverse effects on the natural environment while accomplishing the authorized project purpose. Project features to preserve existing environmental values for future generations include: (1) Providing a source of agricultural water while conserving ground water resources; (2) implementing on-farm conservation practices that capture runoff, reducing loss of water resources; (3) creating artificial wetlands by constructing surface water storage reservoirs which may be utilized by migrating waterfowl; (4) enhancing 2,650 acres of cropland annually for wintering waterfowl use; (5) enhancing an additional 3,000 acres of wildlife habitat, including wetlands within the Raft Creek Wildlife Management Area; (6) ensuring on-farm operations are in compliance with Section 404 of the Clean Water Act, and that wetlands are avoided to the maximum extent practicable; and (7) mitigating unavoidable losses to wetlands per the guidelines and regulatory statutes of the Clean Water Act, potentially enhancing and/or creating wildlife corridors within the project area.

b. The Little Red River Irrigation Project was planned using a systematic interdisciplinary approach involving integrated uses of the natural, social and environmental sciences. All conclusions concerning the environmental impact of

the project and overall merit of existing plans were based on a review of data and information that would be reasonably expected to reveal significant environmental consequences of the proposed project. These data included studies prepared specifically for the project and comments and views of interested Federal, State, and local agencies and individuals. The results of this review constitute the basis for the conclusions and recommendations. The project will not affect any cultural resources eligible for inclusion in the National Register of Historic Places nor will it affect any species of fish, wildlife, or plant or their habitats that have been designated as endangered or threatened.

c. In studying and evaluating the environmental impact of the Little Red River Irrigation Project, every effort was made to express all significant environmental values quantitatively and to identify and give appropriate weight and consideration of non-quantifiable environmental values.

Wherever differences of opinion existed and conclusions led to different views, persons qualified in the appropriate disciplines were consulted. The most reasonable scientific theories and conclusions were adopted.

d. Every possible effort was made to identify those adverse environmental effects that cannot be avoided if the project is constructed.

e. The long-term and short-term resource uses, long-term productivity, and the irreversible and irretrievable commitment of resources are described in the final environmental impact statement.

f. All known reasonable and viable alternatives to project features and to the project itself were studied and analyzed with reference to national policies and goals, especially those expressed in the National Environmental Policy Act and Federal water resource development legislation. Each course of action was evaluated as to its possible economic, technical, social, and overall environmental consequences to determine the tradeoffs necessary to accommodate all national policies and interests. Some alternatives may tend to protect more of the present and tangible environmental amenities than the proposed project will preserve. However, no alternative or combination of alternatives will afford greater protection of the environmental values while accomplishing the other project goals and objectives.

g. I conclude, therefore, that the proposed project is the most effective means of meeting national goals and is consistent in serving the public interest by including provisions to protect and enhance the environment. I also conclude that the recommended plan is the environmentally preferable plan.

4. *Recommendations*—Having concluded that the proposed Little Red River Irrigation Project uses all practicable means, consistent with other essential considerations of the national policy, to meet the goals established in the National Environmental Policy Act, that the project will thus serve the overall public interest, that the final environmental impact statement has been prepared, reviewed, and accepted in accordance with the provisions of the National Environmental Policy Act as implemented by Departmental regulations for the preparation of environmental impact statements, and that the project meets the needs of the project sponsor, I propose to implement the Little Red River Irrigation Project.

Dated: July 14, 2006.

Kalven L. Trice,

State Conservationist, Natural Resources Conservation Service, U.S. Department of Agriculture.

[FR Doc. E6–11728 Filed 7–21–06; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Information Quality Guidelines and Request for Comments

AGENCY: Commission on Civil Rights.

ACTION: Proposed Information Quality Guidelines and Request for Comments.

SUMMARY: The Office of Management and Budget (OMB) directed Federal agencies to make available on their Web sites guidelines that ensure and maximize the quality, objectivity, utility, and integrity of information (including statistical information) they disseminate. Federal agencies should also make available on their Web sites administrative mechanisms that allow affected persons to seek and obtain correction of information that the agency maintains and disseminated that does not comply with the guidelines. The U.S. Commission on Civil Rights (Commission) now seeks public comments on the following guidelines covering pre-dissemination information quality control and an administrative mechanism for requests for correction of information the Commission publicly disseminates.

DATES: Submit comments on or before August 23, 2006.

ADDRESSES: Address comments concerning these proposed guidelines to: David P. Blackwood, Esq. General Counsel, United States Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425. Comments can be faxed to (202) 376–7672.

FOR FURTHER INFORMATION CONTACT: David P. Blackwood, Esq., General Counsel, United States Commission on Civil Rights, 624 9th Street, NW., Washington, DC 20425 Tel. (202) 376–8351.

For the reasons discussed in the summary, the Commission proposes to issue these guidelines pursuant to Section 515 of the Paperwork Reduction Act (44 U.S.C. 3502(1) *et seq.*).

Dated: July 19, 2006.

David P. Blackwood,

General Counsel.

SUPPLEMENTARY INFORMATION:

Section I. The U.S. Commission on Civil Rights' Mission and Mandate

.01 The Commission is an independent, bipartisan, fact-finding Federal agency of the executive branch established under the Civil Rights Act of 1957 to monitor and report on the status of civil rights in the nation. As the nation's conscience on matters of civil rights, the Commission strives to keep the President, Congress, and the public informed about civil rights issues that deserve concerted attention.

.02 The Commission is mandated to:

(a) Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices;

(b) Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;

(c) Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice;

(d) Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin;

(e) Submit reports, findings, and recommendations to the President and Congress;

(f) Issue public service announcements to discourage discrimination or denial of equal protection of the laws.

.03 The Commission's National Office is in Washington, DC. Its six

Regional Offices are located throughout the nation:

(a) The Eastern Regional Office, Washington, DC;

(b) Southern Regional Office, Atlanta, Georgia;

(c) Midwestern Office, Chicago, Illinois;

(d) Central Regional Office, Kansas City, Kansas;

(e) Rocky Mountain Office, Denver, Colorado; and

(f) Western Regional Office, Los Angeles, California.

.04 State Advisory Committees (SACs) are established in each State and in Washington, DC. SACs advise the Commission on matters pertaining to discrimination or denials of equal protection of the laws because of race, color, religion, sex, national origin, age, disability, or in the administration of justice. They also assist the Commission in its statutory obligation to serve as a national clearinghouse for information on those subjects. SACs present advice to the Commission in a variety of forms, including formal fact-finding reports and briefing memoranda.

Section II. The Office of Management and Budget Governmentwide Guideline

.01 Section 515 of the Treasury and General Government Appropriation Act for Fiscal Year 2001 (Public Law 106–554) directs OMB to issue to Federal agencies subject to the Paper Reduction Act (44 U.S.C. Chapter 3502(1) *et seq.*) governmentwide guidelines that provide policy and procedural guidance for ensuring and maximizing the quality, objectivity, utility, and integrity of the information (including statistical information) that they disseminate. Specifically, the OMB guidelines direct agencies to:

(a) Issue their own guidelines, consistent with government-wide guidelines, to ensure and maximize the quality, objectivity, utility, and integrity of information (including statistical information) the agency disseminates;

(b) Establish administrative mechanisms allowing affected persons to seek and obtain correction of information the agency maintains and disseminates that does not comply with OMB guidelines; and

(c) Report annually to the OMB Director the number and nature of complaints the agency received regarding compliance with OMB guidelines on quality, objectivity, utility, and integrity of information and how such complaints were resolved.

.02 The OMB guidelines offer three underlying principles. Agencies should ensure that the guidelines:

(a) Are sufficiently flexible to be applied to a wide variety of information activities that range in importance and scope, and to fit all forms of media;

(b) Meet basic information quality standards, although some information may require higher or more specific standards. Agencies should weigh the costs and benefits of higher information quality in the context of their mission, budget constraints, and timeliness in dissemination; and

(c) Are applied in a common-sensical and workable manner. Agencies should incorporate quality information guideline standards and procedures into existing processes and procedures. Application of these guidelines should not impose unnecessary administrative burdens.

Section III. The Commission's Existing Policies and Procedures That Ensure and Maximize Information Quality

.01 The Commission disseminates information on civil rights through:

(a) Reports to Congress and the President, including an annual report on civil rights enforcement as required by statute and other reports as considered appropriate;

(b) Program activities, such as hearings, briefings, conferences, and consultations; and

(c) Provision of civil rights information to the public through its clearinghouse function.

.02 In order to ensure the accuracy and the impartiality of the information it provides, the Commission has in place various mechanisms to correct the information it disseminates. OMB's Information Quality Guidelines urge agencies to integrate into existing guidelines for dissemination of information the standards for information quality embodied in the Data Quality Act. The Commission shall improve the quality of the information it disseminates as it seeks to achieve the strategic goals of its mission while adhering to budget and resource priorities.

.03 The mechanisms the Commission uses to ensure information quality are:

(a) Defame and Degrade. Commission regulations provide procedural guidelines when statements made at Commission hearings or in reports will defame, degrade or incriminate persons or institutions.

A statement defames and degrades if its probable effect is to damage the person or institution criticized in reputation, business, or otherwise. In determining whether damage is likely to result, it is necessary to consider the substance of the allegations, all the circumstances surrounding it, and the community perception and reaction that is likely to result. All this must all be considered in light of the applicable legal standards governing defamation of public versus private persons and entities.

When in advance of a hearing the Commission determines that certain evidence may tend to defame, degrade, or incriminate any person at any hearing, it shall receive such evidence of testimony, or a summary of such evidence or testimony in executive session. The Commission affords such persons defamed, degraded, or incriminated by such evidence or testimony an opportunity to appear and be heard in executive session with a reasonable number of additional witnesses they request, before deciding to use such evidence or testimony. If the Commission decides to make this information public, it will give the person the opportunity to appear as a voluntary witness or submit a sworn statement. procedures for addressing evidence presented at a hearing that may tend to defame, degrade, or incriminate any person are specified at 45 CFR 702.11.

If a Commission report tends to defame, degrade, or incriminate any person, the report or relevant portions thereof shall be delivered to such person at least thirty (30) days before the report is published to allow such person the opportunity to make a timely verified answer to the report, or relevant portions thereof. Administrative Instruction 7–1, Procedures for Providing an Opportunity for Response to Persons Criticized by Commission Publications and Audiovisual Products, at section 6 provides that whenever a publication, other than a statutory report, contains material that tends to defame and degrade, such person must be provided a full and fair opportunity to respond to such material. Section 7 of Administrative Instruction 7–1 provides for a defame and degrade review of State Advisory Committee reports. Section 8 of Administrative Instruction 7–1 provides for a defame and degrade review of the *Civil Rights Journal.*

(b) *Legal Sufficiency Review.* Administrative Instruction 1–6, National Project Development and Implementation, at section 15 provides for legal sufficiency review by the Office of General Counsel on draft reports and national office publications that are provided to the public. The purpose of the legal sufficiency review is to ensure the adequate interpretation and citation of legal materials and compliance with statutory requirements. SAC reports also

will be subject to a legal sufficiency review.

(c) *Editorial Policy Review.* Administrative Instruction 1–6, National Project Development and Implementation, at section 14 provides that the Staff Director will appoint members of an editorial policy board to review draft national reports to determine the adequacy and accuracy of the substantive information in the draft document (for example, conceptual soundness, adherence to Commission policy, quality of research, argumentation, and documentation of major points). The project staff revises the draft document in accordance with the editorial board comments. The appropriate office director apprises the Staff director by memorandum of areas upon which agreement was not reached and changes were not made. Once the substantive changes are made, the new material must be submitted for an expedited legal sufficiency review.

The Regional Directors are responsible for ensuring that such reports are unbiased, methodologically sound, well written, appropriately organized, and properly formatted. SACs are ultimately responsible for the substance of their reports and memoranda. A report is forwarded to the Staff Director following formal approval from the appropriate State Advisory Committee.

(d) *Affected Agency Review.* Administrative Instruction 1–6, National Project Development and Implementation, at section 16 provides that after completing any revisions occasioned by legal and editorial reviews, the director of the appropriate office sends the sections of the draft report that pertain to a government agency to the affected agency for review and comment on the accuracy of the material contained therein. The Commission's draft findings, conclusions, and recommendations are not submitted to the affected agency. Nongovernmental organizations receive pertinent material for review where appropriate. Upon receipt of comments, the project staff prepares the appropriate revisions. SAC reports also are subject to an affected agency review.

.04 Information Technology and Systems Management. Administrative Instruction 4–18, Information Technology and Systems Management, provides guidance for the appropriate management of information technology resources and systems throughout their life cycle, in accordance with federal regulations, policies and guidelines. It also provides for the establishment and maintenance of a strategic information resources management planning process that includes:

(a) An up-to-date five-year plan that has, among others, document linkages between mission needs and information technology capabilities; and

(b) An up-to-date security and disaster preparedness plan for information systems that provides adequate assurances of the availability, confidentiality and integrity of the information systems.

.05 The Staff Director is the Chief Information Officer (CIO) of the agency and has primary responsibility for managing the Commission's information resources. The Deputy CIO will manage the Commission's security systems and procedures, and monitor Commission compliance with appropriate federal policies, principles, standards, guidelines, rules, and administrative instructions.

.06 Data Collection from the Public.

(a) Administrative Instruction 1–6, National Project Development and Implementation, at section 9 provides that the Chief of the Administrative Services and Clearinghouse Division (ASCD) is the Commission's designated paperwork reduction officer, and as such, is responsible for reviewing proposed data collection procedures as required by the Paperwork Reduction Act of 1980. It provides that when collecting information from ten or more persons or organizations, the Commission must receive prior approval from OMB. The appropriate documents are submitted to the ASCD Chief at least fifty (50) days before the anticipated administration of a questionnaire or interview schedule.

(b) The Civil rights Commission Amendments Act of 1994, Pub. L. 103–419, 108 Stat. 4338, at 42 U.S.C. 1975a(e) provides that the Commission may issue subpoenas for the attendance of witnesses and the production of written or other matter in a hearing approved by the Commission. In addition, the Commission may use depositions and written interrogatories to obtain information and testimony about matters that are the subject of a Commission hearing or report.

Further, data also are collected at briefings, conferences, hearings, and during consultation and interviews by staff. Staff shall submit the Commission's Privacy Act notice to potential data sources at these prior to collecting the data.

Section IV. Scope and Applicability of the Commission's Quality Information Guidelines

.01 Consistent with OMB guidance, the definitions of information and dissemination set the scope and applicability of the Commission's quality information guidelines. For the purposes of these guidelines, information means any communication or representation of facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that the Commission disseminates from a Web page, but does not include the provision of hyperlinks to information that others disseminate.

.02 This definition of information does not include:

(a) Opinions or policies, where the presentation makes clear that the statements are subjective opinions, rather than facts. Underlying information upon which the opinion or policy is based may be subject to these guidelines only if the Commission publishes that information;

(b) Information originated by and attributed to non-Commission sources, provided the Commission does not expressly rely upon it. Examples include non-U.S. government information reported and duly attributed in materials the Commission prepared and disseminated, hyperlinks on the Commission's Web site to information that others disseminate, and reports of advisory committees published on the Commission's Web site that are not explicitly endorsed by the Commission;

(c) Statements relating solely to the Commission's internal personnel rules and practices and other materials produced for the Commission's employees, contractors, or agents;

(d) Descriptions of the Commission, its responsibilities, and organizational components;

(e) Statements, the modifications of which might cause harm to the national security, including harm to the national defense or foreign relations of the United States;

(f) Statements of Commission policy; however, any underlying information the Commission published upon which a statement is based may be subjected to these guidelines;

(g) Testimony or comments of Commission officials before courts, administrative bodies, Congress, or the media;

(h) Investigatory material compiled pursuant to U.S. law or for law enforcement purposes in the United States; or

(i) Statements which are, or which reasonably may be expected to become, the subject of litigation, whether before a U.S. or foreign court or in an

international arbitral or other dispute resolution proceeding.

.03 Dissemination means Commission initiated or sponsored distribution of information to the public (see 5 CFR 1320.3(d) ''Conduct or Sponsor'').

.04 This definition of dissemination does not include distributions of information or other materials that are:

(a) Produced in response to requests for Commission records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or similar law; or

(b) Archival records, public filings, responses to subpoena or compulsory document productions, or documents prepared and released in the context of adjudicative processes. These guidelines do not impose any additional requirements on the Commission during adjudicative proceedings and do not provide parties to such adjudicative proceedings any additional rights of challenge or appeal; and

(c) Limited to Commission employees or Commission contractors or grantees, as well as intra-or-inter-agency use or sharing of government information.

.05 Consistent with OMB guidance, the Commission's guidelines apply to any covered information the Commission disseminated on or after October 1, 2002. The Commission's administrative mechanism shall apply to information that it disseminates on or after October 1, 2002, regardless of when it first disseminated the information.

Section V. The Commission's Guidelines for Ensuring and Maximizing Information Quality

0.1 In accordance with OMB guidelines, quality encompasses utility, objectivity, and integrity. These four statutory terms sometimes are collectively referred to as quality. The Commission shall adopt a basic standard of quality and take appropriate steps to ensure that all offices in the National Office and each Regional Office incorporate quality criteria into its information dissemination practices.

0.2 Utility of Information

(a) Utility means the usefulness of the disseminated information to its intended users, including the public. The Commission is committed to disseminating quality information. Basic to achieving utility is an understanding of what information is needed as the Commission seeks to fulfill its mission and mandate. The Commission shall identify civil rights issues in which there is a critical need for information and shall develop and implement plans to provide such information.

(b) The Commission shall assess the utility of the information it will produce from original research and secondary analysis of existing data. It shall also assess the utility of the information it disseminates that is provided by or obtained from outside sources and which it adopts, endorses, or uses.

(c) When reproducibility and transparency of information are essential for determining information utility, the Commission shall ensure the reproducibility and transparency of the research design and analytic methods. In this context, reproducibility means that the information is capable of being reproduced, subject to an acceptable degree of imprecision. With respect to analytic results, ''capable of being substantially reproduced'' means that independent analysis of the original or supporting data using identical methods would generate similar analytic results, subject to an acceptable degree of imprecision.

(d) In order to enhance further the utility of information, the Commission shall ensure that the information it will disseminate is clearly written in plain English, grammatically correct, and free of spelling or typographical errors. Where appropriate, the Commission shall include contact information for intended users and the public who may wish to obtain supplementary information, seek further elucidation, or provide comments.

0.3 Objectivity of Information

Objectivity concerns substance and presentation of disseminated information. Substance focuses on whether the content of the disseminated information is accurate, reliable, unbiased, and balanced. Presentation concerns whether the disseminated information is presented in an accurate, clear, complete, and unbiased manner. The Commission is committed to disseminating information that reflects these two elements.

(a) In the course of fulfilling its mission and mandate, the Commission conducts social science studies and evaluates federal civil rights enforcement programs, reports on findings and conclusions, and makes recommendations. The Commission strives for a research process that embodies methodological and statistical rigor, intellectual honesty in analysis, and presentation of findings and conclusions in full and proper context in order to achieve accurate, reliable, and unbiased reports. In this respect, the Commission's Administrative Instruction 1–6, National Project Development and Implementation at sections 7 and 8 is instructive. Consistent with it, the Commission shall ensure that the program office primarily responsible for reports:

(1) Develops methodologically strong and practically feasible research designs capable of judging the issues addressed;

(2) Makes explicit the assumptions underlying research efforts;

(3) Conducts thorough review of the literature representing a wide range of perspectives on the subject of study or evaluation;

(4) Uses appropriate and sound research methods to gather information;

(5) Uses appropriate and sound statistical techniques to analyze collected information;

(6) Ensures that the analysis is unbiased;

(7) Presents disseminated information within a full and proper context, including supporting data as appropriate;

(8) Identifies data sources (to the extent possible, consistent with confidentiality protections); and

(9) Specifies limitations of the study or evaluation, including error sources that affect data quality.

The Staff Director is responsible for reviewing national office project designs and proposals to ensure that they reflect objectivity and balance. The Staff Director also reviews State Advisory Committee reports for balance and objectivity.

.04 In conducting social science studies and evaluation of federal civil rights enforcement programs, the Commission may combine original research with secondary analysis of existing data or may rely solely on the latter. The sources of existing data may be other federal government agencies, advisory committees, or other organizations and individuals. The Commission expects that these entities will subject information they submit to adequate quality control measures. Prior to using existing data from outside sources, the responsible program office shall review and verify the data as necessary and appropriate. Data collected at briefings may be verified by requiring the outside sources to submit testimony upon oath or affirmation. The underlying information upon which the disseminated material is based may be subject to these guidelines only if the Commission publishes that information. Being subject to these guidelines does not necessarily mean that the material the Commission publishes is a policy statement of the United States government.

.05 When the responsible program office determines that the information it will disseminate is influential social science, financial, legal, or statistical information, it shall take extra care to

include a high degree of transparency about data and research methods to meet OMB's requirement for the reproducibility of such information. In this context, influential means that such information will have or does have a clear and substantial impact on important public policies pertaining to civil rights issues or important private sector decisions that have civil rights implications. A high degree of transparency for disseminated information here means that the methodology used to derive the results is readily understandable to persons experienced in the appropriate field of study. In determining the appropriate level of transparency, the responsible program office will consider the types of data that can be practically subjected to a reproducibility requirement given ethical, feasibility, confidentiality, and national security constraints. In making this determination, the responsible program office will hold analytical results to an even higher standard than original data. It is important that analytic results have a high degree of transparency regarding:

(a) The source of the data used;

(b) The various assumptions employed;

(c) The analytic methods applied; and

(d) The statistical procedures employed.

.06 The Commission may contract, from time to time, with organizations or individuals to conduct research and analysis in support of its mission and mandate, but Commission policy does not influence their results. The responsible program office that disseminates contractor-prepared information will maintain records on data sources, data collection methods, and statistical techniques used in analysis, and retain all data and documents employed in preparing contractor reports. The Commission expects that contractors will adhere to research standards set forth in section V.03 and .04 above. When the Lead Office anticipates that the contractor-prepared information it will disseminate is influential social science, financial, or statistical information, it will ensure that the contractor adheres to section V.05 above.

.07 The clearance process contributes in important ways to the objectivity of disseminated information. The Commission's Administrative Instruction 1–6, National Project Development and Implementation, at sections 13, 14, 15, 16, and 17 provides a rigorous, multi-phased quality control clearance. Where appropriate, the Commission will seek substantive input from other government agencies, nongovernment organizations, scholars, and the public. The Commission also will determine if peer review is appropriate and, if necessary, the Lead Office will coordinate such review;

.08 Public dissemination of hard-bound information and all information published in final form on the Commission's Web site at *www.usccr.gov* shall occur only after clearances are obtained from the Office of the Staff Director, and, if appropriate, with the approval of the Commissioners.

.09 These guidelines focus on procedures for the dissemination of information, as those terms are defined herein. Accordingly, procedures specifically applicable to forms of communication outside the scope of these guidelines, such as those for correspondence, press releases, or to other federal employees, among others, are not included.

.10 Integrity of Information

(a) Integrity refers to security, that is, the protection of information from unauthorized access or revision in order to ensure that it is not compromised through corruption or falsification. Information technology is essential to the Commission as it seeks to fulfill its mission and mandate. A critical component of information integrity is protecting information technology systems from unauthorized access that could compromise information stored therein.

.11 Consistent with Administrative Instruction 4–18, Information Technology and System Management, the Commission shall ensure that ASCD coordinates and works with all offices in the National Office, the Regional Offices, and SACs to guarantee the integrity of information residing in its technology systems.

.12 To assist in fulfilling its mission, the Commission's Office of Civil Rights Evaluation and Office of General Counsel conduct studies on issues with civil rights implications. They may collect information for analysis and/or obtain existing information from other sources. These program offices shall protect such information from unauthorized, unanticipated, or unintentional modification. They shall use appropriate controls to safeguard draft reports and confidential information, such as interrogatory responses, from improper dissemination.

Section VI. Administrative Procedures for Pre-Dissemination Review

.01 Each Commission's program office in the National Office and each Regional Office shall incorporate OMB and Comission information quality principles into their existing pre-dissemination review procedures as appropriate.

Section VII. Administrative Mechanism for Correction of Information

.01 The Commission shall allow any affected person to request the correction of Commission-disseminated information that does not comply with applicable OMB and Commission information quality guidelines. An affected person is an individual or an entity that may use, benefit from, or be harmed by the disseminated information at issue.

.02 Information Correction Requests

(a) In the Commission's correction request process the burden of proof rests with the requester. An affected person who believes that information the Commission disseminates does not adhere to the information quality guidelines of OMB or the Commission, and who would like to request correction of specific information, needs to submit a Petition for Correction with the following information.

(1) Name, mailing address, e-mail address, telephone number, and organizational affiliation (if any) of the individual or organization submitting a petition;

(2) Detailed description of the information the requester believes does not comply with the Commission's guidelines, including the exact name of the report or publication, the date, and a description of the specific item in question;

(3) Description of the requester's interest in the information and how the requester is affected by the information in question; and

(4) Description of reason(s) that the information should be corrected, including the elements of the information quality guidelines that were not followed.

(b) The Petition for Correction should be sent to the Deputy Chief Information Officer (DCIO) for Information Management at the following address: Deputy Chief Information Officer, U.S. Commission on Civil Rights, 624 Ninth Street, NW., Washington, DC 20425.

(c) Alternatively, requesters may submit an e-mail request to the following address: *dblackwood@usccr.gov.* Requesters should indicate that they are submitting an Information Quality Request in the subject line of the e-mail.

.03 The DCIO will review the request and determine whether it contains all the information required for a Petition. If the request is unclear or incomplete, he/she will seek clarification from the requester.

.04 If the request is complete, the DCIO will forward it to the appropriate program office(s) for a response. The responsible office(s) will determine whether a correction is warranted, and if so, what corrective action it will take. The answer will take into consideration the importance of the information involved, the magnitude of the error, and the cost of undertaking the correction.

.05 The Commission is not required to change the content or status of information simply based on the receipt of a Petition for Correction. The Commission may reject a request that appears to be made in bad faith or without justification, and is only required to undertake the degree of correction that is appropriate for the nature and timeliness of the information involved. In addition, the Commission need not respond to requests involving information not covered by the information quality guidelines.

.06 The Commission will respond to all Petitions for Correction within sixty (60) calendar days of the receipt of the request by the DCIO, unless there is a reasonable basis for an extension. The requester will be told of the right to appeal the decision.

.07 Appeal

(a) If the requester is not satisfied with the Commission's decision on the request, he/she may appeal to the Commission's CIO within thirty (30) calendar days of the receipt of the Commission's decision. This administrative appeal must include a copy of the initial request, a copy of the Commission's decision, and a written narrative explaining why the requester believes the Commission's decision was inadequate, incomplete, or in error.

(b) This appeal will be sent to the Commission's CIO at the following address: The Chief Information Officer, Staff Director's Office, RE: Information Quality Appeal, Room 700, 624 Ninth Street, NW., Washington, DC 20425.

(c) All appeals will be impartially reviewed by parties other than those who prepared the Commission's decision. The Commission will respond to all appeals within sixty (60) calendar days of the CIO's receipt of the appeal.

(d) If the appropriate Commission official, whether at the initial or appeal stage, decides that the requester is correct and the information should be corrected, he/she will notify the Staff Director who will instruct the officials in charge of publications to attach an errata page to the publication in question so that all future dissemination of the data will show that the error was corrected.

(e) The Commission will also post information quality correction requests to its Web site. The specific information will include a copy of each correction request, the Commission's formal response(s), and any communications regarding appeals. The Commission also will include a brief description of each request and any subsequent responses.

[FR Doc. 06–6426 Filed 7–21–06; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1464]

Grant of Authority for Subzone Status, Eastman Kodak Company, (X–ray Film, Color Paper, Digital Media, Inkjet Paper, Entertainment Imaging, and Health Imaging) Whittier and Santa Fe Springs, California

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

WHEREAS, the Board's regulations (15 CFR part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

WHEREAS, the Port of Long Beach (California), grantee of Foreign–Trade Zone 50, has made application to the Board for authority to establish special–purpose subzone status at the warehousing, processing and distribution facilities (X–ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging) of the Eastman Kodak Company, located in Whittier and Santa Fe Springs, California (FTZ Docket 46–2005, filed 9/26/2005; amended 5/15/2006);

WHEREAS, notice inviting public comment has been given in the **Federal Register** (70 FR 57555–57556, 10/3/2005); and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

NOW, THEREFORE, the Board hereby grants authority for subzone status for activity related to X–ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging at the warehousing, processing and distribution facilities of the Eastman Kodak Company, located in Whittier and Santa Fe Springs, California (Subzone 50K), as described in the amended application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28, and further subject to a restriction that privileged foreign status (19 CFR 146.41) shall be elected:

1. On foreign merchandise that falls under HTSUS headings or subheadings 2821, 2823, all of Chapter 32 or 3901.20 or where the foreign merchandise in question is described as a ''pigment, pigment preparation, masterbatch, plastic concentrate, flush color, paint dispersion, coloring preparation, or colorant.''
2. On foreign merchandise that falls under HTSUS heading 4202, with the exception of merchandise classified in HTSUS categories 4202.91.0090 and 4202.92.9060.

Signed at Washington, DC, this 14th day of July 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration,Alternate ChairmanForeign–Trade Zones Board.

ATTEST:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–11747 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1463]

Grant of Authority for Subzone Status, Eastman Kodak Company, (X–ray Film, Color Paper, Digital Media, Inkjet Paper, and Entertainment Imaging), Windsor, Colorado

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the Foreign–Trade Zones Act provides for '' . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and

for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

WHEREAS, the Board's regulations (15 CFR part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

WHEREAS, the City and County of Denver, Colorado, grantee of Foreign–Trade Zone 123, has made application to the Board for authority to establish special–purpose subzone status at the manufacturing, warehousing, processing and distribution facilities (X–ray film, color paper, digital media, inkjet paper, and entertainment imaging) of the Eastman Kodak Company, located in Windsor, Colorado (FTZ Docket 37–2005, filed 8/1/2005; amended 5/15/2006);

WHEREAS, notice inviting public comment has been given in the **Federal Register** (70 FR 46474–46475, 8/10/2005); and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest;

NOW, THEREFORE, the Board hereby grants authority for subzone status for activity related to X–ray film, color paper, digital media, inkjet paper, and entertainment imaging at the manufacturing, warehousing, processing and distribution facilities of the Eastman Kodak Company, located in Windsor, Colorado (Subzone 123C), as described in the amended application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including § 400.28, and further subject to a restriction that privileged foreign status (19 CFR 146.41) shall be elected:

1. On foreign merchandise that falls under HTSUS headings or subheadings 2821, 2823, all of Chapter 32 or 3901.20 or where the foreign merchandise in question is described as a ''pigment, pigment preparation, masterbatch, plastic concentrate, flush color, paint dispersion, coloring preparation, or colorant.''
2. On foreign merchandise that falls under HTSUS heading 4202, with the exception of merchandise classified in HTSUS categories 4202.91.0090 and 4202.92.9060.

Signed at Washington, DC, this 14th day of July 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration,Alternate ChairmanForeign–Trade Zones Board.

ATTEST:

Andrew McGilvray,

Acting Executive Secretary.

[FR Doc. E6–11748 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Amended Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: This is an amendment to the notice of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews, 71 FR 37901 (July 3, 2006) (Advance Notification).

EFFECTIVE DATE: July 24, 2006.

FOR FURTHER INFORMATION CONTACT: Zev Primor, Office 4, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2006, the Department of Commerce (''the Department'') published in the **Federal Register** a list of sunset reviews scheduled for initiation in August 2006. (*See Advanced Notification*). We are amending the advanced sunset **Federal Register** notice because we have determined that early initiation of the sunset reviews for all of the Certain Hot–Rolled Carbon Steel Flat Products orders would promote administrative efficiency.

Upcoming Sunset Reviews for August 2006

The following Sunset Reviews are scheduled for initiation in August 2006 and will appear in that month's Notice of Initiation of Five–Year Sunset Reviews.

Antidumping Duty Proceedings	Department Contact
Foundry Coke from the PRC (A–570–862)	Jim Nunno (202) 482–0783
Solid Agricultural Grade Ammonium Nitrate from Ukraine (A–823–810)	Brandon Farlander (202) 482–0182
Certain Hot–Rolled Carbon Steel Flat Products from Argentina (A–357–814)	Zev Primor (202) 482–4114
Certain Hot–Rolled Carbon Steel Flat Products from the PRC (A–570–865)	Jim Nunno (202) 482–0783
Certain Hot–Rolled Carbon Steel Flat Products from India (A–533–820)	Zev Primor (202) 482–4114
Certain Hot–Rolled Carbon Steel Flat Products from Indonesia(A–560–812)	Zev Primor (202) 482–4114
Certain Hot–Rolled Carbon Steel Flat Products from Kazakhstan (A–834–806)	Dana Mermelstein (202) 482–1391
Certain Hot–Rolled Carbon Steel Flat Products from the Netherlands (A–421–807)	Dana Mermelstein (202) 482–1391
Certain Hot–Rolled Carbon Steel Flat Products from Romania (A–485–806)	Zev Primor (202) 482–4114
Certain Hot–Rolled Carbon Steel Flat Products from South Africa (A–791–809)	Dana Mermelstein (202) 482–1391
Certain Hot–Rolled Carbon Steel Flat Products from Taiwan (A–583–835)	Dana Mermelstein (202) 482–1391
Certain Hot–Rolled Carbon Steel Flat Products from Thailand (A–549–817)	Dana Mermelstein (202) 482–1391
Certain Hot–Rolled Carbon Steel Flat Products from Ukraine (A–823–811)	Dana Mermelstein (202) 482–1391
Steel Concrete Reinforcing Bars from Belarus (A–822–804)	Brandon Farlander (202) 482–0182
Steel Concrete Reinforcing Bars from the PRC (A–570–860)	Brandon Farlander (202) 482–0182
Steel Concrete Reinforcing Bars from Indonesia (A–560–811)	Brandon Farlander (202) 482–0182
Steel Concrete Reinforcing Bars from Latvia (A–449–804)	Brandon Farlander (202) 482–0182
Steel Concrete Reinforcing Bars from Moldova (A–841–804)	Brandon Farlander (202) 482–0182
Steel Concrete Reinforcing Bars from Poland (A–455–803)	Brandon Farlander (202) 482–0182
Steel Concrete Reinforcing Bars from South Korea (A–580–844)	Brandon Farlander (202) 482–0182
Steel Concrete Reinforcing Bars from Ukraine (A–823–809)	Brandon Farlander (202) 482–0182
Countervailing Duty Proceedings.	

Antidumping Duty Proceedings	Department Contact
Certain Hot–Rolled Carbon Steel Flat Products from Argentina (C–357–815)	Brandon Farlander (202) 482–0182
Certain Hot–Rolled Carbon Steel Flat Products from India (C–533–821)	Brandon Farlander (202) 482–0182
Certain Hot–Rolled Carbon Steel Flat Products from Indonesia (C–560–813)	Brandon Farlander (202) 482–0182
Certain Hot–Rolled Carbon Steel Flat Products from South Africa(C–791–810)	Dana Mermelstein (202) 482–1391
Certain Hot–Rolled Carbon Steel Flat Products from Thailand (C–549–818)	Dana Mermelstein (202) 482–1391
Suspended Investigations.	
No suspended investigations are scheduled for initiation in August 2006..	

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 18, 2006.

Thomas F. Futtner,

Acting Director, AD/CVD Operations, Office 4,Import Administration.

[FR Doc. E6–11745 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–865]

Final Rescission of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 24, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Carrie Blozy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 and (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2005, the Department of Commerce (''Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the People's Republic of China (''PRC'') for the period November 1, 2004, through October 31, 2005. *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 65883 (November 1, 2005). On November 30, 2005, Nucor Corporation, a domestic producer of certain hot–rolled carbon steel flat products, requested that the Department conduct an administrative review of Angang Group International Trade Corporation, Angang Group Hong Kong Co., Ltd., New Iron & Steel Co., Ltd. (''collectively Angang''); and Shanghai Baosteel Group Corporation, Baoshan Iron and Steel Co., Ltd., and Baosteel Group International Trade Corporation (collectively ''Baosteel''). On December 22, 2005, the Department published a notice of initiation of an antidumping duty administrative review on certain hot–rolled carbon steel flat products from the PRC. *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part* (''*Notice of Initiation*''), 70 FR 76024 (December 22, 2005). On May 3, 2006, we preliminarily rescinded this review based on evidence on the record indicating that there were no entries into the United States of subject merchandise during the period of review (''POR'') by the named firms. *See Preliminary Rescission of Antidumping Duty Administrative Review: Certain Hot–Rolled Carbon Steel Flat Products From the People's Republic of China*, 71 FR 26040 (May 3, 2006) (''*Preliminary Rescission*''). We invited interested parties to submit comments on our *Preliminary Rescission*. We did not receive any comments on our *Preliminary Rescission*. The POR is November 1, 2004 through October 31, 2005.

Scope of the Review

For purposes of this review, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review.

Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and, iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).

Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300

and higher.
Ball bearing steels, as defined in the HTSUS.
Tool steels, as defined in the HTSUS.
Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
ASTM specifications A710 and A736.
USS abrasion–resistant steels (USS AR 400, USS AR 500).
All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to this review is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot–rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and U.S. Customs purposes, the written description of the merchandise under review is dispositive.

Final Rescission of Review

Because neither Angang nor Baosteel made shipments to the United States of subject merchandise during the POR, and because we did not receive any comments on our *Preliminary Rescission*, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding this review of the antidumping duty order on certain hot–rolled carbon steel flat products from the PRC for the period of November 1, 2004, to October 31, 2005. *See, e.g., Polychloroprene Rubber from Japan: Notice of Rescission of Antidumping Duty Administrative Review*, 66 FR 45005 (August 27, 2001). The cash deposit rate for Angang and Baosteel will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–11744 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071106G]

RIN 0648–AT94

Fisheries in the Western Pacific; Western Pacific Bottomfish and Seamount Groundfish Fisheries; Guam Bottomfish Management Measures

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

ACTION: Announcement of availability of FMP amendment; request for comments.

SUMMARY: Amendment 9 to the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP Amendment 9) would prohibit large vessels, i.e., those 50 ft (15.2 m) or longer, from fishing for bottomfish in Federal waters within 50 nm (92.6 km) around Guam, and would establish Federal permitting and reporting requirements for these large bottomfish fishing vessels. The amendment is intended to maintain viable bottomfish catch rates by small vessels in the fishery, to sustain participation by smaller vessels in the fishery, to maintain traditional patterns of the bottomfish supply to local Guam markets, and to provide for the collection of adequate fishery information for effective management.

DATES: Comments on the amendment must be received by September 22, 2006.

ADDRESSES: Comments on FMP Amendment 9, identified by 0648–AT94, should be sent to any of the following addresses:

• E-mail: *AT94Guam@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier ''AT94 Guam Bottomfish.'' Comments sent via e-mail, including all attachments, must not exceed a 10 megabyte file size.

• Federal e-Rulemaking portal: *www.regulations.gov*. Follow the instructions for submitting comments.

• Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700.

Copies of the FMP, Amendment 9, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Initial Regulatory Flexibility Analysis (IRFA) may be obtained from William L. Robinson.

FOR FURTHER INFORMATION CONTACT: Robert Harman, NMFS PIR, 808–944–2271.

SUPPLEMENTARY INFORMATION: FMP Amendment 9, developed by the WPFMC, has been submitted to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson-Stevens Act). This notice announces that the amendment is available for public review and comment for 60 days. NMFS will consider public comments received during the comment period in determining whether to approve, partially approve, or disapprove FMP Amendment 9.

The bottomfish fishery operating in Federal waters around Guam is managed under the Fishery Management Plan for Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP), but aside from restrictions on the use of certain destructive fishing methods that apply to the bottomfish fisheries throughout the western Pacific, the Guam fishery is mostly unregulated at this time. Potential developments in the fishery, however, led the WPFMC to prepare FMP Amendment 9.

The Guam-based small-boat bottomfish fishery is a mix of subsistence, recreational, and limited commercial fishing, particularly in the summer months when weather conditions are calm. There are currently three primary sources of fisheries-

dependent fisheries data for Guam: a boat-based and shoreline-based creel surveys conducted by staff of the Division of Aquatic and Wildlife Resources (DAWR), a voluntary fish dealer trip ticket invoice system coordinated by DAWR staff, and a voluntary data collection system established and coordinated by the Guam Fishermen's Cooperative with data submitted to and processed by DAWR staff. Based on the current FMP reporting and management requirements, these data collection programs can provide adequate information about Guam's inshore bottomfish fisheries that are conducted by smaller vessels. Thus, the amendment does not intend to establish additional data collection requirements on smaller vessels.

There is a potential component of Guam's bottomfish fishery in which fishermen in relatively large vessels (i.e., greater than 50 ft or 15.2 m in length) target deep-slope fish species, particularly onaga (longtail red snapper, or flame snapper, *Etelis coruscans*). This fishery is currently inactive, but several vessels have operated in the past. The fish were caught on offshore banks in Federal waters, landed at Guam's commercial port, and rather than entering the local market, exported by air to foreign markets, especially Japan. The activity occurred on some or all of Guam's southern banks, including Galvez, 11–Mile, Santa Rosa, White Tuna, and Baby Banks. Most of the vessels fishing on these southern banks targeted the shallow-water bottomfish complex, but some targeted the deep-water complex. The banks to the north of Guam, including Rota Bank, and far to the west of Guam, including Bank A, appear not to have been fished at this time.

The potential for large-vessel bottomfish fishing activity to resume on the offshore banks prompted concerns about fishery information being inadequate for effective management, the potential for small-vessel catch rates to decline to non-viable levels, threats to sustained participation by smaller-vessels in the fishery, and disruptions to traditional patterns of supply of bottomfish products to the local market.

Thus, FMP Amendment 9 has the following objectives:

- To ensure that adequate information is routinely collected for the large-vessel, export-oriented bottomfish fishery in Federal waters around Guam;
- To maintain adequate opportunities for small-scale commercial, recreational, and subsistence bottomfish fishermen in Federal waters around Guam;
- To provide for sustained community participation by smaller vessels in the Guam bottomfish fishery; and
- To encourage consistent availability of fresh, locally caught deepwater bottomfish products to Guam consumers.

After considering a wide range of management options, including many options suggested by the public during a public scoping process, the WPFMC recommended several measures that would be established under FMP Amendment 9, including the following:

- A Federal fishing permit that would be required for large vessels, i.e., 50 ft (15.2 m) or greater in length, to fish for bottomfish in authorized areas around Guam;
- A Federal fishing logbook, in which the large bottomfish vessels would be required to record their daily catch and effort information to be supplied to NMFS; and
- A bottomfish area closure, encompassing Federal waters within 50 nm (92.6 km) around Guam, in which large vessels targeting bottomfish would be prohibited from fishing.

NMFS seeks public comment on FMP Amendment 9, which must be received by September 22, 2006, to be considered by NMFS when it decides whether to approve, partially approve, or disapprove the amendment. NMFS will review FMP Amendment 9 to determine whether it complies with the Magnuson-Stevens Act, the National Standards of the Magnuson-Stevens Act, and other applicable law. In the near future, NMFS intends to publish in the **Federal Register** a proposed rule to implement FMP Amendment 9.

Dated: July 18, 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–11752 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071806E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene one public meeting of the Ad Hoc Shrimp Effort Working Group (SEWG).

DATES: The SEWG meeting will convene at 9 a.m. on Monday, August 7, 2006 and conclude no later than 5 p.m. on Tuesday, August 8, 2006.

ADDRESSES: The meeting will be held at the Quorum Hotel Tampa, 200 N. Westshore Blvd., Tampa, FL 33609; telephone: (813) 289–8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Assane Diagne, Economist, telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene meetings of the Ad Hoc Shrimp Effort Working Group (SEWG) to begin evaluating shrimp effort in the Exclusive Economic Zone (EEZ) of the Gulf of Mexico. The working group, appointed by the Council during its March 2006, regular meeting, is charged with providing the Council with alternatives for determining the appropriate level of effort in the shrimp fishery in the EEZ. The group also will discuss the level of effort necessary to achieve optimum yield in the shrimp fishery and what level of effort would derive the maximum benefits of that fishery. The SEWG includes fishery biologists, economists and others knowledgeable about shrimp effort in the Gulf of Mexico.

Although other non-emergency issues not on the agenda may come before the SEWG for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the SEWG will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 19, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–11683 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071806G]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Reef Fish Advisory Panel (AP) and its Standing and Special Mackerel and Reef Fish Scientific and Statistical Committees (SSC).

DATES: The meetings will begin at 8:30 a.m. on Tuesday, August 8, 2006 and conclude by 12 noon on Thursday, August 10, 2006.

ADDRESSES: The meeting will be held at the Quorum Hotel, 700 North Westshore Boulevard, Tampa, FL 33607

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Council will convene the Standing and Special Mackerel SSC at 8:30 a.m. on Tuesday, August 8, 2006, to consider and possibly make recommendations on a report on mixing and other aspects of a previous stock assessment for king mackerel developed by a special, joint SSC made up of SSC members from the Council and the South Atlantic Fishery Management Council. The Council will then convene the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) and its Reef Fish AP in a joint session on Tuesday, August 8, 2006, from 1 p.m. to 5:30 p.m., to receive presentations of stock assessment results for vermilion snapper, greater amberjack, gray triggerfish, and gag grouper.

Beginning at 8:30 a.m. on August 9, 2006, the Reef Fish AP will discuss these stock assessments and potentially provide recommendations to the Council. The Reef Fish AP will also consider and possibly provide recommendations on alternatives in a Draft Reef Fish Amendment 27/Shrimp Amendment 14 that could: (1) Change the total allowable catch (TAC) for red snapper, (2) change the minimum size limit for red snapper, (3) change the recreational fishing season and bag limit for red snapper, (4) reduce the bag limit of red snapper for captains and crew of for-hire vessels to zero, (5) modify allowable fishing gear to possibly include changes to the type and size of hooks used to harvest red snapper, and (6) cap effort in the shrimp fishery to further reduce bycatch.

Beginning at 8:30 a.m. on August 10, 2006, the Standing and Special Reef Fish SSC will reconvene to discuss and possibly make recommendations regarding the stock assessments for vermilion snapper, greater amberjack, gray triggerfish, and gag grouper and potentially provide recommendations to the Council. The SSC will also consider and possibly provide recommendations on alternatives in a Draft Reef Fish Amendment 27/Shrimp Amendment 14 that could: (1) Change the total allowable catch (TAC) for red snapper, (2) change the minimum size limit for red snapper, (3) change the recreational fishing season and bag limit for red snapper, (4) reduce the bag limit of red snapper for captains and crew of for-hire vessels to zero, (5) modify allowable fishing gear to possibly include changes to the type and size of hooks used to harvest red snapper, and (6) cap effort in the shrimp fishery to further reduce bycatch.

A copy of the agenda and related materials can be obtained by calling the Council office at (813) 348–1630.

Although other non-emergency issues not on the agendas may come before the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) and the Reef Fish Advisory Panel, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions of the Standing and Special Reef Fish Scientific and Statistical Committee (SSC) and the Reef Fish Advisory Panel will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina Trezza at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: July 19, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–11686 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071806I]

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 meeting.

SUMMARY: The North Pacific Fishery Management Council's Scientific and Statistical Committee (SSC) will meet, in Juneau, AK.

DATES: They will begin their plenary session at 8 a.m. on Tuesday, August 15 and continue through the Wednesday, August 16, 2006..

ADDRESSES: The meeting will be held at the Federal Building, 709 W 9th Avenue, 4th Floor, NMFS Conference Room, Juneau, AK 99801.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff contact, Bill Wilson; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: SSC review of the Steller Sea Lion recovery plan: (1) Review of the recovery plan through Appendix 2 (ending on p. 217); (2) review of the PVA (Appendix 3, starting on p. 218); and (3) review of the Steller Sea Lion Mitigation Committee mitigation tool.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: July 19, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–11684 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071806F]

Pacific Fishery Management Council; Public Meeting/Workshop

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

ACTION: Notice of a public meeting.

SUMMARY: NOAA Fisheries and The Pacific Fishery Management Council will hold a workshop to discuss the availability and treatment of data in West Coast groundfish stock assessments as well as general modeling issues, including a review of the features and functionality of the Stock Synthesis 2 modeling platform.

DATES: The Data/Modeling workshop will be held Tuesday, August 8, 2006 through Thursday, August 10, 2006. The workshop will start at 8:30 a.m. and end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The Data/Modeling workshop will be held at the NOAA Western Regional Center (WRC), 7600 Sand Point Way NE, Building 4, Room 2076, Seattle, WA 98115.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: (206) 860–3480; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Data/Modeling workshop is to review available data sources for West Coast groundfish stock assessments and discuss general modeling issues. Topics will include a review of available data, reconstructing historical catch series, standardizing methods for constructing age and length compositions and ageing-error matrices, sample-size issues, the features and functionality of the Stock Synthesis 2 modeling platform, appropriate spatial scales for assessments, as well as the treatment of uncertainty in tuning indices and parameter values (use of priors).

All participants are encouraged to pre-register for the workshop by contacting Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC) by phone at (206) 860–3480 or by e-mail at *Stacey.Miller@noaa.gov*.

Although non-emergency issues not contained in the meeting agenda may come before the workshop participants for discussion, those issues may not be the subject of formal workshop action during this meeting. Workshop action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

Pre-registration for the workshop will expedite entry to the NOAA WRC. All WRC visitors will be required to show a valid picture ID and register with security every morning. A visitor's badge, which must be worn while at the NOAA Facility, will be issued to non-Federal employees participating in the meeting.Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 19, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–11685 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071806H]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Oculina Evaluation Team, in Cape Canaveral, FL.

DATES: The meeting will take place August 21–23, 2006. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Radisson at the Port, 8701 Astronaut Blvd., Cape Canaveral, FL; telephone: (800) 333–3333 or (321) 784–0000; fax: (321) 783–7718.

Council address: One Southpark Circle, Suite 306, Charleston, SC 29407–4699

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: Members of the Oculina Evaluation Team will meet from 1 p.m. - 5 p.m. on August 21, 2006, from 8:30 a.m. - 5 p.m. on August 22, 2006, and from 8:30 a.m. - 1 p.m. on August 23, 2006.

In June 2004, the Council approved Amendment 13A to the Snapper Grouper Fishery Management plan that extended regulations, including the prohibition of harvest or possession of snapper grouper, in the Oculina Experimental Closed Area for an indefinite period. As part of the extension, the Council will review the size and configuration of the area within 3 years of the Final Rule (March 26, 2004) and perform a complete evaluation within a 10-year period.

The Council has established an evaluation team as part of its Evaluation Plan for the Oculina Experimental Closed Area. The team will review and provide recommendations for the ongoing research and monitoring, outreach, and law enforcement components of the Evaluation Plan that will assist the Council to complete the 3-year size and configuration evaluation. Members of the Oculina Evaluation Team include scientists, commercial and recreational fishermen, outreach specialists, and law enforcement personnel.

Note: The times and sequence specified in this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meetings.

Dated: July 19, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–11687 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062306B]

Review Workshop Report and Final Stock Assessment Report for Large Coastal Sharks

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

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the large coastal shark (LCS) final stock assessment report, prepared by the NMFS Southeast Fisheries Science Center (SEFSC). The report includes a copy of the recently completed review panel consensus summary, as well as copies of the Data and Assessment workshop reports. These reports summarize the relevant working documents; describe models and methods used to assess the status of the LCS complex, sandbar sharks, and Atlantic and Gulf of Mexico stocks of blacktip sharks; make general and research oriented recommendations; summarize stakeholder opinion for each of the stocks assessed; and make conclusions regarding the status of the stock.

ADDRESSES: Requests for copies of the LCS final stock assessment report should be sent to Sarah McTee, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to (301) 713–1917 or phone (301) 713–2347. Electronic copies of the stock assessment may also be obtained from the SEFSC SEDAR Web site at: *http://www.sefsc.noaa.gov/sedar/Index.jsp*.

FOR FURTHER INFORMATION CONTACT: For information on the methods, data, and results of the stock assessment, contact Julie Neer by phone at (850) 234–6541 or by fax at (850) 235–3559.

SUPPLEMENTARY INFORMATION: Stock assessments are periodically conducted to determine stock status relative to current management criteria. Collecting the best available scientific data and conducting stock assessments are critical to determine appropriate management measures for rebuilding stocks. The latest LCS stock assessment was conducted in a manner similar to the Southeast Data, Assessment, and Review (SEDAR) process. SEDAR is a cooperative process initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. SEDAR emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments.

SEDAR is organized around three workshops. The first workshop is a Data workshop where datasets are documented, analyzed, reviewed, and compiled for conducting assessment analyses. The LCS Data workshop was held from October 31 through November 4, 2005, in Panama City, FL. The second workshop, an Assessment workshop where quantitative population analyses are developed and refined and population parameters are estimated, was held from February 6 through February 10, 2006, in Miami, FL. The last workshop was the Review workshop, in which a panel of independent experts reviewed the data and assessments and recommended the most appropriate values of critical population and management quantities. This workshop was held in Panama City, FL, from June 5 through June 9, 2006. All workshops were open to the public. More information on the SEDAR process can be found at *http://www.sefsc.noaa.gov/sedar*.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 17 2006.

Alan D. Risenhoover,

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

[FR Doc. E6–11749 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071206A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of application for research permit 1583 and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for a permit for an Endangered Species Act (ESA) scientific research from Tenera Environmental in Lafayette, CA. This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*). This document serves to notify the public of the availability of the permit applications for review and comment.

DATES: Written comments on the permit application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on August 23, 2006.

ADDRESSES: Written comments on the permit application should be sent to the appropriate office as indicated below. Comments may also be sent via e-mail to *FRNpermit.sac@noaa.gov* or fax to the number indicated for the request. The application and related documents are available for review by appointment: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3615, fax: 916–930–3629).

FOR FURTHER INFORMATION CONTACT: Russell Bellmer, Ph.D., at phone number 916–930–3615, or e-mail: *FRNpermit.sac@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531 1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on the application listed in this notice should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NMFS. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to federally endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), threatened Central Valley steelhead (*O. mykiss*), and threatened Southern DPS of North American green sturgeon (*Acipenser medirostris*).

Applications Received

Tenera Environmental requests a 1-year permit 1583 for an estimated take of 32 juvenile winter-run Chinook Salmon, 85 juvenile spring-run Chinook Salmon, and 6 juvenile Central Valley steelhead to fulfill the requirements of the U.S. Environmental Protection Agency and provide current impingement data as requested by NMFS, U.S. Fish and Wildlife Service, and California Department Fish and Game. Tenera Environmental requests authorization for an estimated total take of 123 juveniles (with 100–percent incidental mortality) resulting from rinsing all impinged material from the traveling screens into the screenwash sluiceways and directing it by water flow and gravity into a collection container. Sampling will occur once every 4 hours for one 24-hour collection period per week for 12 consecutive months (312 samples) at the Contra Costa Power Plant (lat. 38° 01′12″ N, long. 121° 45′36″ W) and Pittsburg Power Plant (lat. 38°02′28″ N, long. 121° 53′38″W) located in the Suisun Bay of San Francisco Bay Delta. If any listed species are collected alive, they will be immediately returned to Suisun Bay. Individuals are measured and identified to species or run.

Tenera Environmental will take a total of six juveniles of the threatened Southern DPS of North American green sturgeon (with 100–incidental mortality) resulting from capture and release of the fish.

Dated: July 18, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–11750 Filed 7–21–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–40]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–40 with attached transmittal and policy justification.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

14 JUL 2006

In reply refer to:
I-06/007044

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-40, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Israel for defense articles and services estimated to cost $210 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Transmittal No. 06-40

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$210 million
TOTAL	$210 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: JP-8 aviation jet fuel

(iv) Military Department: Army (ZHF)

(v) Prior Related Cases, if any:
FMS case YWJ - $ 89 million - 01Dec00
FMS case YNV - $103 million - 27Sep96
FMS case YLM - $ 60 million - 28Nov95

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: None.

(viii) Date Report Delivered to Congress: 14 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel- JP-8 Aviation Jet Fuel

The Government of Israel has requested a possible sale of JP-8 aviation jet fuel. The estimated cost is $210 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale of the JP-8 aviation fuel will enable Israel to maintain the operational capability of its aircraft inventory. The jet fuel will be consumed while the aircraft is in use to keep peace and security in the region. Israel will have no difficulty absorbing this additional fuel into its armed forces.

The proposed sale of this JP-8 aviation fuel will not affect the basic military balance in the region.

The Defense Energy Supply Center is unable is unable to identify the vendors at this time due to the competitive bid process for the supply sources(s). There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–6412 Filed 7–21–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 60–41]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter of the Speaker of the House of Representatives, Transmittal 06–41 with attached transmittal, policy justification, and Sensitivity of Technology.

C.R. Choate,

Alternate OSC Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

14 JUL 2006

In reply refer to:
I-06/007045

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-41, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Australia for defense articles and services estimated to cost $1 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Transmittal No. 06-41

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$ 800.0 million
Other	$ 200.0 million
TOTAL	$1,000.0 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to three (3) MK 41 Vertical Launch System Baseline VII ship sets (includes 24 modules), modification of up to three (3) MK 7 AEGIS Weapon Systems, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support.

(iv) Military Department: Navy (LCQ, Amendment 2)

(v) Prior Related Cases, if any:
FMS case LCQ - $279 million - 31Oct05

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 14 JUL 2006

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia – MK 41 Vertical Launch Systems

The Government of Australia requested a possible sale of up to three (3) MK 41 Vertical Launch System Baseline VII ship sets (includes 24 modules), modification of up to three (3) MK 7 AEGIS Weapon Systems, U.S. Government and contractor engineering and logistics personnel services, personnel training and training equipment, support and test equipment, spare and repair parts, publications and technical documentation, launch system software development and maintenance and other related elements of logistics support. The estimated cost is $1 billion.

Australia is one of our most important allies in the Western Pacific. The strategic location of this political and economic power contributes significantly to ensuring peace and economic stability in the region. Australia's efforts in operations Iraqi and Enduring Freedom peacekeeping and humanitarian operations have made a significant impact to regional political and economic stability and have served U.S. national security interests. This proposed sale is consistent with those objectives and facilitates burden sharing with our allies.

The proposed sale of Vertical Launcher Systems and modification of the AEGIS Weapons Systems to Australia will contribute to U.S. security objectives by providing a coalition partner with significantly improved Air Warfare capability. This will improve the Royal Australian Navy's ability to participate in coalition operations, will provide common logistical support with the U. S. Navy, and will enhance the lethality of its Air Warfare Destroyer platform. The Royal Australian Navy can easily integrate the capabilities of the AEGIS Weapons Systems into their concept of operations. Australia will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be:

Lockheed Martin Maritime Systems and Sensors	Moorestown, New Jersey
(two locations)	Eagan, Minnesota
Raytheon Corporation, Equipment Division	Andover, Massachusetts
General Dynamics, Armament Systems	Burlington, Vermont

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of three contractor representatives in Australia for approximately 36 months during the preparation, equipment installations, and equipment test and checkout of the MK 41 Vertical Launch Systems on the ships.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 06-41

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The MK-41 Vertical Launch Systems (VLS) contain sensitive technology and are Unclassified. The Launch Control Computer Program (LCCP), which also contains missile launch rates, is classified Confidential. The LCCP provides the control and processing to interface the Weapon Control System with the VLS. Sections of the MK-41 technical documentation, which disclose launcher vulnerabilities, are classified Confidential.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 06–6411 Filed 7–21–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Department of the Army

[USA–2006–0024]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 23, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6503.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 17, 2006.

C.R. Choate,

Alternate Federal Register Liaison Officer, Department of Defense.

A0210–50 DAIM

SYSTEM NAME:

Army Housing Operations Management System (HOMS) (April 21, 2006, 71 FR 20651).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with: ''Army Housing Operations Management Systems (HOMES).''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Applications for on/off post housing containing name, service branch, Social Security Number, rank/grade and date, service data, organization of assignment, home address and telephone number; records reflecting housing availability/assignment/termination; housing financial records; referral services; property inventories, inventory listing, and issue slips; cost control, job orders; survey data; other management reports regarding the Army housing system, complaints and investigations; and similar relevant documents. Deposit waiver agreements with off-post landlords/rental officers and with utility companies for both on-post and off-post residents.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add ''Pub. L. 104–106, Military Housing Privatization initiative (MHPI) Act of 1996'' to the entry.

PURPOSE(S):

Delete entry and replace with: ''To provide information relating to the management, operation, and control of the Army housing program; to provide housing and related services for military personnel, their dependents, and qualified civilian employees; to render reports; to investigate complaints and related matters.''

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows: Add the following paragraph: ''To the Residential Community Initiatives (RCI), a private non-governmental entity, to execute the privatization of residential communities for Soldiers and their families under the authority of Military Housing Privatization initiative (MHPI) Act of 1996.''

* * * * *

SAFEGUARDS:

Delete entry and replace with: ''Records are maintained in areas accessible only to authorized persons having official need. Records are housed in buildings protected by security guards or locked when not in use. Information in automated media is further protected by physical security devices; access to or update of information in the system is protected through a system of passwords and usage of the Common Access Cards (CACs), thereby preserving integrity of data.''

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Army Family Housing, Unaccompanied Personnel Housing and Off-Post housing files are destroyed after 3 years; installation housing project tenancy files are destroyed 3 years after termination of quarters occupancy; family housing leasing files are destroyed 3 years after lease terminates is canceled, lapses, or after any litigation is concluded; housing, facility and complaint records are destroyed after 10 years; housing referral services are destroyed after 5 years; off-post rental housing reports are destroyed after 2 years; and off-post housing complaints and investigation are destroyed 10 years after completion at office having Army-wide responsibility.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete ''Chief'' and replace with ''IT Team Leader.'' Delete ''Automation'' and replace with ''Division''.

NOTIFICATION PROCEDURE:

Delete entry and replace with: ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquires to the IT Team Leader, Army Housing Division, Office of the Assistant Chief of Staff for Installation Management, Directorate of Facilities and Housing, ATTN: DAIM–FDH, 600 Army Pentagon, Washington, Dc 20310–0600.

Individual should provide name, address and last assignment location.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries the IT Team Leader, Army Housing Division, Office of the Assistant Chief of Staff for Installation Management, Directorate of Facilities and Housing, ATTN: DAIM–FDH, 600 Army Pentagon, Washington, DC 20310–0600.

Individual should provide name, address and last assignment location.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with: ''From the individual, his/her personnel records, tenants/landlords and realty activities, utility companies, privatization partners, financial institutions, and previous employers/commanders, and the Defense Enrollment Eligibility Reporting System (DEERS) database.''

* * * * *

A0210–50 DAIM

SYSTEM NAME:

Army Housing Operations Management Systems (HOMES).

SYSTEM LOCATION:

Office of the Assistant Chief of staff for Installation Management, Directorate of Facilities and Housing, ATTN: DAIM–FDH, 2511 Jefferson Davis Hwy, Arlington, VA 22202–3926.

Secondary location: Offices of Facilities and Housing at major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, their dependents, and Department of Defense civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications for on/off post housing containing name, service branch, Social Security Number, rank/grade and data, service data, organization of assignment, home address and telephone number; records reflecting housing availability/assignment/termination; housing financial records; referral services; property inventories, inventory listing, and issue slips; costs control, job orders; survey data; other management reports regarding the Army housing system, complaints and investigations; and similar relevant documents. Deposit waiver agreements with off-post landlords/rental officers and with utility companies for both on-post and off-post residents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Public Law 104–106, Military Housing Privatization Initiative (MHPI) Act of 1996; DoD Directive 4165.63, DoD Housing; Army Regulation 210–50, Housing Management; and E.O. 9397 (SSN).

PURPOSE(S):

To provide information relating to the management, operation, and control of the Army housing program; to provide housing and related services for military personnel, their dependents, and qualified civilian employees; to render reports; to investigate complaints and related matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Housing and Urban Development to resolve and/or adjudicate matters falling within their jurisdiction.

To the Residential Community Initiatives (RCI), a private non-governmental entity, to execute the privatization of residential communities for Soldiers and their families under the authority of Military Housing Privatization Initiative (MHPI) Act of 1996.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Paper records, computer tapes, discs, and printouts.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized persons having official need. Records are housed in buildings protected by security guards or locked when not in use. Information in automated media is further protected by physical security devices; access to or update of information in the system is protected through a system of passwords and usage of the Common Access Cards (CACs), thereby preserving integrity of data.

RETENTION AND DISPOSAL:

Army Family Housing, Unaccompanied Personnel Housing and Off-Post housing files are destroyed after 3 years; installation housing project tenancy files are destroyed 3 years after termination of quarters occupancy; family housing leasing files are destroyed 3 years after lease terminates is canceled, lapses, or after any litigation is concluded; housing, facility and complaint records are destroyed after 10 years; housing referral services are destroyed after 5 years; off-post rental housing reports are destroyed after 2 years; and off-post housing complaints and investigation are destroyed 10 years after completion at office having Army-wide responsibility.

SYSTEM MANAGER(S) AND ADDRESS:

IT Team Leader, Army Housing Division, Office of the Assistant Chief of Staff for Installation Management, Directorate of Facilities and Housing, ATTN: DAIM–FDH, 600 Army Pentagon, Washington, DC 20310–0600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the IT Team Leader, Army Housing Division, Office of the Assistant Chief of Staff for Installation Management, Directorate of Facilities and Housing, ATTN: DAIM–FDH, 600 Army Pentagon, Washington, DC 20310–0600.

Individual should provide name, address and last assignment location.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries the IT Team Leader, Army Housing Division, Office of the Assistant Chief of Staff for Installation Management, Directorate of Facilities and Housing, ATTN: DAIM–FDH, 600 Army Pentagon, Washington, DC 20310–0600.

Individual should provide name, address and last assignment location.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his/her personnel records, tenants/landlords and realty activities, utility companies, privatization partners, financial institutions, and previous employers/commanders, and the Defense Enrollment Eligibility Reporting System (DEERS) database.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–6413 Filed 7–21–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0162]

Defense Intelligence Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Intelligence Agency proposes to alter a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 23, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Freedom of Information Office, Defense Intelligence Agency (DAN–1A), 200 MacDill Blvd., Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Lowery at (202) 231–1193.

SUPPLEMENTARY INFORMATION: The Defense Intelligence Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 14, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 17, 2006.

C.R. Choate,

Alternate Federal Register Liaison Officer, Department of Defense.

LDIA 0660

SYSTEM NAME:

Security Files (February 22, 1993, 58 FR 10613).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete zip code and replace with: ''20304–5100''.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with: ''Military/civilian applicants and nominees to DIA; contractors; current and former DIA and Defense Attache System personnel; and other DoD affiliated personnel under the security cognizance of DIA.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with: ''5 U.S.C. 301, Departmental Regulation; DoD 5200.2.R, Personnel Security Program; DCI Directive 6–4, Personnel Security Standards and Procedures for access to Special Compartmented Information; DIA Manual 50–8, Personnel Security Program; DIA Manual 50–14, Security Investigations; and EO 9397 (SSN).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the second paragraph, delete ''a legitimate use'' and replace with ''an official need.''

STORAGE:

Delete entry and replace with: ''Automated in computer, manual in paper files, or on microfilm/CD.''

RETRIEVABILITY:

Delete entry and replace with: ''Alphabetically by surname of

individual or by Social Security Number or by File Number.''

SAFEGUARDS

Delete entry and replace with: ''Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.''

RETENTION AND DISPOSAL:

Delete entry and replace with: ''Records of civilian and military applicants not hired by or assigned to DIA and favorable files of employees departing DIA maintained up to six months and then destroyed. Out-processing interviews will be retained for 5 years and then destroyed. Indoctrination/debriefing memoranda and non-disclosure agreements pertaining to access to Secret Compartmentalized Information are retained for 70 years or until notification of the death of the signer, whichever is sooner. Files containing information which may conceivably result in litigation and non-Secret Compartmentalized Information security agreements are destroyed when no longer required or retired.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with: ''Counterintelligence and Security Activity, ATTN: DAC, Defense Intelligence Agency, Washington DC 20340–5100''.

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with: ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individuals should provide their full name, current address, telephone number and ''Social Security Number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with: ''DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.''.

* * * * *

LDIA 0660

SYSTEM NAME:

Security Files.

SYSTEM LOCATION:

Defense Intelligence Agency, Washington, DC 20304–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military/civilian applicants and nominees to DIA; contractors; current and former DIA and Defense Attache System personnel; and other DoD affiliated personnel under the security cognizance of DIA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records associated with personnel security functions, nomination notices, statement of personal history, indoctrination/debriefing memoranda, secrecy and nondisclosure agreements, certificates of clearance, adjudication memoranda and supporting documentation and in-house investigations, security violations, identification badge records, retrieval indices, clearance status records, and access control records and Social Security Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulation; DoD 5200.2.R., Personnel Security Program; DCI Directive 6–4, Personnel Security Standards and Procedures for access to Special Compartmented Information; DIA Manual 50–8, Personnel Security Program; DIA Manual 50–14, Security Investigations; and EO 9397 (SSN).

PURPOSE(S):

Information is collected in order to accomplish those administrative and personnel security functions relating to initial and continued assignment/employment and eligibility for access to classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to other Federal agencies, state and local governments, as may have an official need for such information and agree to apply appropriate safeguards to protect the data in a manner consistent with the conditions or expectations under which the information was provided, collected or obtained.

The 'Blanket Routine Uses' set forth at the beginning of the DIA's complication of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated in computer, manual in paper files, or on microfilm/CD.

RETRIEVABILITY:

Alphabetically by surname of individual or by Social Security Number or by File Number.

SAFEGUARDS:

Records are maintained in a building protected by security guards and are stored in vaults, safes or locked cabinets and are accessible only to authorized personnel who are properly screened, cleared and trained in the protection of privacy information. Electronic records are maintained on a classified and password protected system.

RETENTION AND DISPOSAL:

Records of civilian and military applicants not hired by or assigned to DIA and favorable files of employees departing DIA maintained up to six months and then destroyed. Out-processing interviews will be retained for 5 years and then destroyed. Indoctrination/debriefing memoranda and non-dislosure agreements pertaining to access to Secret Compartmentalized Information are retained for 70 years or until notification of the death of the signer, whichever is sooner. Files containing information which may conceivably result in litigation and non-Secret Compartmentalized Information security agreements are destroyed when no longer required or retired.

SYSTEM MANAGER(S) AND ADDRESS:

Counterintelligence and Security Activity, ATTN: DAC, Defense Intelligence Agency, Washington, DC 20340–5100.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

RECORD ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Freedom of Information Act Office (DAN–1A/FOIA), Defense Intelligence Agency, 200 MacDill Blvd., Washington, DC 20340–5100.

Individual should provide their full name, current address, telephone number and Social Security Number.

CONTESTING RECORD PROCEDURES:

DIA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DIA Regulation 12–12 ''Defense Intelligence Agency Privacy Program''; 32 CFR part 319—Defense Intelligence Agency Privacy Program; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual, other Federal agencies, firms contracted to the DoD and Agency officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(k)(2) and (k)(5), as applicable. An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 319. For more information contact the system manager.

[FR Doc. 06–6418 Filed 7–21–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Navy is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: Effective July 24, 2006.

ADDRESSES: Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 17, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MIL00019

SYSTEM NAME:

Equipment and Weapons Receipt or Custody Files (April 8, 2002, 67 FR 16738).

REASON:

The system of records is maintained under Department of the Navy systems of records notice NM07320–1, entitled, Property Accountability Records (May 31, 2006, 71 FR 30894).

[FR Doc. 06–6414 Filed 7–21–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Navy is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: Effective July 24, 2006.

ADDRESSES: Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 17, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MMN00021

SYSTEM NAME:

Weapons Registration (January 4, 2000, 65 FR 291).

REASON:

The system of records is maintained under Department of the Navy systems of records notice NM08370–1, entitled, Weapons Registration (June 14, 2006, 71 FR 34324).

[FR Doc. 06–6415 Filed 7–21–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Navy is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: Effective July 24, 2006.

ADDRESSES: Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 17, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N07401–1

SYSTEM NAME:

Bingo Winners (April 28, 1999, 64 FR 22840).

REASON:

The system of records is maintained under Department of the Navy systems of records notice NM01700–1, entitled, DON General Morale, Welfare and Recreation Records (June 14, 2006, 71 FR 34321).

[FR Doc. 06–6416 Filed 7–21–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy; DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Navy is deleting a system of records notice from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: Effective July 24, 2006.

ADDRESSES: Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Doris Lama at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 17, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05520–1

SYSTEM NAME:

Personnel Security Eligibility Information System (September 2, 1999, 64 FR 48148).

REASON:

The information in this system of records is now maintained under the Defense Security Service systems of records notice V5–05, Joint Personnel Adjudication System (JPAS) (July 1, 2005, 70 FR 38120).

[FR Doc. 06–6417 Filed 7–21–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education

AGENCY: A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, U.S. Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Thursday, August 10, 2006.

TIME: 10 a.m. to 1 p.m.

ADDRESSES: The Commission will meet in Washington, DC, at the Department of Education, 400 Maryland Avenue, SW., Washington, DC, Barnard Auditorium.

FOR FURTHER INFORMATION CONTACT: Kristen Vetri, Chief of Staff, National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, 400 Maryland Avenue, SW., Washington, DC 20202–3510; telephone: (202) 205–8741.

SUPPLEMENTARY INFORMATION: The Commission is established by the Secretary of Education to begin a national dialogue about the future of higher education in this county. The purpose of this Commission is to consider how best to improve our system of higher education to ensure that our graduates are well prepared to meet our future workforce needs and are able to participate fully in the changing economy. The Commission shall consider federal, state, local and institutional roles in higher education and analyze whether the current goals of higher education are appropriate and achievable. The Commission will also focus on the increasing tuition costs and the perception of many families, particularly low-income families, that higher education is inaccessible.

The agenda for this meeting will include a discussion among commission members regarding preliminary findings and recommendations for the final report.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Kristen Vetri at (202) 205–8741 no later than July 31, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Kristen Vetri at (202) 205–8741 or by e-mail at *Kristen.Vetri@ed.gov*.

Opportunities for public comment are available through the Commission's Web site at *http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html*. Records are kept of all Commission proceedings and are available for public inspection at the staff office for the Commission from the hours of 9 a.m. to 5 p.m.

Dated: July 19, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 06–6421 Filed 7–21–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of its Human Reliability Program (HRP), OMB Control Number 1910–5122. The collections consist of forms that will certify to DOE that respondents were advised of the requirements for occupying or continuing to occupy a HRP position. The HRP is a security and safety reliability program for individuals who apply for or occupy certain positions that are critical to the national security. It requires an initial and annual supervisory review, medical

assessment, management evaluation, and a DOE personnel security review of all applicants or incumbents. It is also used to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives.

DATES: Comments regarding this collection must be received on or before August 23, 2006. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to: Jeffrey Martus, IM–11/ Germantown Building, U.S. Department of Energy, 1000 Independence Ave SW., Washington, DC 20585–1290. Or by fax at 301–903–9061 or by e-mail at *Jeffrey.martus@hq.doe.gov.*

Comments should also be addressed to:

Sharon A. Evelin, Director, IM–11/ Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290,

and to:

Kathy Murphy, SP–1.22 Germantown Building, U.S. Department of Energy, 19901 Germantown Road, Germantown, Maryland 20874–1290.

FOR FURTHER INFORMATION CONTACT: Sharon A. Evelin and Kathy Murphy, at the addresses listed above in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: This package contains: (1) *OMB No.:* 1910–5122; (2) *Package Title:* Human Reliability Program (3) *Purpose:* for DOE management to ensure that individuals who occupy HRP positions meet program standards of reliability and physical and mental suitability; (4) *Estimated Number of Respondents:* 11,500; (5) *Estimated Total Burden Hours:* 5,750; (6) *Number of Collections:* The package contains five (5) information and/or recordkeeping requirements.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, of August 4, 1977.

Issued in Washington, DC on July 17, 2006.

Jeffrey Martus,

Records Management Division (IM–11), Office of the Chief Information Officer.

[FR Doc. E6–11710 Filed 7–21–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy invites public comment on a proposed collection of information that the Department is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The proposed collection of information is in an interim final rule pertaining to standby support that was published in the **Federal Register** on May 15, 2006.

DATES: Consideration will be given to comments submitted by September 22, 2006. Comments may be mailed to the address given in the **ADDRESSES** section below. Comments also may be submitted electronically by e-mailing them to: *StandbySupport@Nuclear.Energy.gov.* We note that e-mail submissions will avoid delay currently associated with security screening of U.S. Postal Service mail.

ADDRESSES: You may submit written comments, identified by the term Standby Support—Paperwork Reduction Act Proposal— by any of the following methods:

1. E-mail to *StandbySupport@Nuclear.Energy.gov.* Include RIN 1901–AB17 and ''Paperwork Reduction Act Proposal'' in the subject line of the e-mail. Please include the full body of your comments in the text of the message or an attachment.

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

3. Mail: Address the comments to Kenneth Chuck Wade, Office of Nuclear Energy, (NE–30) U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. The Department requires, in hard copy, a signed original and three copies of all comments. Due to potential delays in the Department's receipt and processing of mail sent through the U.S. Postal Service, we encourage commenters to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Kenneth Chuck Wade, Project Manager, Office of Nuclear Energy, NE–30, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. (301) 903–6509 or Marvin Shaw, Attorney-Advisor, U.S. Department of Energy, Office of the General Counsel, GC–52, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586–2906.

SUPPLEMENTARY INFORMATION:

Collection title: Standby Support for Certain Nuclear Plant Delays.

Type of review: New collection.

OMB number: None.

Type of respondents: Sponsors of new advanced nuclear facilities.

Estimated number of respondents: Three to five per year.

Estimated total burden hours: 218.

Frequency of response: Single submission.

Abstract: On May 15, 2006, the Department published an interim final rule to implement section 638 of the Energy Policy Act of 2005 that authorizes the Secretary of Energy to enter into Standby Support Contracts with sponsors of advanced nuclear power facilities to provide risk insurance for certain delays attributed to the regulatory process or litigation. (71 FR 28200). That rule contains the following recordkeeping requirements that must be approved by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) before sponsors can be required to comply with them: (1) Section 950.10(b) contains information collection requirements pertaining to eligibility; (2) section 950.12(a) contains information collection requirements pertaining to fulfillment of conditions precedent to a Standby Support Contract; and (3) section 950.23 contains information collection requirements pertaining to submission of claims for payment of covered costs under a Standby Support Contract.

Request for Comments: Pursuant to 44 U.S.C. 3506(c)(2)(A), the Department invites comment on: (1) Whether the recordkeeping requirements in the interim final rule are necessary; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who choose to respond. Additional information about the Department's proposed information collection may be obtained from the contact person named in this notice.

Sharon A. Evelin,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. E6–11712 Filed 7–21–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–885–000; ER06–885–001]

BM2 LLC; Notice of Issuance of Order

July 13, 2006.

BM2 LLC (BM2) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. BM2 also requested waivers of various Commission regulations. In particular, BM2 requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by BM2.

On July 13, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by BM2 should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 14, 2006.

Absent a request to be heard in opposition by the deadline above, BM2 is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of BM2, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of BM2's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11653 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–433–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 14, 2006.

Take notice that on July 12, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to be effective September 1, 2006. CEGT states that the purpose of this filing is to amend various provisions of its Tariff, including Forms of Service Agreements, to provide for a more streamlined contracting process for its Shippers. Additionally, CEGT is proposing to make certain clarifying and ''housekeeping'' changes.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11670 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–422–016]

El Paso Natural Gas Company; Notice of Compliance Filing

July 14, 2006.

Take notice that on July 10, 2006, El Paso Natural Gas Company (EPNG) submitted a compliance filing pursuant to Commission Order dated June 30, 2006 in the above listed proceeding. EPNG tenders for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed in Appendix A to be effective March 20, 2006.

Thirty-Third Revised Sheet No. 20
Tenth Revised Sheet No. 21
Thirty-Second Revised Sheet No. 23
Ninth Revised Sheet No. 25
First Revised Sheet No. 25A
Second Revised Sheet No. 25B
Second Revised Sheet No. 25C
First Revised Sheet No. 25E
First Revised Sheet No. 25F
First Revised Sheet No. 25G
First Revised Sheet No. 25H
Thirty-Third Revised Sheet No. 26
Fourth Revised Sheet No. 27A
Second Revised Sheet No. 374
Second Substitute Original Sheet No. 375
Second Substitute Original Sheet No. 376

EPNG states that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11664 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–392–001]

El Paso Natural Gas Company; Notice of Supplement To Request for Waivers Filing

July 14, 2006.

Take notice that on July 10, 2006, El Paso Natural Gas Company (EPNG) filed with the Federal Energy Regulatory Commission a supplement to its request for waivers filing filed June 13, 2006 in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11667 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–431–000]

El Paso Natural Gas Company; Notice of Request for Waivers

July 14, 2006.

Take notice that on July 11, 2006, El Paso Natural Gas Company (EPNG) filed to request the Federal Energy Regulatory Commission to permit EPNG to waive and/or discount certain penalties and charges under its Tariff from July 13, 2006 through July 31, 2006, and from August 1, 2006 through August 31, 2006 to provide shippers additional time to align their business needs with EPNG's new services.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11669 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.CP06–418–000]

Kinder Morgan Interstate Gas Transmission LLC & Northern Natural Gas Company; Notice of Petition for Waiver of Rule

July 13, 2006.

On July 10, 2006, as amended on July 12, 2006, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) and Northern Natural Gas Company (Northern), pursuant to section 385.207 of the Federal Energy Regulatory Commission's (Commission) regulations jointly petition the Commission for a temporary waiver of section 157.202(b)(2)(ii)(A), (B) and (C) of the Commission's regulations, which exclude a main line of a gas transmission system, an extension of a main line, and a facility, including compression and looping, that alters the capacity of a main line (except for certain replacement faculties and facility modifications) from the facilities eligible for construction under a section 157, subpart F blanket certificate. For reasons explained more fully in the filing, petitioners request that the exclusion of these facilities be waived to allow the construction of such main line facilities under a blanket certificate pending issuance of a final rule in Docket No. RM06–7–000,[1] for the purpose of providing service to any new plant constructed or existing plant expanded for the production of ''renewable fuel'' as defined in section 1501 of the Energy Policy Act of 2005.[2] If the Commission conditions its waiver to incorporate the 60-day prior notice requirement proposed in the NOPR, such a condition would be acceptable to the Petitioners.

Questions concerning the Petition should be directed to: Bentley W. Breland, Vice-President, Certificates and Rates, Kinder Morgan Interstate Gas Transmission LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304. Telephonically, he may be contacted at (303) 763–3581.

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, 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.

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 at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11656 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates, 115 FERC ¶ 61,338 (2006).

[2] Public Law 109–58, 119 Stat. 594, 1067–68 (2005) (to be codified at 42 U.S.C. 7545).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–438–004]

Manchief Power Company LLC; Notice of Compliance Filing

July 14, 2006.

Take notice that on July 12, 2006, Manchief Power Company LLC, tendered for filing an amendment to its triennial market-based rate update submitted on April 18, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 19, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11671 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–430–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 14, 2006.

Take notice that on July 10, 2006, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), the following tariff sheets to become effective August 9, 2006:

Title Page

First Revised Sheet No. 270.4
Ninth Revised Sheet No. 7
First Revised Sheet No. 55
Second Revised Sheet No. 79
First Revised Sheet No. 246C
Fifth Revised Sheet No. 247
First Revised Sheet No. 247A
Second Revised Sheet No. 267
Thirteenth Revised Sheet No. 273
Third Revised Sheet No. 408
Third Revised Sheet No. 418
Second Revised Sheet No. 426
Second Revised Sheet No. 493
Second Revised Sheet No. 494
Sixth Revised Sheet No. 495

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11668 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–332–001]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

July 14, 2006.

Take notice that on July 7, 2006, Northern Natural Gas Company (Northern) filed to supplement its April 28, 2006 tariff filing in the above-referenced docket to adjust the boundary between Operational Zones ABC and EF to the Iowa/Minnesota border.

Northern states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11665 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–1018–000; ER06–1018–001]

Power Hedging Dynamics, LLC; Notice of Issuance of Order

July 13, 2006.

Power Hedging Dynamics, LLC (Power Hedging) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Power Hedging also requested waivers of various Commission regulations. In particular, Power Hedging requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Power Hedging.

On July 13, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part

34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Power Hedging should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 14, 2006.

Absent a request to be heard in opposition by the deadline above, Power Hedging is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Power Hedging, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Power Hedging's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11652 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER06–972–000; ER06–972–001]

Thornwood Management Company, LLC; Notice of Issuance of Order

July 13, 2006.

Thornwood Management Company, LLC (Thornwood Management) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Thornwood Management also requested waivers of various Commission regulations. In particular, Thornwood Management requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Thornwood Management.

On July 13, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of securities or assumptions of liability by Thornwood Management should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is August 14, 2006.

Absent a request to be heard in opposition by the deadline above, Thornwood Management is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Thornwood Management, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Thornwood Management's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11654 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–069]

TransColorado Gas Transmission Company; Notice of Tariff Filing

July 14, 2006.

Take notice that on July 11, 2006, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000, TransColorado Gas Transmission Company (TransColorado) tendered for filing and acceptance Seventh Revised Sheet No. 22B to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 12, 2006.

TransColorado states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210

of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11657 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–380–001]

Tuscarora Gas Transmission Company; Notice of Compliance Filing

July 14, 2006.

Take notice that on July 7, 2006, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, effective June 1, 2006, pursuant to *Tuscarora Gas Transmission Company,* 116 FERC ¶ 61,003 (2006) (July 3 Order):

Seventh Revised Sheet No. 4.
Original Sheet No. 4A.
Seventh Revised Sheet No. 5.
Original Sheet No. 5A.
Third Revised Sheet No. 12.
Fourth Revised Sheet No. 22.

Tuscarora states that copies of the filing were served on all parties on the official service list in the above-captioned proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11666 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 13, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG06–63–000.
Applicants: COSI ACE, LLC.
Description: COSI ACE, LLC submits a Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: June 15, 2006.
Accession Number: 20060615–5026.
Comment Date: 5 p.m. Eastern Time on Thursday, July 27, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER91–569–035.
Applicants: Entergy Services Inc.
Description: Entergy Services, Inc on behalf of Entergy Operating Companies submits a refund report related to refunds pursuant to Commission's May 26, 2006 Order.
Filed Date: July 11, 2006.
Accession Number: 20060712–0072.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Docket Numbers: ER03–845–002.
Applicants: Pinpoint Power, LLC.
Description: Pinpoint Power, LLC submits its Substitute Original Sheet 1 to revise the prohibition on certain affiliate sales in paragraph 4 of triennial updated market analysis.
Filed Date: July 10, 2006.
Accession Number: 20060712–0117.
Comment Date: 5 p.m. Eastern Time on Monday, July 31, 2006.

Docket Numbers: ER04–1135–002.
Applicants: Wisconsin Power & Light Company.
Description: Wisconsin Power and Light Company submits a refund report in compliance with Commission's April 26, 2006 Order.
Filed Date: July 11, 2006.
Accession Number: 20060711–5015.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Docket Numbers: ER06–881–001; ER06–881–002.
Applicants: Midwest Independent Transmission System; Xcel Energy Services Inc.
Description: Midwest Independent Transmission System Operator, Inc et al. submit their supplemental information in response to the Commission's June 9, 2006 deficiency letter and on July 11, 2006 submitted an errata to its response filing.
Filed Date: July 10, 2006.
Accession Number: 20060712–0065.
Comment Date: 5 p.m. Eastern Time on Monday, July 31, 2006.

Docket Numbers: ER06–700–003.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corp submits a compliance filing and status report pursuant to FERC's May 12, 2006 Order.
Filed Date: July 11, 2006.

Accession Number: 20060713–0092.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Docket Numbers: ER06–916–001.
Applicants: Xcel Energy Services Inc.
Description: Xcel Energy Services Inc on behalf of Northern States Power (Minnesota), et al., submits its Settlement Agreement and Explanatory Statement to resolve all outstanding issues. ER06–916.
Filed Date: June 30, 2006.
Accession Number: 20060706–0043.
Comment Date: 5 p.m. Eastern Time on Thursday, July 20, 2006.

Docket Numbers: ER06–996–001.
Applicants: Public Service Electric & Gas Company.
Description: Public Service Electric and Gas Co submits its response to FERC deficiency letter issued on June 28, 2008.
Filed Date: July 11, 2006.
Accession Number: 20060712–0073.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Docket Numbers: ER06–1073–001; ER06–1074–001.
Applicants: LSP Oakland, LLC; LSP South Bay, LLC.
Description: LSP Oakland, LLC and LSP South Bay, LLC submit revised reliability Must-Run Agreements with the California Independent System Operator.
Filed Date: July 11, 2006.
Accession Number: 20060712–0056.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Docket Numbers: ER06–1178–000.
Applicants: SEMASS Partnership.
Description: SEMASS Partnership submits Supplement 2 to FERC Rate Schedule 1, Amended Power Sale Agreement with Commonwealth Electric Co dba NSTAR Electric.
Filed Date: June 28, 2006.
Accession Number: 20060703–0208.
Comment Date: 5 p.m. Eastern Time on Friday, July 21, 2006.

Docket Numbers: ER06–1239–000.
Applicants: Moguai Energy LLC.
Description: Moguai Energy LLC submits a petition for acceptance of Amended Rate Schedule 1, Waivers and Blanket Authority including authority to sell electricity at market-based rates.
Filed Date: July 10, 2006.
Accession Number: 20060712–0066.
Comment Date: 5 p.m. Eastern Time on Monday, July 31, 2006.

Docket Numbers: ER06–1240–000; ER00–980–014.
Applicants: Bangor Hydro-Electric Company.
Description: Bangor Hydro-Electric Co submits a Settlement Agreement, revised tariff sheets, and Explanatory Statement pursuant to Rule 602 of FERC's Rules of Practice and Procedure.
Filed Date: July 3, 2006.
Accession Number: 20060712–0067.
Comment Date: 5 p.m. Eastern Time on Monday, July 24, 2006.

Docket Numbers: ER06–1241–000.
Applicants: American Electric Power Service Corporation.
Description: American Electric Power Service Corporation agent for Indiana and Michigan Power Co submits an Original Interconnection and Local Delivery Service Agreement with the City of Garrett, Indiana.
Filed Date: July 11, 2006.
Accession Number: 20060712–0071.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Docket Numbers: ER06–1242–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Co submits revised rate sheets for the Bear Valley Project Distribution System Facilities Agreement, Rate Schedule 468 with Southern California Water Company.
Filed Date: July 11, 2006.
Accession Number: 20060712–0070.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Take notice that the Commission received the following electric securities filings.

Docket Numbers: ES06–55–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Coop, Inc. submits its application for Authorization of the Assumption of Liabilities.
Filed Date: July 11, 2006.
Accession Number: 20060711–5077.
Comment Date: 5 p.m. Eastern Time on Tuesday, August 1, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.

[FR Doc. E6–11650 Filed 7–21–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2698–033, 2686–032, 2602–007, and 2601–007 North Carolina]

Duke Power Company LLC; Notice of Availability of Final Environmental Assessment

July 14, 2006.

In accordance with the National Environmental Policy Act of 1969, as amended, and Federal Energy Regulatory Commission (Commission) regulations (18 CFR part 380), Commission staff reviewed the applications for new major licenses for the East and West Fork projects, a subsequent license for the Bryson Project, and the application for license surrender for the Dillsboro Project. We prepared a combined environmental assessment (EA) on the proposed

actions. The East and West Fork and Dillsboro projects are located on the Tuckasegee River in Jackson County, North Carolina. The Bryson Project is located on the Oconaluftee River (a tributary to the Tuckasegee River) in Swain County, North Carolina.

In this final EA, Commission staff analyze the probable environmental effects of implementing the projects and conclude that approval of the projects, with appropriate staff-recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the final EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Internet Web site (*http:///www.ferc.gov*) using the ''eLibrary'' link. Additional information about the project is available from the Commission's Office of External Affairs at (202) 502–6088, or on the Commission's Web site using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676; for TTY call (202) 502–8659.

For further information, please contact Carolyn Holsopple at (202) 502–6407 or at *carolyn.holsopple@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–11663 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2216–066]

Niagara Project; Notice of Availability of the Draft Environmental Impact Statement for the Niagara Project and Intention To Hold Public Meetings

July 14, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the application for a New Major License for the Niagara Project, and have prepared a draft environmental impact statement (DEIS) for the project which is located on the Niagara River in Niagara County, New York.

The DEIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Niagara Project. The DEIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the DEIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All Comments must be filed by September 19, 2006, and should reference the Niagara Project, Project No. 2216–066. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this DEIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the DEIS. The exact time and place of the meeting will be determined soon and announced in a separate notice. At this time, Commission staff intend to hold the meeting in either Niagara Falls or Lewiston near the middle of August.

For further information, please contact Steve Kartalia at (202) 502–6131 or at *Stephen.Kartalia@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–11655 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2216–066]

Niagara Project; Notice of Availability of the Draft Environmental Impact Statement for the Niagara Project and Intention To Hold Public Meetings

July 14, 2006.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects staff (staff) reviewed the application for a New Major License for the Niagara Project, and have prepared a draft environmental impact statement (DEIS) for the project which is located on the Niagara River in Niagara County, New York.

The DEIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Niagara Project. The DEIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the DEIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Comments should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All Comments must be filed by September 19, 2006, and should reference the Niagara Project, Project No. 2216–066. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and instructions on the Commission's Web site at *http://www.ferc.gov* under the eLibrary link.

Anyone may intervene in this proceeding based on this DEIS (18 CFR 380.10). You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

In addition to or in lieu of sending written comments, you are invited to attend a public meeting that will be held to receive comments on the DEIS. The exact time and place of the meeting will be determined soon and announced in a separate notice. At this time, Commission staff intend to hold the meeting in either Niagara Falls or Lewiston near the middle of August.

For further information, please contact Steve Kartalia at (202) 502–6131 or at *Stephen.Kartalia@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–11660 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 14, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12677–000.

c. *Date filed:* May 26, 2006.

d. *Applicant:* Lake Shannon Hydroelectric Company, LLC.

e. *Name of Project:* Scoggins Dam Hydroelectric Project.

f. *Location:* On the Scoggins Creek in Washington County, Oregon. Dam is owned by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Richard W. Rosenberg, P.E., 4141 State Hwy. 508 Cinebar, WA 98533, (360) 985–7195.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would use the existing Bureau of Reclamation's Scoggins Dam and would consist of: (1) A proposed powerhouse containing one to two turbine/generating units having a total installed capacity of 1,000 kilowatts, (2) a proposed 1,000 foot-long transmission line, and (3) appurtenant facilities. The proposed project would have an average annual generation of 6 gigawatt-hours, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing

the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11658 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests and Comments

July 14, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12683–000.

c. *Date filed:* June 7, 2006.

d. *Applicant:* Three Guys Hydroelectric Company, LLC.

e. *Name of Project:* R.D. Bailey Hydroelectric Project.

f. *Location:* On Guyandotte River, in Wyoming and Mingo Counties, West Virginia. The R.D. Bailey Dam is owned and operated by the U.S.Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. M. Clifford Phillips, Advanced Hydro Solutions LLC, 150 North Miller Road, Suite 450 C, Fairlawn, OH 44333, (330) 869–8451.

i. *FERC Contact:* Patricia W. Gillis at (202) 502–8735.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12683–000) on any comments, protests, or motions filed.

k. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' R. D. Bailey Dam and would consist of: (1) A proposed powerhouse containing two vertical turbine/generating units with a nominal total generating capacity of 7.8-Megawatts; (2) a 10-foot-diameter penstock; (3) a proposed 6.5 mile-long, 14.7 kV transmission line; (4) a tailrace, and (5) appurtenant facilities.

The project would have an estimated annual generation of approximately 30,000 MW. The applicant plans to sell the generated energy.

l. *Location of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT'', or ''COMPETING APPLICATION'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents

must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11659 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 14, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity Amendment of License.

b. *Project No.:* 2423–024.

c. *Date Filed:* March 13, 2006.

d. *Applicant:* Great Lakes Hydro America, LLC.

e. *Name of Project:* Riverside Hydroelectric Project.

f. *Location:* The project is located on the Androscoggin River, in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Kevin Bernier, Environmental and FERC Compliance Specialist, Great Lakes Hydro America, LLC, 1014 Central Street, Millinocket, ME 04462, telephone: (207) 723–4241.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 31, 2006.

k. *Description of Request:* The licensee filed an amendment application to delete an additional 4.5 MW turbine unit, which was approved in the new license issued in 1992, but was never installed. The proposed amendment would decrease the authorized installed capacity of the project from 12.4 MW to 7.9 MW.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. Information about this filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–11662 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2299—057]

Modesto Irrigation District; Turlock Irrigation District; Agenda for Meeting To Discuss the 10-Year Fisheries Summary Report for the Don Pedro Project

July 14, 2006.

The Modesto Irrigation District and the Turlock Irrigation District (licensees) filed a Fisheries Summary Report on March 25, 2005, pursuant to Article 58 of the license, as amended. [1] A notice issued by the Commission on June 23, 2006 stated that Commission staff will conduct a public meeting based on the filings of the licensees' report and comments received to date. The meeting will be held on Tuesday, July 25, 2006, from 9 a.m. to 5 p.m. (PST) at the John E. Moss Federal Building and Courthouse, 650 Capitol Mall, Stanford Room, 1st floor, Sacramento, California 95814. The following is the agenda for the meeting:

9 a.m.–9:15 a.m. Introductions/Purpose for Meeting (FERC).

9:15 a.m.–9:30 a.m. History/Background Overview (FERC).

9:30 a.m.–10:30 a.m. Technical Review/Assessment/Questions (FERC) .

10:30 a.m.–10:45 a.m. Break.

10:45 a.m.–noon Agencies/Licensees/NGOs Presentations/Statements/Questions.

Noon–1:15 p.m. Lunch.

[1] See 76 FERC ¶ 61, 117 (1996)

1:15 p.m.–2:30 p.m. Agencies/Licensees/NGOs Presentations/Statements/Questions.
2:30 p.m.–2:45 p.m. Break.
2:45 p.m.–5 p.m. Discussion.

The June 23 notice stated that the meeting will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project. The meeting will be recorded by a stenographer until the afternoon break. After the break during the agenda discussion period, the meeting will not be recorded by a stenographer.

Any questions about this notice should be directed to Philip Scordelis at the Federal Energy Regulatory Commission, (415) 369–3335, or by e-mail at *philip.scordelis@ferc.gov.*

Magalie R. Salas,
Secretary.

[FR Doc. E6–11661 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

July 13, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

Docket No.	Date received	Presenter or requester
1. CP06–365–000	7–3–06	Hon. Brian Baird.
2. Project No. 459–128	7–11–06	Mark C. Jordan.
2. Project No. 2174–000	7–10–06	R.W. Krieger.
3. Project Nos. 2602–005, *et al.*	7–3–06	Hon. Charles H. Taylor.

Magalie R. Salas,
Secretary.

[FR Doc. E6–11651 Filed 7–21–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0270; FRL–8201–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Contribution of Household Activities to the Health of Urban Ecosystems; EPA ICR No. 2223.01, OMB Control No. 2080–NEW

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). 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 September 22, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0270 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- E-mail: *ord.docket@epa.gov.*
- Fax: 202–566–0224.
- Mail: Office of Research and Development Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: Headquarters, Office of Research and Development.
- 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. EPA–HQ–ORD–2006–0270. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* 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 *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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 *www.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 the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Anita Morzillo, Office of Research and Development, Environmental Protection Agency, 200 SW 35th St., Corvallis, or 97333; telephone number: 541–754–4738; fax number: 541–754–4299; e-mail address: *morzillo.anita@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2006–0270, which is available for online viewing at *www.regulations.gov*, or in person viewing at the Office of Research and Development Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 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 Office of Research and Development Docket is 202–566–1752.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the 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 in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

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 and provide specific examples.
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. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. 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.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are residents living within: (1) The southwestern quadrant of Bakersfield, and (2) portions of Thousand Oaks, Agoura Hills, Calabasas, and Westlake Village, California.

Title: Contribution of household activities to the health of urban ecosystems.

ICR numbers: EPA ICR No. 2223.01, OMB Control No. 2080–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: As part of the EPA's Sustainability Initiative, this research focuses on maintaining healthy urban ecosystems for both people and other species. The goal is to better understand whether people recognize how household activities affect the surrounding environment, most notably the wildlife that is dependent on these systems, and whether people are likely to change their behaviors once they learn about household-environment linkages. The specific topic of interest is household rodenticide use, and resident awareness of how inexpert use of rodenticides may result in mortality of non-target species. The two study areas are (1) the southwestern quadrant of Bakersfield, and (2) portions of Thousand Oaks, Agoura Hills, Calabasas, and Westlake Village, California. The most effective way to gather detailed information about household rodenticide use is to directly ask residents within the locations of interest. A voluntary mail survey will be used, and all respondent identities and individual responses will remain confidential to the extent allowed by law. This information will provide the

EPA with a better understanding about how people relate to their personal impacts on the environment, and will lead to improved communication between members of the general public, environmental regulators, and resource managers. The end result will be more effective and appropriately targeted environmental regulation.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.33 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; 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.

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. At that time, 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**.

Dated: July 13, 2006.

Jennifer Ormezavaleta,

Acting Director, Western Ecology Division, National Health and Environmental Effects Research Laboratory, Office of Research and Development.

[FR Doc. E6–11703 Filed 7–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8202–6]

EPA Science Advisory Board Staff Office; Clean Air Scientific Advisory Committee (CASAC); Notification of Public Advisory Committee Meeting of the CASAC Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the Clean Air Scientific Advisory Committee's (CASAC) Ozone Review Panel (CASAC Panel) to conduct a peer review of the *Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information* (second draft Ozone Staff Paper, July 2006) and three related draft technical support documents: *Ozone Health Risk Assessment for Selected Urban Areas: Draft Report* (second draft Ozone Health Risk Assessment, July 2006); *Ozone Population Exposure Analysis for Selected Urban Areas: Draft Report* (second draft Ozone Exposure Assessment, July 2006); and *Draft Ozone Environmental Assessment: Exposure, Risk and Benefits Assessment* (draft Ozone Environmental Assessment, July 2006).

DATES: The meeting will be held from 8:30 a.m. (Eastern Time) on Thursday, August 24, 2006, through 3 p.m. (Eastern Time) on Friday, August 25, 2006.

Location: The meeting will take place at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703, Phone: (919) 941–6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement (five minutes or less) or wants further information concerning this meeting must contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343–9994; fax: (202) 233–0643; or e-mail at: *butterfield.fred@epa.gov*. General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: The CASAC, which is comprised of seven members appointed by the EPA Administrator, was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee, in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to air quality criteria and NAAQS under sections 108 and 109 of the Act. The CASAC is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The CASAC Ozone Review Panel complies with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the national ambient air quality standards (NAAQS) for the six ''criteria'' air pollutants, including ambient ozone. Pursuant to sections 108 and 109 of the Act, EPA is in the process of reviewing the ozone NAAQS, which the Agency most recently revised in July 1997. EPA's Office of Air Quality Planning and Standards (OAQPS), within the Office of Air and Radiation (OAR), has developed a second draft Ozone Staff Paper as part of its review of the ozone NAAQS. This second draft Ozone Staff Paper evaluates the policy implications of the key scientific and technical information contained in the Agency's final *Air Quality Criteria for Ozone and Related Photochemical Oxidants, Volumes I, II, and III*, (EPA/600/R–05/004aF–cF, February 2006), and identifies critical elements that EPA believes should be considered in its review of the ozone NAAQS. The Ozone Staff Paper is intended to ''bridge the gap'' between the scientific review contained in the Ozone Air Quality Criteria Document (AQCD) and the public health and welfare policy judgments required of the EPA Administrator in reviewing the ozone NAAQS. The Agency solicited early advice and recommendations from the CASAC Panel by means of a consultation on the *Review of the National Ambient Air Quality Standards for Ozone: Policy Assessment of Scientific and Technical Information* (first draft Ozone Staff Paper, November 2005) and two related draft technical support documents, *Ozone Health Risk Assessment for Selected Urban Areas: Draft Report* (first draft Ozone Risk Assessment, November 2005) and *Ozone Population Exposure Analysis for Selected Urban Areas: Draft Report* (first draft Ozone Exposure Assessment, October 2005). This consultation took place in a public meeting on December

8, 2005 in Durham, NC. The letter to the Administrator documenting that this consultative meeting occurred (EPA–CASAC–CON–06–003, dated February 16, 2006, is posted on the SAB Web site at: *http://www.epa.gov/sab/pdf/casac_con_06_003.pdf*. This meeting is a continuation of the CASAC Ozone Review Panel's advisory activities in this current review cycle for the ozone NAAQS.

Technical Contact: Any questions concerning the second draft Ozone Staff Paper and the second draft Ozone Health Risk Assessment, the second draft Ozone Exposure Assessment, and the draft Ozone Environmental Assessment should be directed to Dr. Dave McKee, OAQPS, at phone: (919) 541–5288, or e-mail: *mckee.dave@epa.gov*.

Availability of Meeting Materials: The second draft Ozone Staff Paper and the three related technical support documents can be accessed via the Agency's Technology Transfer Network (TTN) Web site at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_index.html* in the ''Documents for Current Review'' section under ''Staff Papers'' and ''Technical Documents,'' respectively. In addition, a copy of the draft agenda and other materials for this CASAC meeting will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/casacorpanel.html* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the CASAC Ozone Review Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than a total of one hour for all speakers. Interested parties should contact Mr. Butterfield, DFO, in writing (preferably via e-mail), by August 17, 2006, at the contact information noted above, to be placed on the public speaker list for this meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by August 17, 2006, so that the information may be made available to the CASAC Panel for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Butterfield at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 17, 2006.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–11709 Filed 7–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8202–5]

Proposed CERCLA Administrative Cashout Settlement; In the Matter of the American Lead Smelting and Refining Site—Johnson Control, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the American Lead Smelting and Refining site in Indianapolis, Indiana with the following settling party: Johnson Control, Inc. The settlement requires the settling party to pay $159,750 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to section 107(a) of ''CERCLA,'' 42 U.S.C. 9607(a). The settlement, however, does not provide the settling party with contribution protection. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at Martindale Wright Public Library, 2435 North Sherman Ave., Indianapolis, Indiana and 77 West Jackson Boulevard, Chicago, Illinois 60625.

DATES: Comments must be submitted on or before August 23, 2006.

ADDRESSES: The proposed settlement is available for public inspection at the EPA's Record Center, 7th Floor, 77 West Jackson Boulevard, Chicago, Illinois. A copy of the proposed settlement may be obtained from Peter Felitti, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone number (312) 886–5114. Comments should reference the American Lead Smelting and Refining Site in Indianapolis, Indiana and EPA Docket No. VW–06-C851 and should be addressed to Peter Felitti, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Peter Felitti, 77 West Jackson Boulevard, Chicago, Illinois 60625 or call (312) 886–5114.

Dated: July 13, 2006.

Douglas Balloti,

Acting Director, Superfund Division.

[FR Doc. E6–11705 Filed 7–21–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8202–2]

Excello Plating Co. and Glen Harleman; Notice of Proposed CERCLA Administrative Order on Consent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(I) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9622(I), the EPA is hereby providing notice of a proposed administrative order on consent (''AOC'') concerning the Excello Plating Co. facility located at 4057 Goodwin Avenue, Los Angeles, California. Section 122(h) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative settlements. This settlement is intended to resolve the liability of Excello Plating Co. and Glen Harleman for EPA's response costs at the Excello Plating Co. facility. The settling parties will pay a $43,000 (forty-three thousand dollars) to EPA.

DATES: EPA will receive written comments relating to the settlement for thirty (30) days beginning on the date this notice is published. EPA will consider all comments it receives during this period, and may modify or

withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Written comments should be addressed to Marie Rongone, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code ORC–3), San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Marie Rongone, U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street (mail code ORC–3), San Francisco, California 94105–3901, (415) 972–3891, *Rongone.Marie@epa.gov*.

Dated: June 29, 2006.

Nancy Lindsay,

Acting Director, Superfund Division, U.S. EPA Region IX.

[FR Doc. E6–11707 Filed 7–21–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve 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.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer — Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer — Mark Menchik––Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, with revision of the following reports:

1. Report title: Report of Transaction Accounts, Other Deposits and Vault Cash

Agency form number: FR 2900

OMB control number: 7100–0087

Frequency: Weekly, quarterly

Reporters: Depository institutions

Annual reporting hours: 586,166 hours

Estimated average hours per response: 3.50 hours

Number of respondents: 2,752 weekly and 6,093 quarterly

General description of report: This information collection is mandatory (12 U.S.C. 248(a), 461, 603, and 615) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: Nonexempt institutions–defined as those with net transaction accounts greater than the exemption amount or with total deposits equal to or greater than the reduced reporting limit–file the fifteen–item FR 2900 weekly if their total deposits are equal to or greater than the nonexempt deposit cutoff and quarterly if their total deposits are less than the nonexempt deposit cutoff. U.S. branches and agencies of foreign banks and banking Edge and agreement corporations are required to submit FR 2900 data weekly regardless of their deposit size. These mandatory data are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and monitoring the monetary and reserve aggregates.

Current Actions: On May 8, 2006, the Federal Reserve published a notice soliciting comments on the proposed revisions to the Report of Transaction Accounts, Other Deposits and Vault Cash (71 FR 26763). The comment period ended on July 7, 2006. The Federal Reserve will implement the following revisions: (1) Raise the nonexempt deposit cutoff to $229.1 million (compared with an indexed level of $181.1 million) and set the reduced reporting limit at its indexed value of $1.206 billion beginning in September 2006; (2) calculate the nonexempt deposit cutoff and the reduced reporting limit using the sum of total transaction accounts, savings deposits, and small time deposits, rather than total deposits, beginning with the September 2007 panel shift; and (3) index the nonexempt deposit cutoff and the reduced reporting limit annually to 80 percent of the June–to–June growth in total transaction accounts, savings deposits, and small time deposits at all depository institutions. The actual values of the nonexempt deposit cutoff and the reduced reporting limit to be used in September 2007 will be announced under the usual schedule, in October 2006.

The Federal Reserve received one comment letter from a federal agency describing its use of these data. The revisions will be implemented as originally proposed.

2. Report title: Annual Report of Total Deposits and Reservable Liabilities

Agency form number: FR 2910a

OMB control number: 7100–0175

Frequency: Annually

Reporters: Depository institutions

Annual reporting hours: 5,317 hours

Estimated average hours per response: 45 to 60 minutes, depending on entity type

Number of respondents: 5,605

General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: Currently, the three–item FR 2910a is generally filed by exempt institutions whose net transaction accounts are greater than the exemption amount and whose total deposits (as shown on their December Call Report) are greater than the exemption amount but less than the reduced reporting limit. Respondents submit single–day data as of June 30. These mandatory data are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and monitoring the monetary and reserve aggregates.

Current Actions: On May 8, 2006, the Federal Reserve published a notice soliciting comments on the proposed revisions to the Annual Report of Total Deposits and Reservable Liabilities (71 FR 26763). The comment period ended on July 7, 2006. The Federal Reserve will implement the following revisions effective for the June 30, 2007, report date: (1) Replace data item 1, ''Total Deposits,'' with ''Total Transaction Accounts, Savings Deposits, and Small Time Deposits;'' (2) delete the parenthetical text from data item 1, ''(If the amount reported for this item is less than or equal to $7.0 million, Items 2 and 2.a need not be completed);'' (3) change the reporting form title from, ''Annual Report of Total Deposits and Reservable Liabilities,'' to ''Annual Report of Deposits and Reservable Liabilities;'' and (4) require depository

institutions to submit either a positive or negative value in data item 2.a, ''Net Transaction Accounts,'' rather than reporting negative values as zero, as is currently required.

3. Report title: Allocation of Low Reserve Tranche and Reservable Liabilities Exemption

Agency form number: FR 2930/2930a

OMB control number: 7100–0088

Frequency: Annually and on occasion

Reporters: Depository institutions

Annual reporting hours: 40 hours

Estimated average hours per response: 15 minutes

Number of respondents: 160

General description of report: This information collection is mandatory (12 U.S.C. 248(a), 461, 603, and 615) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2930 and FR 2930a collect data on the allocation of the low reserve tranche and reservable liabilities exemption amount for depository institutions having offices (or groups of offices) that file separate FR 2900 deposit reports. The FR 2930 is filed by U.S. branches and agencies of foreign banks and banking Edge and agreement corporations; the FR 2930a is filed by other types of depository institutions. Both reporting forms collect the same data. However, the instructions and explanatory information differ. These mandatory data are used to calculate the reserve requirement of an institution that submits separate FR–2900 data for two or more offices, that institution is required to allocate, using the FR 2930, the low reserve tranche and the exemption among those offices.

Current Actions: On May 8, 2006, the Federal Reserve published a notice soliciting comments on the proposed revisions to the Allocation of Low Reserve Tranche and Reservable Liabilities Exemption (71 FR 26763). The comment period ended on July 7, 2006. The Federal Reserve will combine the FR 2930 and FR 2930a into one reporting form (FR 2930) that would be used by any entity type (both foreign–related and domestic institutions). The instructions for the FR 2930 reporting form will be modified to reflect this change. Both of these revisions will be effective September 30, 2006.

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

Report title: Report of Foreign (Non–U.S.) Currency Deposits

Agency form number: FR 2915

OMB control number: 7100–0237

Frequency: Quarterly

Reporters: Depository institutions

Annual reporting hours: 214 hours

Estimated average hours per response: 30 minutes

Number of respondents: 107

General description of report: This information collection is mandatory (12 U.S.C. 248(a)(2), and 347(d)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2915 collects seven–day averages of the amounts outstanding for foreign (non–U.S.) currency–denominated deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included in the institution's FR 2900 data. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900 data submission. All weekly and quarterly FR 2900 respondents offering foreign currency deposits file the six–item FR 2915 quarterly, on the same reporting schedule as quarterly FR 2900 respondents. Data collected on the FR 2915 are mainly used in the construction of the monetary aggregates. These data are included in deposit data submitted on the FR 2900 for reserve requirement purposes, but they are not included in the monetary aggregates. The FR 2915 is the only source of data on such deposits.

Board of Governors of the Federal Reserve System, July 19, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11704 Filed 7–21–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Farmers Capital Bank Corporation, Frankfort, Kentucky; to acquire 100 percent of the voting shares of Citizens National Bancshares, Inc., Nicholasville, Kentucky, and thereby indirectly acquire voting shares of Citizens National Bank of Jessamine County, Nicholasville, Kentucky.

B. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of The Park National Bank of Kentucky, Florence, Kentucky, a *de novo* bank which will then be merged directly into Park National Bank, Newark, Ohio.

Board of Governors of the Federal Reserve System, July 19, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11697 Filed 7–21–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E6-11322) published on page 40720 of the issue for Tuesday, July 18, 2006.

Under the Federal Reserve Bank of Chicago heading, the entries for Oakland Financial Services, Inc., Ioakland, Iowa, and Southwest Company, Sidney, Iowa, are revised to read as follows:

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Oakland Financial Services, Inc., Oakland, Iowa; to increase its nonvoting equity interest to 50 percent and its total equity to 33.3 percent of Otoe County Bancorporation, Inc., Nebraska City, Nebraska, and thereby indirectly acquire additional voting shares of Otoe County Bank & Trust Company, Nebraska City, Nebraska.

2. Southwest Company, Sidney, Iowa; to increase its nonvoting equity interest to 50 percent and its total equity to 33.3 percent of Otoe County Bancorporation, Inc., Nebraska City, Nebraska, and thereby indirectly acquire additional voting shares of Otoe County Bank & Trust Company, Nebraska City, Nebraska.

Comments on this application must be received by August 14, 2006.

Board of Governors of the Federal Reserve System, July 19, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11699 Filed 7–21–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 8, 2006.

A. Federal Reserve Bank of New York (Anne McEwen, Financial Specialist) 33 Liberty Street, New York, New York 10045-0001:

1. Kookmin Bank, Seoul, Korea; to acquire through its acquisition of Korea Exchange Bank, Seoul, Korea, KEB Financial Corporation, New York, New York, and thereby indirectly acquire KEB LA Financial Corporation, Los Angeles, California, and engage in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–11698 Filed 7–21–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH); Advisory Board on Radiation and Worker Health (ABRWH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health, National Institute for Occupational Safety and Health and Subcommittee for Dose Reconstruction and Site Profile Reviews (SDRSPR).

Time and Date: 10 a.m.–4:30 p.m., August 8, 2006.

Place: Via Teleconference. For toll-free access, please dial 866–643–6504. Participant Pass Code 9448550.

Status: Open to the public, but without a public comment period.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: The Advisory Board is charged with (a) Providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes the Conflict of Interest policies; Rocky Flats SEC Petition; Sanford Cohen & Associates (SC&A) Contract Tasks for 2007 and Review of SC&A Proposals; Construction Worker Issues; Individual Dose Reconstruction and Procedures Review; Charters for additional subcommittees; Nevada Test Site Profile; and Working Group Updates.

The agenda is subject to change as priorities dictate. In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

For Further Information Contact: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513.533.6825, fax 513.533.6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–11727 Filed 7–21–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Center for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Medicare Lifestyle Modification Program (MLMP) Demonstration, System No. 09–70–0585.'' The program is mandated by the Consolidated Appropriations Act of 2001 (Public Law (Pub. L.) 106–554). The MLMP Demonstration and evaluation will test the feasibility and cost effectiveness of proven and intensive programs designed to reduce or reverse the progression of cardiovascular disease of patients at risk for invasive treatment procedures. The programs may reduce the incidence of hospitalizations and invasive procedures among patients with substantial coronary occlusion.

The purpose of this system is to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the MLMP Demonstration. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist Quality Improvement Organizations; (4) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain Federally-funded health benefits programs. We have provided background information about the new system in the ''Supplementary Information'' section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATE: CMS filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 17, 2006. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comment to the CMS Privacy Officer, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Armen Thoumaian, Division of Health Promotion & Disease Prevention Demonstrations, Medicare Demonstrations Program Group, Office of Research, Development & Information, Mail Stop S3–02–01, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849. He can be reached by telephone at 410–786–6672, or via e-mail at *Armen.Thoumaian@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The program is mandated by the Consolidated Appropriations Act of 2001 (Public Law (Pub. L.) 106–554). The MLMP demonstration and evaluation will test the feasibility and cost effectiveness of proven and intensive programs designed to reduce or reverse the progression of cardiovascular disease of patients at risk for invasive treatment procedures. Research has provided evidence that specific lifestyle changes can lead to a decrease in the levels of cardiovascular risk factors, resulting in lower morbidity and mortality associated with coronary artery disease. Lifestyle modification programs are increasingly becoming an approach to the secondary prevention of coronary disease morbidity. The programs may reduce the incidence of hospitalizations and invasive procedures among patients with substantial coronary occlusion.

Medicare currently pays for 12 weeks of cardiac rehabilitation services for Medicare patients who have a prior diagnosis of myocardial infarction or who have had a recent cardiac revascularization procedure or both. Coverage under the Medicare cardiac rehabilitation benefit is more limited than that contained in a comprehensive lifestyle modification program. We are investigating the benefits of coverage a complete package of services offered under an established, multi-site lifestyle modification program.

I. Description of the Proposed System of Records

A. *Statutory and Regulatory Basis for SOR.* The statutory authority for this system is given under the provisions of the Consolidated Appropriations Act of 2001 (Public Law (Pub. L.) 106–554).

B. *Collection and Maintenance of Data in the System.* This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries who are potential participants in the MLMP and providers who provide services to such beneficiaries. Data will be collected from Medicare administrative and claims records, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers. The collected information will include, but is not limited to: Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues. It will also include treatment, program participation, and evaluation, survey, and research information needed to evaluate the program and develop research reports on findings.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for

which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release MLMP information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of MLMP.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the MLMP Demonstration. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies, in their administration of a Federal health program, may require MLMP information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To assist Quality Improvement Organizations (QIO) in connection with the review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

QIOs will work to implement quality improvement programs, provide consultation to CMS, its contractors, and to ensure that payment is only made for medically necessary services. QIOs will assist in related monitoring and enforcement efforts, assist CMS and intermediaries in program integrity assessment, investigate beneficiary complaints about quality of care, and prepare summary information for release to CMS.

4. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The MLMP data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicare beneficiaries.

CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policies that govern their care.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct,

remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require MLMP information for the purpose of combating fraud and abuse in such federally-funded programs.

B. *Additional Provisions Affecting Routine Use Disclosures.* To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 Fed. Reg. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that because of the small size, use of this information could allow for the deduction of the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: July 14, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0585

SYSTEM NAME:

''Medicare Lifestyle Modification Program (MLMP) Demonstration,'' HHS/CMS/ORDI.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS agents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries who are potential participants in the MLMP Demonstration and providers who provide services to such beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data will be collected from Medicare administrative and claims records, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers. The collected information will include, but is not limited to: Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues. It will also include treatment, program participation, and evaluation, survey, and research information needed to evaluate the program and develop research reports on findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under the provisions of the Consolidated Appropriations Act of 2001 (Public Law (Pub. L.) 106–554).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the MLMP Demonstration. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) assist Quality Improvement Organizations; (4) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain Federally-funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To assist Quality Improvement Organizations (QIO) in connection with the review of claims, or in connection with studies or other review activities, conducted pursuant to Part B of Title XI of the Act and in performing affirmative outreach activities to individuals for the purpose of establishing and maintaining their entitlement to Medicare benefits or health insurance plans.

4. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. *Additional Provisions Affecting Routine Use Disclosures.* To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that because of the small size, use of this information could allow for the deduction of the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; e.g., beneficiary name or HICN.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and

Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period not to exceed 25 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Office of Research, Development & Information, Mail Stop S3–02–01, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORDS SOURCE CATEGORIES:

Data will be collected from Medicare administrative and claims records, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–11637 Filed 7–21–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''Medicare Care Management for High Cost Beneficiaries (CMHCB), System No. 09–70–0580.'' The program is authorized under provisions of the Social Security Act (42 U.S.C. Section 1395b–1(a)), which gives the Secretary the broad authority to, 'develop and engage in experiments and demonstration projects.' The CMHCB program seeks to improve beneficiary self-care and provide beneficiaries and their providers enhanced information and support in order to increase adherence to evidence-based care. Improvements in these areas are expected to generate savings to the Medicare program to offset the costs of the payments. Each CMHCB program is an experimental design involving assignment of beneficiaries to either an intervention or control group.

The purpose of this system is to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the CMHCB program. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud and abuse in certain Federally-funded health benefits programs. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on all portions of this notice. See ''Effective Dates'' section for comment period.

EFFECTIVE DATE: CMS filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security & Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on July 17, 2006. To ensure that all parties have adequate time in which to comment, the new system will become effective 30 days from the publication of the notice, or 40 days from the date it was submitted to OMB and the Congress, whichever is later. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comment to the CMS Privacy Officer, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location by appointment during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Melissa Dehn, Division of Chronic Care Improvement Programs, Provider Billing Group, Center for Medicare Management, Mail Stop C4–10–07, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1849. She can be reached by telephone at 410–786–5721, or via e-mail at *Melissa.Dehn@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION: The CMHCB program pays monthly fees to CMHCB sites for improving the coordination of Medicare services

delivered to Medicare Fee-For-Service (FFS) beneficiaries with high costs and chronic conditions. The CMHCB program seeks to improve quality of care and quality of life as well as reduce both Medicare program expenditures and beneficiary health costs. This program is designed to achieve Medicare spending targets for high cost populations with one or more chronic health conditions. The CMHCB program enables CMS to test the program business design, and program components and to test the effect on utilization, cost, and quality of care to Medicare FFS beneficiaries.

Medicare claims for participating beneficiaries will continue to be paid on a FFS basis. Separate payments to participating CMHCB sites will be made on a per-person per-month basis, to be derived from savings expected through improvements in care coordination for an assigned beneficiary population. This three-year demonstration project is designed to improve beneficiary quality of life using direct-care provider models to coordinate interventions for people with chronic high-cost and high-risk conditions. The sites will employ a variety of interventions including health care coordination, physician and nurse home visits, use of in-home monitoring devices, self-care and caregiver support, tracking and reminders of individuals' preventive care needs, behavioral health care management and transportation services. The projects are intended to help increase adherence to evidence-based care, reduce unnecessary hospital stays and emergency room visits, and help participants avoid costly and debilitating complications. The program will be evaluated on its effectiveness in achieving program goals.

I. Description of the Proposed System of Records

A. *Statutory and Regulatory Basis for SOR.* The statutory authority for this system is given under the provisions of the Social Security Act (42 U.S.C. Section 1395b–1(a)).

B. *Collection and Maintenance of Data in the System.* This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries who are potential participants in the CMHCB program and providers who provide services to such beneficiaries. Data will be collected from Medicare administrative and claims records, CMHCB site administrative data systems, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers. The collected information will include, but is not limited to: Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues. It will also include chronic care diagnosis, treatment, program participation, and evaluation, survey, and research information needed to evaluate the program and develop research reports on findings.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The Government will only release CMHCB information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use. We will only collect the minimum personal data necessary to achieve the purpose of CMHCB.

CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected; e.g., to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the CMHCB program. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy, at the earliest time, all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, consultant or grantee whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor, consultant or grantee from using or disclosing the information for any purpose other than that described in the contract and requires the contractor, consultant or grantee to return or destroy all information at the completion of the contract.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute

or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies, in their administration of a Federal health program, may require CMHCB information in order to support evaluations and monitoring of Medicare claims information of beneficiaries, including proper reimbursement for services provided.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The CMHCB data will provide for research or support of evaluation projects and a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that researchers may have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policies that govern their care.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

5. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual, grantee, cooperative agreement or consultant relationship with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse. CMS occasionally contracts out certain of its functions or makes grants or cooperative agreements when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor, grantee, consultant or other legal agent whatever information is necessary for the agent to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the agent from using or disclosing the information for any purpose other than that described in the contract and requiring the agent to return or destroy all information.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs. Other agencies may require CMHCB information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. *Additional Provisions Affecting Routine Use Disclosures.* To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, Subparts A and E) 65 Fed. Reg. 82462 (12–28–00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a)(1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that because of the small size, use of this information could allow for the deduction of the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in this system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS

will make disclosure from the proposed system only with consent of the subject individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: July 14, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0580

SYSTEM NAME:

''Medicare Care Management for High Cost Beneficiaries (CMHCB),'' HHS/CMS/CMM.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850 and at various co-locations of CMS agents.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system will collect and maintain individually identifiable and other data collected on Medicare beneficiaries who are potential participants in the CMHCB program and providers who provide services to such beneficiaries. Data will be collected from Medicare administrative and claims records, CMHCB site administrative data systems, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The collected information will include, but is not limited to: Medicare claims and eligibility data, name, address, telephone number, health insurance claims number, race/ethnicity, gender, date of birth, provider name, unique provider identification number, medical record number, as well as clinical, demographic, health/well-being, family and/or caregiver contact information, and background information relating to Medicare issues. It will also include chronic care diagnosis, treatment, program participation, and evaluation, survey, and research information needed to evaluate the program and develop research reports on findings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for this system is given under the provisions of the Social Security Act (42 U.S.C. Section 1395b–1(a)).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain demographic and health related data on the target population of Medicare beneficiaries who are potential participants in the CMHCB program. We will also collect certain identifying information on Medicare providers who provide services to such beneficiaries. Information retrieved from this system may be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor, grantee, consultant or other legal agent; (2) assist another Federal or state agency with information to contribute to the accuracy of CMS's proper payment of Medicare benefits, enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support litigation involving the agency; and (5) combat fraud and abuse in certain Federally-funded health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors, consultants or grantees, who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits;

b. Enable such agency to administer a Federal health benefits program, or, as necessary, to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; and/or

c. Assist Federal/state Medicaid programs within the state.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government is a party to litigation or has an interest in such litigation, and, by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

5. To a CMS contractor (including, but not necessarily limited to, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

6. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures. To the extent this system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR parts 160 and 164, Subparts A and E) 65 FR 82462 (12–28–

00). Disclosures of such PHI that are otherwise authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.'' (See 45 CFR 164.512(a) (1)).

In addition, our policy will be to prohibit release even of data not directly identifiable, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that because of the small size, use of this information could allow for the deduction of the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on electronic media.

RETRIEVABILITY:

The collected data are retrieved by an individual identifier; e.g., beneficiary name or HICN.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations may apply but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: all pertinent National Institute of Standards and Technology publications; the HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period not to exceed 25 years. All claims-related records are encompassed by the document preservation order and will be retained until notification is received from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Division of Chronic Care Improvement Programs, Provider Billing Group, Center for Medicare Management, CMS, Mail Stop C4–10–07, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For purpose of access, the subject individual should write to the system manager who will require the system name, employee identification number, tax identification number, national provider number, and for verification purposes, the subject individual's name (woman's maiden name, if applicable), HICN, and/or SSN (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay).

RECORD ACCESS PROCEDURE:

For purpose of access, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5 (a)(2)).

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORDS SOURCE CATEGORIES:

Data will be collected from Medicare administrative and claims records, CMHCB site administrative data systems, patient medical charts, physician records, and via survey instruments administered to beneficiaries and providers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E6–11638 Filed 7–21–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Multi-site Evaluation for Foster Youth Programs.

OMB No.: 0970–0253.

Description: The Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS) is requesting comments on plans to continue data collection for the Evaluation of Independent Living Programs funded under the Chafee Foster Care Independence Program. The Foster Care Independence Act of 1999 (Pub. L. 106–169) mandates evaluations of promising independent living programs administered by State and local child welfare agencies. ACF is conducting an evaluation of four independent living programs using a randomized experimental design. Youth aged 14–21 receiving independent living program services are interviewed at three points during the evaluation period. Program administrators, staff, and youth will participate in interviews, observations, and focus groups conducted during program site visits.

In addition, ACF is requesting comments on plans to begin data collection and conduct an evaluation of a fifth independent living program using a randomized experimental design. Youth aged 18–21 will be interviewed at three points during the evaluation period. Program administrators, staff, and youth will participate in interviews, observations, and focus groups conducted during the program site visits.

Respondents: Youth, caseworkers, program administrators, and staff.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Ongoing Study Sites				
Baseline:				
Youth interview	98	1	1.5	147
Caseworker survey	4	19	.5	38
First Follow Up:				
Youth interview	177	1	1.5	266
Caseworker survey	4	36	.5	72
Program site visit	50	1	1.5	75
Second Follow Up:				
Youth interview	370	1	1.5	555
New (5th) Study Site				
Baseline:				
Youth interview	250	1	1.5	375
Program site visit	80	1	1.5	120
First Follow Up:				
Youth interview	213	1	1.5	320
Program site visit	50	1	1.5	75
Second Follow Up:				
Youth interview	200	1	1.5	300

Estimated Total Burden Hours: 2,343.

Estimated Annual Burden Hours (average over three years): 781.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the Information collection. E-mail address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACR, E-mail address: *Katherine_T._Astrich@omb.eop.gov*.

Dated: July 18, 2006.

Robert Sargis.

Reports Clearance Officer.

[FR Doc. 06–6405 Filed 7–21–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0123]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Survey of Need for Online Medical Device Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 23, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Survey of Need for Online Medical Device Information

Executive Order 12862 directs agencies to identify the customers who are, or should be, served by the agency, and to survey customers to determine the kind and quality of services they want.

This proposed survey will collect data about the information customers want when looking up medical devices on the Internet. It will focus on the ways individuals find, use, and rate existing sources of online medical device information. FDA will use this data to understand more about its customers and to make improvements to its own Web site.

FDA will administer this survey to individuals who use the Internet to look for information about medical devices. The survey will consist of three components: A screening tool of 5,000 to identify appropriate respondents, an online survey of 500 customers, and a telephone followup interview with 50 customers.

In the **Federal Register** of April 20, 2005 (70 FR 20573), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received in response to that notice.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR (Or FDA Form #)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Screening Tool	5,000	1	5,000	0.05	250
Online Survey	500	1	500	0.25	125
Telephone[2] Follow-Up	-	-	-	-	-
Total					375

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.
[2]This was listed in the FEDERAL REGISTER announcement but is no longer required in the survey.

Dated: July 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11640 Filed 7–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0279]

Agency Information Collection Activities; Proposed Collection; Comment Request; Bar Code Label Requirement for Human Drug and Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the bar code label requirements for human drug and biological products.

DATES: Submit written or electronic comments on the collection of information by September 22, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA' s estimate of the 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 the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Bar Code Label Requirement for Human Drug and Biological Products

In the **Federal Register** of February 26, 2004 (69 FR 9120), we issued a new rule that required human drug product and biological product labels to have bar codes. The rule required bar codes on most human prescription drug products and on over-the-counter (OTC) drug products that are dispensed under an order and commonly used in health care facilities. The rule also required machine-readable information on blood and blood components. For human prescription drug products and OTC drug products that are dispensed under an order and commonly used in health care facilities, the bar code must contain the National Drug Code number for the product. For blood and blood components, the rule specifies the minimum contents of the machine-readable information in a format approved by the Center for Biologics Evaluation and Research Director as blood centers have generally agreed upon the information to be encoded on the label. The rule is intended to help reduce the number of medication errors in hospitals and other health care settings by allowing health care professionals to use bar code scanning equipment to verify that the right drug (in the right dose and right route of administration) is being given to the right patient at the right time.

Most of the information collection burden resulting from the final rule, as calculated in table 1 of the final rule (69 FR 9120 at 9149), was a one-time burden that does not occur after the rule's compliance date of April 26, 2006. In addition, some of the information collection burden estimated

in the final rule is now covered in other OMB-approved information collection packages for FDA. However, parties may continue to seek an exemption from the bar code requirement under certain, limited circumstances. Section 201.25(d) (21 CFR 201.25(d)) requires submission of a written request for an exemption and describes the contents of such requests. Based on the number of exemption requests submitted during 2004 and 2005, we estimate that approximately 2 waiver requests may be submitted annually, and that each exemption request will require 24 hours to complete. This would result in an annual reporting burden of 48 hours.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
201.25(d)	2	1	2	24	48
Total					48

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11641 Filed 7–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0277]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the regulation requiring manufacturers, packers, and distributors of dietary supplements to notify FDA that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by September 22, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the 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 the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93 (OMB Control Number 0910–0331)—Extension

Section 403(r)(6) of the act (21 U.S.C 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented, and who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

Description of Respondents: Businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Respondent	Total Hours
101.93	2,500	1	2,500	.75	1,875

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) of the act statements on labels or in labeling of dietary supplements. The agency is requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. This estimate is based on the average number of notification submissions received by the agency in the preceding 12 months.

Dated: July 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11642 Filed 7–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0278]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection contained in the guidance for industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act.

DATES: Submit written or electronic comments on the collection of information by September 22, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the 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 the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act—(OMB Control Number 0910–0518)— Extension

FDA is requesting OMB approval under the PRA (44 U.S.C. 3507) for the reporting and recordkeeping requirements contained in the guidance for industry entitled ''Continuous Marketing Applications (CMA): Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA.'' This guidance discusses how the agency will implement a pilot program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of the development of certain Fast Track drug and biological products. Applicants are asked to apply to participate in the Pilot 2 program.

In conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA), FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the CMA concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement. Under

the CMA pilot program, Pilot 2, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to participate in the program. Pilot 2 is an exploratory program that allows FDA to evaluate the impact of frequent scientific feedback and interactions with applicants during the investigational new drug application (IND) phase. Under the pilot program, a maximum of 1 Fast Track product per review division in FDA's Center for Drug Evaluation and Research (CDER) and Center for Biologics Evaluation and Research (CBER) is selected to participate. This guidance provides information regarding the selection of participant applications for Pilot 2, the formation of agreements between FDA and applicants on the IND communication process, and other procedural aspects of Pilot 2. FDA began accepting applications for participation in Pilot 2 on October 1, 2003.

The guidance describes 1 collection of information: Applicants who would like to participate in Pilot 2 must submit an application (Pilot 2 application) containing certain information outlined in the guidance. The purpose of the Pilot 2 application is for the applicants to describe how their designated Fast Track product would benefit from enhanced communications between FDA and the applicant during the product development process.

FDA's regulation at § 312.23 (21 CFR 312.23) states that information provided to the agency as part of an IND must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs. 21 CFR part 312 and FDA Form 1571 have a valid OMB control number: OMB control number 0910–0014, which expires May 31, 2009.

In the guidance document, CDER and CBER ask that a Pilot 2 application be submitted as an amendment to the application for the underlying product under the requirements of § 312.23; therefore, Pilot 2 applications should be submitted to the agency in triplicate with Form FDA 1571. The agency recommends that a Pilot 2 application be submitted in this manner for two reasons: (1) To ensure that each Pilot 2 application is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the Pilot 2 application is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on activities.

Under the guidance, the agency asks applicants to include the following information in the Pilot 2 application:

- Cover letter prominently labeled ''Pilot 2 application;''
- IND number;
- Date of Fast Track designation;
- Date of the end-of-phase 1 meeting, or equivalent meeting, and summary of the outcome;
- A timeline of milestones from the drug or biological product development program, including projected date of new drug application (NDA)/biologics license application (BLA) submissions;
- Overview of the proposed product development program for a specified disease and indication(s), providing information about each of the review disciplines (e.g., chemistry/manufacturing/controls, pharmacology/toxicology, clinical, clinical pharmacology and biopharmaceutics);
- Rationale for interest in participating in Pilot 2, specifying the ways in which development of the subject drug or biological product would be improved by frequent scientific feedback and interactions with FDA and the potential for such communication to benefit public health by improving the efficiency of the product development program; and
- Draft agreement for proposed feedback and interactions with FDA.

This information is used by the agency to determine which Fast Track products are eligible for participation in Pilot 2. Participation in this pilot program is voluntary.

Based on the number of Pilot 2 applications submitted to CDER and CBER during fiscal year 2004 and 2005, we estimate that the number of applications received annually for Pilot 2 is 7 for products regulated by CDER and 1 for products regulated by CBER. FDA anticipates that approximately 7 applicants (respondents) will submit these Pilot 2 applications annually to CDER and approximately 1 applicant (respondent) will submit these Pilot 2 applications annually to CBER. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted in a Pilot 2 application in accordance with the guidance, is estimated to be approximately 80 hours. Based on FDA's experience, we expect it will take respondents this amount of time to obtain and draft the information to be submitted with a Pilot 2 application. Therefore, the agency estimates that applicants use approximately 640 hours annually to submit the Pilot 2 applications.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Pilot 2 Application	No. of Respondents	No. of Responses per Response	Total Responses	Hours per Response	Total Hours
CDER	7	1	7	80	560
CBER	1	1	1	80	80
Total					640

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11643 Filed 7–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0486]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration Public Health Notification (formerly known as Safety Alert/Public Health Advisory) Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 23, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

FDA Public Health Notification (formerly known as Safety Alert/Public Health Advisory) Readership Survey (OMB Control Number 0910–0341)—Extension.

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 375(b)) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH) communicates these risks to user communities through two publications: (1) The Public Health Notification (PHN) and (2) the Preliminary Public Health Notification (PPHN). The PHN is published when CDRH has information or a message to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type, and that information may not be readily available to the affected target audience in the health care community, and CDRH can make recommendations that will help the health care practitioner mitigate or avoid the risk.

The PPHN is also published when CDRH has information to convey to health care practitioners that they would want to know in order to make informed clinical decisions about the use of a device or device type. However, two additional conditions exist that make the use of this type of notification preferable. First, CDRH's understanding of the problem, its cause(s), and the scope of the risk is still evolving, and in order to minimize the risk, the center believes that health care practitioners need the information they have, however incomplete, as soon as possible. Second, the problem is being actively investigated by the center, the industry, another agency, or some other reliable entity, so that the center expects to be able to update the PPHN when definitive new information becomes available.

Notifications are sent to organizations affected by the risks discussed in the notification, such as hospitals, nursing homes, hospices, home health care agencies, retail pharmacies, and other health care providers. Through a process for identifying and addressing postmarket safety issues related to regulated products, CDRH determines when to publish notifications.

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly notifications for reducing risk are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of information in the alert. Subjects will also be asked whether they wish to receive future notifications electronically, as well as how the PHN program might be improved.

The information collected will be used to shape FDA's editorial policy for the PHN and PPHN. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content, format, and method of dissemination.

In the **Federal Register** of December 22,2005 (70 FR 76054), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received in response to that notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
308	3	924	.17	157

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on the history of the PHN program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: July 17, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–11644 Filed 7–21–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[USCBP–2006–0021]

Standards for Tariff Classification of Unisex Footwear

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: Proposed interpretation; solicitation of comments.

SUMMARY: This document proposes new criteria to be used by the Bureau of Customs and Border Protection (''CBP'') to determine whether footwear should be considered to be ''commonly worn by both sexes'' (unisex) for tariff classification purposes under the Harmonized Tariff Schedule of the United States. The rates of duty applicable to footwear ''For other persons'' (*i.e.* ''unisex'') are about 1.5 percent higher than the rates of duty applicable to footwear ''For men, youths and boys''. CBP is seeking comments from the public on its proposed criteria prior to adoption of a final interpretation.

DATES: Comments must be received on or before September 22, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, Office of Regulations and Rulings, (202) 572–8883.

ADDRESSES: You may submit comments, identified by *docket number*, by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments via docket number USCBP–2006–0021.
- Mail: Trade and Commercial Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this document. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information, see the ''Public Participation'' 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.regulations.gov.* Submitted comments may also be inspected during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to submit written data, views, or arguments on all aspects of the proposed interpretation. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed interpretation. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed interpretation, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

This document sets forth CBP's proposed standards for classification of certain footwear as ''unisex''. On April 15, 2002, CBP's predecessor, the U.S. Customs Service (hereinafter ''CBP'', for clarity and consistency), published in the **Federal Register** (67 FR 18303) a general notice to solicit comments concerning alternatives to CBP's treatment of footwear deemed to be ''unisex.'' Four comments were received in response to that notice. In this document, CBP addresses the concerns and suggestions raised in those comments and proposes standards for determining whether footwear should be classified as unisex footwear. This document solicits further comment on the proposed interpretation before a final interpretation is published.

Current Law and Policy

Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS) covers footwear, gaiters and the like, and parts of such articles. Disparities in the duty rates applicable to some provisions under heading 6403 in Chapter 64 are based on the gender of the user. Additional U.S. Note 1(b) and Statistical Note 1(b) to Chapter 64, HTSUS, provide that footwear ''for men, youths and boys'' covers footwear of certain men's and youths'' sizes, but does not cover footwear commonly worn by both sexes (i.e., unisex footwear). Statistical Note 1(c) to Chapter 64, HTSUS, provides that footwear ''for women'' covers footwear of certain women's sizes, whether for females or of types commonly worn by both sexes (i.e, unisex). Elsewhere in the HTSUS (in subheadings 6403.99.75 and 6403.99.90, for example), footwear is classified as ''for other persons,'' a definition that also includes unisex footwear. The determination of whether footwear is classifiable as ''for men, youths and boys'' rather than ''for women'' or ''for other persons,'' therefore, often rests on whether the footwear is truly for men, youths and boys or is, in fact, unisex. The rates of duty applicable to footwear ''For other persons'' (*i.e.* ''unisex'') are about 1.5 percent higher than the rates applicable to footwear ''For men, youths and boys''. It is noted that quota/visa requirements remain inapplicable to footwear.

Many types of footwear may be, and in fact are, worn by both sexes. Moreover, many types of shoes in male sizes feature no physical characteristics that distinguish the footwear as being exclusively for males. Current CBP standards for making the determination of whether or not footwear is unisex have been developed and applied by CBP on an ad hoc, case-by-case basis. This approach to the ''unisex'' footwear issue, while effective in individual cases, has provided only limited guidance to the importing community and to CBP officers with respect to other prospective or current import transactions that present different factual patterns involving that issue.

CBP's current approach to unisex determinations is as follows: CBP considers certain types or categories of footwear to at least be susceptible to unisex treatment (that is, to be classifiable as footwear ''for other persons'' despite claims that the footwear is designed and intended solely ''for men, youths and boys''). These types of footwear include hikers, sandals, work boots, cowboy boots, combat boots, motorcycle boots, ''athleizure'' shoes, boat shoes, and various types within the class described as athletic footwear (*e.g.*, tennis shoes and training shoes). CBP generally considers that a type of footwear is ''commonly worn by both sexes'' if the number of styles claimed to be for males in an importer's line, when compared to the number of styles in the line for females, renders it likely that females will purchase and wear at least 5 percent of the styles claimed to be for males. Once it is determined that an imported line of footwear potentially susceptible to unisex treatment is in fact ''commonly worn by both sexes,'' CBP applies unisex treatment to that

footwear line only in sizes up to and including American men's size 8.

However, if a shoe in an imported line claimed to be for males is of a type of footwear commonly worn by both sexes, CBP does not accord unisex treatment to the imported line if a ''comparable line'' of styles is available to females. To be considered a ''comparable line,'' CBP requires an equal number of styles of a particular type of footwear (*i.e.*, a one-to-one ratio, female-to-male is required). In addition, to be considered a ''comparable line,'' female styles must be substantially similar to the styles for males in general appearance, value, marketing, activity for which designed, and component material (including percentage) breakdowns.

For purposes of establishing the existence of a ''comparable line'' for females, CBP confines its determination to the imported footwear at issue. CBP may take notice of additional styles made available by the importer that are not included in a particular entry. CBP does not, however, consider the availability of comparable styles for females in the U.S. market as a whole. Finally, CBP does not consider the fact that a certain shoe is not marketed to women to be evidence that the shoe is not ''commonly worn by both sexes.''

Request From Public to Provide Enhanced Guidance

In a letter dated September 17, 1999, the importing public, represented by the Footwear Distributors and Retailers of America (''FDRA''), requested that CBP take steps to provide enhanced guidance in determinations concerning ''unisex'' issues. The FDRA requested that CBP (1) set forth criteria for determining whether footwear claimed to be ''for men, youths and boys'' is ''commonly worn by both sexes'' and therefore should be classified as footwear ''for other persons'' and (2) ensure the uniform interpretation and application of those criteria by Customs field offices.

Preliminary Notice

After receiving the FDRA letter, CBP published a document in the **Federal Register** (67 FR 18303) on April 15, 2002. In that document, CBP set forth a more in depth analysis of its current procedures, and also set forth FDRA's proposed criteria. CBP solicited comments on the appropriateness of the specific standards suggested by FDRA and on the extent to which any standards followed by CBP in the past should be retained. Suggestions for alternative appropriate standards were also invited.

Summary of Comments

All four of the commenters who responded to the general notice provided a range of specific comments on various aspects of the ''unisex'' footwear issue. These comments are discussed below.

Comment: All of the commenters take issue with the fact that CBP confines its ''unisex'' footwear determinations in every case to the footwear of a particular importer's line. They argue that CBP should consider the availability of comparable styles for females in the U.S. retail market to constitute, or substitute for, any part of the importer's ''comparable line'' for females. The commenters note that this narrow focus leads to inaccurate findings that an importer's footwear for males is ''commonly worn by both sexes'' (*i.e.*, unisex). The commenters point out that the precise question raised by Additional U.S. Note 1(b) to chapter 64, is whether footwear is ''commonly worn by both sexes.'' They maintain that CBP improperly applies this statutory standard of ''use'' through presumptions, essentially basing factual determinations on: (1) The size and type of shoe; and (2) the number of various styles (male and/or female) included in an importer's line of merchandise.

Two of the commenters concede that in most cases, confining the inquiry to the importer's line of footwear provides a reliable estimate as to whether footwear for males is commonly worn by both sexes. This is particularly true when the importer is a ''branded distributor'' of the footwear it imports, as opposed to a ''non-branded importer,'' who provides footwear to a retailer under the retailer's brand or a generic brand. However, the commenters assert that, in the case of the non-branded importer, confining the ''unisex'' determination to the importer's line of footwear not only provides an unreliable estimate as to whether footwear for males is commonly worn by both sexes, but also results in the misclassification of footwear.

CBP Response: CBP agrees and, in an effort to bring more consistency to this area, is proposing to consider evidence from an importer of men's footwear demonstrating that it imports the same shoe for women and girls or that the same shoe for women and girls is imported by a separate importer and is available in the U.S. marketplace.

Comment: All of the commenters stress that, in certain cases, importers must be allowed the opportunity to present evidence to establish that their footwear for males is not commonly worn by both sexes. One commenter cites to Treasury Decision (T.D.) 93–88, dated October 25, 1993, as an example of CBP's use of presumption in applying the above statutory standard. In T.D. 93–88, certain footwear definitions were provided for use as guidelines by the importing community. Under the term ''unisex,'' it stated, in part, that ''[u]nless there is evidence to the contrary, assume all athletic shoes for youths (approximately sizes 11.5 to 2) and men, sizes 8 and smaller, are unisex except shoes for football, boxing or wrestling.'' In addition, T.D. 93–88 indicates that CBP will not assume that certain shoes are unisex if there is ''evidence to the contrary.'' The commenter complains that CBP provides very little guidance to the importing community as to the type or amount of evidence needed to refute unreasonable presumptions.

CBP Response: CBP agrees and is proposing to consider evidence of marketing provided by importers and others, and the marking of gender and size. By considering this evidence, CBP hopes to limit determinations that are based solely on presumption as to how footwear will be used.

Comment: One commenter notes that CBP has previously ascertained the availability of women's styles and sizes in the retail market, to determine whether shoes claimed to be ''for men, youths and boys'' were classifiable as footwear ''for other persons.'' The commenter asserts that in Headquarters Ruling Letter (HQ) 955960, issued August 19, 1994, CBP determined that certain basketball shoes were classified as unisex because ''retailers, as well as administrative staff members of a major college women's basketball team, stated that women will buy men's basketball shoes when a suitable selection is not available in the women's department.'' The commenter opines that such an approach, based on available evidence, is sensible and correct. The commenter further notes that in HQ 952097 (issued September 15, 1992), CBP concluded that certain soccer shoes were classified as unisex based on informal interviews with retailers.

CBP Response: As indicated above, CBP agrees with the commenter and is proposing to consider evidence of marketing provided by importers and others, as well as the marking of gender and size.

Comment: Another commenter suggests that, regardless of the type of evidence CBP decides to require or accept, the agency should not have to perform its own market research, as it apparently did before issuing HQ 962742, dated February 28, 2001. This

ruling concerned the extent of use by men of certain types of western/cowboy hats. To determine such use, CBP viewed numerous magazines, contacted several equine sports associations that regulate equine sports events for western style riding, and visited eight western stores. The commenter asserts that the judicial decisions and statutory standards pertinent to unisex footwear do not require the amount of extraneous evidence and number of subjective determinations inherent in standards utilized by CBP and in those initially proposed by the FDRA. The commenter maintains that reliance on the general appearance of footwear is extremely subjective, that shoes of identical construction often are not sold at similar prices and that susceptibility to use, likelihood of use, and availability of ''comparable'' styles in a retail market of ever-changing styles, tastes, etc., rarely shed light on the question of what is ''commonly worn by both sexes.'' However, the commenter also notes that in *Mast Industries, Inc.* v. *United States,* 9 C.I.T. 549 (1985), aff'd 786 F.2d 1144 (Fed. Cir. 1986), the court emphasized the primary importance of the characteristics of the imported merchandise, observing that ''[t]he former Court of Customs and Patent Appeals held that the merchandise itself may be strong evidence of use.''

CBP Response: CBP agrees with the court in Mast. Again, as indicated above, CBP is proposing to consider evidence of marketing provided by importers and others, and marking of gender and size in order to limit determinations that are based solely on presumption. CBP proposes to initially rely on evidence provided by the importer and others. However, CBP does not propose to limit its ability to perform market research in those cases where it finds such research necessary.

Comment: One commenter, noting the judicial guidance of Mast discussed above, proposes that CBP base its unisex determinations on examination of: (1) The imported merchandise itself; and (2) the documents presented at the time the entry summary, or its equivalent, is filed. The commenter asserts that men's/boys' shoes are usually made on men's/boys' lasts (*i.e.*, a block or form shaped like a human foot and used in making shoes) and are usually described as men's/boys' shoes on purchase orders, invoices and footwear detail sheets. The commenter suggests that, in order to eliminate any gender ambiguity, shoes for males could be labeled or marked to identify the gender for which the shoes have been designed, and to whom they will be marketed. CBP could require that such labeling or marking be visible in or on the shoe, the shoebox, or both. As an example, the commenter proposes requiring that a sewn-in label or hang tag state ''boys size 6'' instead of only ''size 6,'' in order to clarify that the shoe is a boy's shoe and that the importer intends that it be sold for use by boys.

The commenter stresses that footwear described as men's/boys' shoes on the import documentation and marked as such, should be presumed to be marketed for sale to men and boys and should not be considered unisex. The commenter also states that shoes designed for males are usually merchandised separately from shoes for females, and even if sold in the same department of the same retail store, the shoes for each gender are usually segregated in separate areas, shelves or racks. The commenter contends that this aspect of marketing is a reflection of shoe design, because shoes for males are intended to be sold to males.

The same commenter recommends the following ''bright-line test'' to establish what is commonly worn by both sexes. The following criteria should be met in order for CBP to presume that imported footwear is unisex. The footwear should be: (a) American men's sizes 8 or under; (b) a type that is susceptible to use by both sexes; (c) not described in import documents as footwear for men, youths or boys; and (d) not made on lasts designed for American males; or not marked, labeled, or sold as footwear for men, youths or boys by sizing or otherwise. The commenter also maintains, however, that an importer should be allowed to rebut CBP's presumption that the footwear is unisex, by establishing the existence of at least one comparable female shoe style, in either the importer's line or in the U.S. market, for every five male shoe styles, with comparability based solely on design and construction of the footwear. A failure to rebut the unisex presumption would call into effect the criterion identified by the commenter as: ''(e) limited availability of comparable female styles.''

CBP Response: CBP agrees in part and is proposing to base ''unisex'' determinations on examination of the imported merchandise and to accept evidence in the form of marketing material, retail advertisements, or other convincing documentation showing that the same shoe is available for ''other persons'' in the U.S. marketplace. CBP is proposing to generally accept presentation of such evidence as satisfactorily demonstrating that the instant footwear is exclusively for ''men, youths and boys.''

CBP is proposing to generally consider the marking of gender and size, to indicate men's size, youths' size, or boys' size, as acceptable evidence that a shoe is not ''unisex.''

CBP does not agree that import documents describing footwear as being for men, youths or boys should constitute sufficient evidence that the footwear is not commonly worn by both sexes.

Lastly, the commenter offered no evidence to support the position that footwear made on male lasts is not commonly worn by both sexes. In the absence of such evidence, CBP declines to adopt that position.

Comment: With respect to factors used to determine that a female style is comparable to a male style, one commenter (as noted immediately above) asserts that comparability should be based only on a shoe's design and construction. Two commenters maintain that comparability should be based primarily on a shoe's retail price, but also on the features and the materials that comprise its upper and outer sole. One of these two commenters also considers the type of shoe to be a factor of comparability.

CBP Response: CBP agrees and is proposing to limit the ''unisex'' determination to the characteristics of the shoe under consideration, in most cases making comparisons and presumptions unnecessary.

Comment: Concerning the ratio of female-to-male styles that could establish the existence of a ''comparable line'' for females, three commenters maintain that the existence of at least one comparable female style (in either the importer's line, or in the U.S. market) for every five male styles (a one-to-five ratio) should be deemed sufficient. These same commenters also state that a one-to-three ratio (female-to-male styles), as an alternative standard, could be considered sufficient.

CBP Response: CBP disagrees that either a one-to-five or one-to-three ratio, female-to-male, is sufficient in the absence of the means and opportunity to examine and compare all styles of an importer's line. CBP is proposing, in the absence of marking as to gender, to require evidence that the same style of shoe for females is available in either the importer's line or the U.S. marketplace. CBP is not proposing to accept comparable styles as alternatives for the same style.

Comment: With regard to any set percentage of use by (or sale to) females, of footwear claimed to be for males, indicative of footwear that is commonly worn by both sexes, one commenter suggests that 25 percent is an

appropriate standard. The commenter contends that the 5 percent (one sale in twenty) standard utilized by CBP (subsequent to the court's finding in *De Vahni International, Inc.* v. *United States*, 66 Cust. Ct. 239, C.D. 4196 (1971), that ''[s]uch infrequent usage [characterized by one sale in a hundred] could hardly be considered common'') is appropriate only as an indicator of *de minimis* usage.

CBP Response: CBP agrees that the 5 percent standard does not provide an accurate indication that footwear is commonly worn by both sexes and is proposing to adopt a 25 percent standard.

Comment: Concerning whether CBP should attempt to clarify, refine, and/or redefine terms such as ''category,'' ''type,'' ''style,'' ''line,'' etc., as they relate to footwear, one commenter recommends that all such terms be left alone. The commenter notes that these terms have been expressed by CBP in appropriately broad terms, that fashion drives most aspects of the footwear industry, and that the market concepts are so fluid that any narrow definitions would soon be obsolete.

CBP Response: CBP agrees and is not proposing, at this time, to attempt to clarify, refine, or redefine footwear-related terms such as those stated above.

Comment: With regard to whether unisex standards should be limited only to provisions under heading 6403, HTSUS, one commenter opines that the standards should indeed be limited to that heading. The commenter notes that in the other headings covering footwear, gender is addressed only at the statistical level (*i.e.*, the ten digit level), and stated as ''For men,'' ''For women,'' or ''Other,'' in contrast to eight digit subheadings under heading 6403, which reference footwear ''For men, youths or boys'' and ''For other persons.'' The commenter also notes that in January 2000, many references to gender at the statistical level in heading 6403 (*e.g.*, ''misses,'' ''children,'' and ''infants'') were eliminated.

CBP Response: CBP agrees and is proposing that unisex standards should be limited only to classifications within heading 6403, HTSUS.

CBP's Proposed Criteria

Based upon the comments received and for the reasons set forth above, CBP is proposing the following criteria for its determination of whether footwear should be deemed to be ''unisex'' under heading 6403, HTSUS:

(1) Footwear in sizes for men, youths or boys will not be considered to be ''commonly worn by both sexes'' (*i.e.*, ''unisex'') if marked ''MEN'S SIZE____'', ''YOUTHS' SIZE____'', or ''BOYS' SIZE____''.

(2) Even if not marked as described in criterion 1, footwear in sizes for men, youths or boys will not be considered to be ''commonly worn by both sexes'' (*i.e.*, ''unisex'') if:

a. The importer imports the same shoe for women and girls, or;

b. Evidence is provided in the form of marketing material, retail advertisements, or other convincing documentation demonstrating that the same shoe for women and girls is available in the U.S. marketplace.

(3) A style of footwear in sizes for males will not be presumed to be ''commonly worn by both sexes'' (*i.e.*, ''unisex'') unless evidence of marketing establishes that at least one pair in four (25 percent) of that style is sold to and/or worn by females.

(4) A determination that footwear is ''commonly worn by both sexes'' will trigger ''unisex'' classification treatment that is applicable to all sizes.

Dated: June 23, 2006.

Deborah J. Spero,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E6–11679 Filed 7–21–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5043–N–06]

Notice of Proposed Information Collection for Public Comment: Survey of Manufactured (Mobile) Home Placements

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 22, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Robert A. Knight, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–1060, Ext. 5893 (this is not a toll-free number), (or via the Internet at *Robert_A._Knight@hud.gov*) or Michael Davis, U.S. Census Bureau, Manufacturing and Construction Division, Room 2126, FOB 4, Washington, DC 20233–6900, at (301) 763–1605 (or via the Internet at *Michael.Davis@census.gov*.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology that will reduce respondent burden (*e.g.,* permitting electronic submission of responses.) This Notice is requesting a revision of a currently approved collection.

This Notice also lists the following information:

Title of Proposal: Survey of Manufactured (Mobile) Home Placements.

OMB Control Number: 2528–0029.

Description of the need for the information and proposed use: The Survey of Manufactured (Mobile) Home Placements collects data on the characteristics of newly manufactured homes placed for residential use including number, sales price, location, and other selected characteristics. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report manufactured home sales and price information for the nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are

being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability.

Agency Form Numbers: C–MH–9A.

Members of Affected Public: Business firms or other for-profit institutions.

Estimation of the Total Numbers of Hours Needed To Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response:

Number of Respondents: 7,300.

Estimate Responses per Respondent: 2.

Time per Respondent: 30 minutes.

Total Hours To Respond: 3,650.

Respondent's Obligation: Voluntary.

Status of the Proposed Information Collection: Pending OMB approval.

Authority: Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

Dated: July 17, 2006.

Darlene F. Williams,

Assistant Secretary for Policy, Development and Research.

[FR Doc. 06–6432 Filed 7–21–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5043–N–05]

Notice of Proposed Information Collection for Public Comment on the: 2007 American Housing Survey—National Sample; 2007 American Housing Survey—Metropolitan Sample

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 22, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202) 708–1060, Ext. 5887 (this is not a toll-free number), or Barbara T. Williams, Bureau of the Census, HHES Division, Washington, DC 20233, (301) 763–3235 (this is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Ronald J. Sepanick or Ms. Barbara Williams.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposing collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology that will reduce burden, (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

(A) *Title of Proposal:* 2007 American Housing Survey—National Sample. *OMB Control Number:* 2528–0017.

(B) *Title of Proposal:* 2007 American Housing Survey—Metropolitan Sample. *OMB Control Number:* 2528–0016.

Description of the Need for the Information and Proposed Use: The 2007 American Housing Survey National Sample (AHS–N) and the 2007 American Housing Survey Metropolitan Sample (AHS–MS) provide a periodic measure of the size and composition of the housing inventory with the former capturing it for the country and the latter for select metropolitan areas. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1701Z–10a mandates the collection of this information.

The 2007 surveys are similar to previous AHS–N and ASH–MS surveys in that they collect data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies. Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–21/61, AHS–22/62 and AHS–23/63.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

	National sample	Metropolitan sample
Number of Respondents	59,581	24,990
Estimate Responses per Respondent ...	(*)	(**)
Time (minutes) per respondent	34	34
Total hours to respond	33,763	14,161

* One (1) every two years.
** One (1) every six to eight years.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: July 17, 2006.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. 06–6433 Filed 7–21–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5041–N–26]

Notice of Proposed Information Collection: Comment Request; Application for Transfer of Physical Assets

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 22, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Building, Room 8001, Washington, DC 20410 or *Lillian_Deitzer@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Kimberly R. Munson, Office of Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Room 6168, Washington, DC 20410, telephone number (202) 708–3730 ext. 5122 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Application for Transfer of Physical Assets.

OMB Control Number, if applicable: 2520–0275.

Description of the need for the information and proposed use: The information collected is completed and submitted to HUD by prospective purchasers of properties with mortgages either HUD-insured or HUD-held prior to conveying the title. HUD uses the information submitted to determine the suitability of new owners and managers of multifamily projects and to ensure the legal and administrative sufficiency of the proposal.

Agency form numbers, if applicable: HUD–92266.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 34,825; the number of respondents is estimated to be 350; the frequency of responses is 1; the estimated time to prepare the information is approximately 92 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: July 18, 2006.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 06–6434 Filed 7–21–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N 52]

Notice of Proposed Information Collection: Comment Request; Contract and Subcontract Activity

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due September 22, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410; telephone: 202–708–2374, (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Laura Schroff, QDAM, Office of the Chief Information Officer, Department of Housing and Urban Development, 451 Seventh Street, SW., L'Enfant Plaza Building, Room 8202, Washington, DC 20410; telephone 202–708–2374 (this is not a toll-free number) or e-mail Ms. Schroff at *Laura_M._Schroff@hud.gov*.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Contract and Subcontract Activity.

OMB Control Number, if applicable: 2535–0117.

Description of the need for the information and proposed use: Information will enable HUD to monitor and evaluate Minority Business Enterprise (MBE) activities against the total program activity and the designated MBE goals. Reports are submitted annually to Congress.

Agency form numbers, if applicable: HUD–2516.

Members of Affected Public: Not-for-profit institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: This proposal will result in no significant increase in the current information collection burden. An estimation of the total number of hours needed to provide the information collection is 5,000, number of respondents is 5,000, frequency of response is ''annually,'' and the hours per response is 1 hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 18, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–11743 Filed 7–21–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0130; Import/Export of Wildlife and Wildlife Parts and Products and Plant Rescue, 50 CFR 12, 13, and 23

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; Request for Comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on August 31, 2006. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before August 23, 2006.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0130.

Title: Import/Export of Wildlife and Wildlife Parts and Products and Plant Rescue, 50 CFR parts 12, 13, and 23.

Service Form Number(s): 3–200–61.

Type of Request: Revision of a currently approved collection.

Affected Public: State and tribal governments; botanical gardens, arboreta, zoological parks and research institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Activity	Number of respondents	Number of responses	Estimated completion time (hrs)	Total annual burden hrs
Approval of a CITES Export Program (American ginseng, furbearers, American alligator)	2	2	12	24
Reports—American Ginseng (FWS Form 3–200–61)	25	25	[1] 43.5	[1] 1,087.5
Reports—Furbearer	52	52	1	52
Reports—American Alligator	10	10	1	10
Participation in the Plant Rescue Center Program	3	3	1	3
Plant Rescue Center Status Reports	69	140	0.5	70
Totals	161	232	.....	1,246.5

[1]Average.

Estimated Total Annual Nonhour Burden Cost to Public: $3,000 for printing and travel costs associated with submission of FWS Form 3–200–61.

Abstract: This information collection is associated with regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES regulates international trade in listed species through a system of permits and certificates. Before issuing a CITES Appendix II export permit, the Service must find that: (1) The specimens to be exported were legally acquired and (2) the export will not be detrimental to the survival of the species in the wild. We must also monitor exports to ensure that the level of trade is sustainable.

We have set up programs to streamline the process for making the findings for export of certain native species listed in CITES Appendix II. Working with State and tribal governments, we have established export programs for American alligator, American ginseng, and certain native furbearers. For States and tribes that request export approval for one or more of these species, we collect information from the State and tribal governments on: (1) The conservation management of the relevant CITES-listed species in their territory and (2) their laws regulating the harvest of these species. This information allows us to make findings on a State or tribal basis, rather than requiring individual permit applicants to provide the information on a permit-by-permit basis.

After we approve a State or tribal export program, we collect information from the State or tribal government in the form of annual reports. These reports request information on annual harvest levels and any changes to the State or tribal regulatory procedures over the past year. States and tribes may refer to information that they provided in previous years if there has been no change. The annual reports provide information that enables us to make findings on an annual or multi-year basis. Regular reporting from States and tribes helps us ensure that our findings

remain valid. We use FWS Form 3–200–61 (American Ginseng Export Program) to collect information on ginseng programs. We collect information on the other export programs by letter or e-mail.

This information collection also pertains to plant rescue. Live plant specimens traded in violation of CITES are subject to seizure, and CITES requires that seized live plant material either be returned to the country of export or placed in a qualified rescue center in the country in which the seizure occurred. In the United States, we have a Plant Rescue Center program consisting of a network of botanical gardens, arboreta, zoological parks, and research institutions that have agreed to care for seized plant material. We collect information to determine if an institution is qualified to participate in the Plant Rescue Center program, as well as followup information from Plant Rescue Center participants confirming receipt of shipments and the condition of plants upon receipt. We collect this information via a letter or e-mail.

Comments: On March 10, 2006, we published a notice in the **Federal Register** (71 FR 12393) soliciting public comment for a period of 60 days on the information collection and recordkeeping requirements described here. The comment period ended May 9, 2006. We received comments from one individual and a State Department of Natural Resources.

The individual commenter did not address the necessity, clarity, or accuracy of the information collection, but instead provided a general statement of opposition to the information collection and the import or export of wildlife and plants. We did not make any changes to our information collection as a result of that comment.

A number of the comments submitted by the State Department of Natural Resources address the necessity, clarity, or accuracy of the information collection and are addressed below. We revised FWS Form 3–200–61 and the supporting statement for our request to OMB based on these comments.

The commenter stated that ginseng is not rare and therefore should be removed from Appendix II. While there is a process for proposing delisting, the issue of whether or not ginseng should be listed in the CITES Appendices is outside the scope of this information collection; therefore, we will not address it here.

In the supporting statement for FWS Form 3–200–61, we note that many of the individuals and companies digging and dealing in American ginseng operate in several States. We also request information on the movement of ginseng within the United States to assist us in keeping track of the legal trade. The commenter asserted that the vast majority of ginseng harvesters dig in the State where they live or vacation, but then noted that several dealers buy certified ginseng from dealers from other States. We continue to believe that many individuals involved in harvesting and selling American ginseng operate in multiple States. The commenter went on to note that she keeps records of every shipment of American ginseng bought and sold by dealers in her State from other States, but had never been asked to provide this information to the Fish and Wildlife Service. FWS Form 3–200–61 asks how States and tribes with approved American ginseng export programs handle ginseng entering from another State or tribe and if individuals and companies dealing in ginseng have to be licensed or registered.

The commenter questioned the utility of collecting harvest data from the States as an indicator of the status of the species in the wild, and further recommended that such information not be collected by county, since she asserted that ''no one in FWS has ever used the county level data'' and such information may be incorrectly reported by ginseng diggers and dealers. We agree with the commenter that harvest levels of ginseng are not completely correlated to abundance of the species in the wild, but are affected by several other factors. However, over time a consistent change in harvest levels, especially a decline, serves as an indicator of a change in the species' abundance. Such changes signal to us the need to engage in more intensive consultations with the States and relevant experts to determine what is actually happening relative to the status of ginseng.

In discussions with State ginseng coordinators and stakeholders (especially diggers, growers, and dealers), it is universally acknowledged that more effort is needed to assess the actual status of ginseng in the wild. However, because American ginseng has an extensive range, a meaningful status assessment would require significant funding and other resources. Although more information has been forthcoming on the status of ginseng, impacts of harvest, best harvest practices, and other aspects of ginseng biology, harvest, and trade, we still find that much of our evaluation of the sustainability of ginseng harvest is derived indirectly rather than through direct study of wild populations of the species. Therefore, until a more complete assessment and monitoring program can be developed, we still need to collect information on harvest levels of ginseng for making our nondetriment findings. The collection of such information is also useful in determining if there are significant discrepancies in what States are certifying as legally acquired and actual exports. Significant differences between amounts of ginseng certified and actual exports would serve to indicate fraud or other illegal activities, potentially in violation of both Federal and State laws, in addition to noncompliance with CITES.

The commenter is mistaken in her belief that the county-level harvest data are not used. In fact, we stated in our 2003–2004 nondetriment finding for ginseng that there was a strong correlation between harvest in certain counties and their proximity to or inclusion of U.S. Forest Service (USFS) lands. We used this information to note discrepancies between levels of harvest authorized by USFS and actual reported amounts, which we believe were potential indicators of illegal harvest on Federal lands. We provided this information to USFS to consider in their management of ginseng on their lands. More recently, in work done by the U.S. Geological Survey-Biological Resource Discipline (BRD) to assist us in evaluating the status of ginseng and the impacts of harvest, county harvest data were used to study ginseng abundance and its relationship to harvest levels as well as the number of ginseng dealers in a given area, particularly in and around Federal lands.

In the supporting statement for FWS Form 3–200–61, we state that we use the information provided on FWS Form 3–200–61 to make nondetriment and legal acquisition findings as required under CITES. The commenter contended that the only person who can determine if the root were legally acquired is the person who dug the root, and it is impossible for dealers or State certifiers to verify legal acquisition. The certification that wild American ginseng was legally acquired is based on the presentation of a digger or dealer license, if required, and State or U.S. Forest Service harvest permits or landowner permission slips for all wild ginseng presented for certification. If a dealer or State certifier has reason to believe that the ginseng presented for certification were not legally acquired or that the digger or dealer violated the requirements for a license, that individual should not certify the ginseng roots in question. While we use the information from FWS Form 3–200–61 in making nondetriment and legal acquisition findings, this is not the only

information we use. In making the nondetriment findings, we also use information from peer-reviewed literature as well as information from federally funded and academic research projects. For the legal acquisition findings, we rely on the fact that States have legislation in place for managing ginseng populations as well as the capacity to enforce that legislation.

With regard to duplication in the information collection, the commenter noted that the States are asked to resubmit information that has not changed from year to year, and she recommended that we require the States only to submit information on those items for which the information has changed from previous years. We agree with this suggestion and have included a clarification statement on FWS Form 3–200–61 noting that information that has not changed from previous years does not need to be provided again. The commenter also stated that the requirement that States track unsold or unexported ginseng was burdensome and did not appear useful. FWS Form 3–200–61 does not require that States keep this information, but rather asks if States track this information as part of their program.

The commenter expressed concern that the information collection would have a significant impact on small businesses or other small entities. The commenter stated that the only way a State agency could obtain the information requested would be to obtain that information from ginseng dealers, which are small businesses. It was the commenter's opinion that the requested information would require a minimum of 725 hours annually for the approximately 15 dealers within the commenter's State. Our programmatic findings reduce the information collection burden on individual businesses and greatly facilitate processing of permits. Through close cooperation with States within the range of American ginseng, we have developed the protocol for making programmatic findings and have established programs with 25 States. This process removes the burden on the individual exporter to provide all of the required information, thus significantly reducing the information collection burden on individual businesses. We disagree with the statement that this information collection would amount to a time burden in excess of 725 hours for approximately 1,800 ginseng purchases by the 15 or so dealers in the commenter's State. Of the 725 hours identified, we believe that only 305 of those hours actually relate to issues of this information collection. In our opinion, the other 420 hours are for standard business practices and recordkeeping, such as for tax purposes, that the dealers would need to conduct whether or not we carried out this information collection. With an estimated 15 dealers, the annual time burden amounts to about 20 hours each, or 10 minutes per purchase.

The commenter believed that we had underestimated the hour burden of the collection of information, and she provided a revised hour burden estimate based on her experience as a State American ginseng program coordinator. We do not agree with all of the elements included in the commenter's hour burden estimate, but we do agree that we previously underestimated the hour burden. We also believe that the hour burden on respondents is likely to vary from program to program. We have revised the information collection for FWS Form 3–200–61 to show an estimated range of 2 to 85 hours (an average of 43.5 hours) for the annual hour burden. We believe that our estimate of the average hourly wage of a person completing the form, approximately $20 per hour, is reasonable and we have revised the average total dollar value of annual burden hours as described above. The commenter included an estimated hour burden for costs to her agency resulting from program requirements imposed by the State. We do not believe that it is appropriate to include that estimate in the supporting statement for FWS Form 3–200–61 since it is not a requirement placed on the State by the Service.

The commenter believed that our estimate of the total annual nonhour cost burden to respondents was incorrect. Although we do not agree that law enforcement activities associated with managing American ginseng are part of the annual nonhour cost burden, we have revised the supporting statement for FWS Form 3–200–61 to include $3,000 for printing and travel costs. We believe this is a reasonable estimate of the total annual nonhour cost burden to respondents.

The commenter also included some general comments related to this information collection. The commenter remarked on the use of the phrase ''States and tribes,'' noting that in her State ginseng harvested on tribal lands is incorporated into the State report. Although there are currently no tribes with approved American ginseng export programs, we have included the reference to tribes in this information collection in the event that a tribe seeks and obtains approval of a program separately from the State in which it is located, particularly as some States no longer manage or regulate resources on tribal lands. We have approved tribal programs for export of other CITES Appendix-II species (e.g., bobcat [*Lynx rufus*]).

The commenter noted the difficulty in compiling the information and completing this information collection by May 1 of each year. On April 19, 2006, we published a proposed rule in the **Federal Register** (71 FR 20168) to revise the regulations that implement CITES. That proposed rule contains information collections related to those described here. In the proposed rule, we change the annual report due date from May 31 to May 1. The harvest seasons for all of the States with currently approved American ginseng export programs end by December 31 at the latest. We believe that the States should reasonably be able to complete this information collection over a 4-month time period. This proposed change will ensure that we receive information in time for us to make required CITES findings before the beginning of the next harvest season.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents. Comments submitted in response to this notice are a matter of public record.

Dated: June 27, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–11645 Filed 7–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control Number 1018–0075; Federal Subsistence Regulations and Associated Forms, 50 CFR 100

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. This ICR is scheduled to expire on August 31, 2006. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before August 23, 2006.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358–2269 (fax); or *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0075.

Title: Federal Subsistence Regulations and Associated Forms, 50 CFR 100.

Service Form Number(s): FWS Forms 3–2326, 3–2327, and 3–2328.

Type of Request: Revision of a currently approved collection.

Affected Public: Federally defined rural residents.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Form No./activity	Number of respondents	Annual number or responses	Average burden hour per response	Total annual burden hours
3–2326—Application	5,000	5,000	10 minutes	833.3
3–2326—Report	*5,000	5,000	5 minutes	416.6
3–2327—Application	450	450	10 minutes	75.0
3–2327—Permit	*450	450	5 minutes	37.5
3–2327—Report	*450	450	5 minutes	37.5
3–2328—Application	250	250	10 minutes	41.6
3–2328—Report	*250	250	20 minutes	83.3
Appeals (nonform)	1	1	4 hours	4.0
Total	5,701	11,851		1,528.8

*These respondents are not included in the total number since they are identical to the respondents for the applications.

Estimated Total Annual Cost to Public: $16,816.80.

Abstract: The Alaska Interest Lands Conservation Act (ANILCA) and Service regulations at 50 CFR part 100 require that persons engaged in taking fish and wildlife on public lands in Alaska apply for and obtain a permit to do so and comply with reporting provisions of that permit. We use three forms to collect information from qualified rural residents for subsistence harvest: FWS Form 3–2326 (Federal Subsistence Hunt Application, Permit, and Report), FWS Form 3–2327 (Designated Hunter Permit Application, Permit, and Report, and FWS Form 3–2328 (Federal Subsistence Fishing Application, Permit, and Report. We use the information collected to evaluate subsistence harvest success; the effectiveness of season lengths, harvest quotas, and harvest restrictions; hunting patterns and practices; and hunter use. The Federal Subsistence Board uses the harvest data, along with other information, to set future seasons and bag limits for Federal subsistence resource users. These seasons and bag limits are set to meet needs of subsistence hunters without adversely impacting the health of existing animal populations.

We also collect information from persons wishing to appeal Federal Subsistence Board decisions. Our regulations at 50 CFR 100.20 set forth procedures for appeals, including the documentation that must be submitted. The required documentation will ensure that we have all of the information necessary to adequately reconsider the decision.

Comments: On March 2, 2006, we published in the **Federal Register** (71 FR 10698) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited public comments for 60 days, ending on May 1, 2006. We received one comment. The commenter did not address the necessity, clarity, or accuracy of the information collection, but instead provided general comments on the low levels of law enforcement and the humane treatment of fish and wildlife. We did not make any changes to our information collection based on this comment.

We again invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents. Comments submitted in response to this notice are a matter of public record.

Dated: June 27, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–11646 Filed 7–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; OMB Control Number 1018–0007; Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80.10f

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to renew approval for the information collection request (ICR) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the

general public and other Federal agencies to take this opportunity to comment on this information collection.

DATES: You must submit comments on or before September 22, 2006.

ADDRESSES: Send your comments on the ICR to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); hope_grey@fws.gov (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Federal Aid in Wildlife Restoration Act (16 U.S.C. 669–669i) and the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777k) provide Federal assistance to the States for management and restoration of fish and wildlife. These Acts and our regulations at 50 CFR 80.10 require that States and territories annually certify their hunting and fishing license sales. States and territories that receive grants under these Acts use FWS Forms 3–154A (Part I—Certification) and 3–155B (Part II—Summary of Hunting and Sport Fishing Licenses Issues) to certify the number and amount of hunting and fishing license sales. We use the information collected to determine apportionment and distribution of funds according to the formula specified in each Act.

II. Data

OMB Control Number: 1018–0007.

Title: Annual Certification of Hunting and Sport Fishing Licenses Issued, 50 CFR 80.10.

Service Form Number(s): 3–154a and 3–154b.

Type of Request: Revision of currently approved collection.

Affected Public: States and territories (Commonwealth of Puerto Rico, District of Columbia, Commonwealth of the Northern Mariana Islands, Guam, Virgin Islands, and American Samoa).

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Annual Number of Respondents: 56.

Frequency of Collection: Annually.

Estimated Number of Responses: 112 (one per respondent for each form).

Estimated Time Per Response: Average of 12 hours for FWS Form 3–154A and 20 hours for FWS Form 3–154B.

Estimated Total Annual Burden Hours: 1,792.

Estimated Total Annual Cost to Public: $44,800.

III. Request for Comments

We invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments submitted in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB to renew approval for this information collection.

Dated: July 5, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–11647 Filed 7–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: We invite the public to comment on the following applications to conduct certain activities with endangered species.

DATES: Comments on these permit applications must be received on or before August 23, 2006.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Chief, Endangered Species, Ecological Services, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503–231–2063; fax: 503–231–6243). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Linda Belluomini, Fish and Wildlife Biologist, at the above Portland address.

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*). The U.S. Fish and Wildlife Service (''we'') solicits review and comment from local, State, and Federal agencies, and the public on the following permit requests.

Permit No. TE–126866

Applicant: California Department of Parks and Recreation, Gustine, California

The applicant requests a permit to take (capture, handle, and attach radio transmitters) the riparian brush rabbit (*Sylvilagus bachmani riparius*) and take (capture, handle, and release) the riparian woodrat (*Neotoma fuscipes riparia*) in conjunction with ecological research in San Joaquin County, California, for the purpose of enhancing their survival.

Permit No. TE–022630

Applicant: U.S. Geological Survey, Henderson, Nevada

The permittee requests an amentment to remove/reduce to possession the *Nitrophila mohavensis* (Amargosa niterwort) in conjunction with scientific study in Nye County, Nevada, and Inyo County, California, for the purpose of enhancing its survival.

Permit No. TE–809232

Applicant: BioWest, Inc., Logan Utah

The permittee requests an amendment to take (capture, mark, tag, and release) the bonytail chub (*Gila elegans*) and increase the geographic area in which to take (capture, mark, tag, measure, fin clip, and release or collect) the razorback sucker (*Xyrauchen texanus*) along the Lower Colorado River in conjunction with scientific research for the purpose of enhancing their survival.

Permit No. TE–106759

Applicant: Lauronda Cooper, Cupertino, California

The permittee requests an amendment to take (capture, mark, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) and the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with surveys throughout the species range in California for the purpose of enhancing their survival.

Permit No. TE–122026

Applicant: Tracy Bailey, Ridgecrest, California

The applicant requests a permit to take (capture, mark, and release) the

Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–128462

Applicant: Jonathan Feenstra, Pasadena, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

Permit No. TE–128400

Applicant: Christina M. Sloop, Sonoma, California

The applicant requests a permit to remove/reduce to possession *Orcuttia pilosa* (hairy orcutt grass) and *Neostapfia colusana* (Colusa grass) from Federal lands throughout the species range in California for the purpose of enhancing their survival.

Permit No. TE–128416

Applicant: Ro M. LoBianco, Danville, California

The applicant requests a permit to take (capture and release) the California freshwater shrimp (*Syncaris pacifica*) in conjunction with surveys throughout the species range in California for the purpose of enhancing its survival.

We solicit public review and comment on each of these recovery permit applications. 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 addresses from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that we may be required to disclose your name and address pursuant to the Freedom of Information Act. 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: June 21, 2006.

Michael Fris,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E6–11716 Filed 7–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Two Applications for Incidental Take Permits for Construction of Two Single-Family Homes in Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) and Habitat Conservation Plan (HCP). Cory Palmateer (Applicant) and America's First Home (Applicant) each request an ITP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants anticipate taking about 0.4 acre combined of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging and sheltering habitat incidental to lot preparation for the construction of two single-family homes and supporting infrastructure in Volusia County, Florida (Project). The destruction of 0.4 acre of foraging and sheltering habitat is expected to result in the take of two families of scrub-jays. The Applicants' Habitat Conservation Plans (HCPs) describe the mitigation and minimization measures proposed to address the effects of the Projects to the Florida scrub-jay.

DATES: Written comments on the ITP applications and HCPs should be sent to the Jacksonville Field Office (see **ADDRESSES**) and should be received on or before August 23, 2006.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain a copy by writing the Service's Jacksonville Field Office. Please reference permit number TE128571–0, for Palmateer, and TE128569–0, for America's First Home, in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES**), telephone: 904/232–2580, ext. 113.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE128571–0, for Palmateer, and TE128569–0, for America's First Home, in such requests. You may mail comments to the Service's Jacksonville Field Office (see **ADDRESSES**). You may also comment via the Internet to *michael_jennings@fws.gov.* Please also include your name and return address in your Internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the Service office listed under **ADDRESSES.** 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. We will not, however, 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.

Residential construction for Palmateer will take place within Section 09, Township 18, Range 30, Orange City, Volusia County, Florida, on lots 17, 18, and 19, East Dorseys Blue Spring Park. Residential construction for America's First Home will take place within Section 30, Township 18, Range 31, Deltona, Volusia County, Florida, on lot 10, Block 103, Deltona Lakes. Each of these lots is within scrub-jay occupied habitat.

The lots combined encompass about 0.4 acre, and the footprint of the homes, infrastructure, and landscaping preclude retention of scrub-jay habitat on each of these respective lots. In order to minimize take on site the Applicants propose to mitigate for the loss of 0.4 acre of scrub-jay habitat by contributing a total of $18,180.96 ($7,727 for Palmateer and $10,453.96 for America's

First Home) to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

The Service has determined that the Applicants' proposals, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the HCPs. Therefore, the ITPs are ''low-effect'' projects and qualify as categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCPs and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act (16 U.S.C. 1531 et seq.). If it is determined that those requirements are met, the ITPs will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITPs.

Authority: This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: July 18, 2006.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E6–11719 Filed 7–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Incidental Take Permit for Construction of a Single-Family Home, Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an incidental take permit (ITP) application and Habitat Conservation Plan (HCP). Lawrence Bank (Applicant) requests an ITP, for a 2-year term, for an individual lot pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicant anticipates taking about .25 acres of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging and sheltering habitat incidental to lot preparation for the construction of one single-family home and supporting infrastructure in Brevard County, Florida (Projects). The destruction of .25 acres of foraging and sheltering habitat is expected to result in the take of one family of scrub-jays. The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the Project to the Florida scrub-jay.

DATES: Written comments on the ITP application and HCP should be sent to the Jacksonville Field Office (see **ADDRESSES**) and should be received on or before August 23, 2006.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by writing the Service's Jacksonville Field Office. Please reference permit number TE128564–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES**), telephone: 904/232–2580, ext. 113.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE128564–0 in such requests. You may mail comments to the Service's Jacksonville Field Office (see **ADDRESSES**). You may also comment via the Internet to *michael_jennings@fws.gov*. Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT**. Finally, you may hand deliver comments to the Service office listed above (see **ADDRESSES**). 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. We will not, however, 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.

Residential construction will take place within section 02, Township 24 South, Range 35 East, Cocoa, Brevard County, Florida, on lot 14, Block 28. This lot is within locations where scrub-jays were sighted during surveys for this species from 1999 through 2003.

The lot encompasses about 1.00 acres, of which .25 acres will be used for the footprint of the home, infrastructure, and landscaping. The remaining .75 acres will be retained as scrub-jay habitat. In order to minimize take on site, the Applicant proposes to preserve the remaining .75 acres of scrub habitat on site and not clear the property or begin construction until the completion of the nesting season (March 1–June 30).

The Applicant proposes to mitigate for the loss of .25 acres of scrub-jay habitat by contributing a total of $4,200 to the Florida Scrub-jay Conservation Fund administered by The Nature Conservancy. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management.

The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will have a minor or negligible effect on the species covered in the HCP. Therefore, the ITP is a ''low-effect'' project and qualifies as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. Low-effect HCPs are those involving (1) minor or negligible effects on federally listed or candidate species

and their habitats, and (2) minor or negligible effects on other environmental values or resources.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If it is determined that those requirements are met, the ITP will be issued for the incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Authority: This notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

Dated: July 18, 2006.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E6–11721 Filed 7–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for the Joshua Tree Recreational Campground Low-Effect Habitat Conservation Plan, San Bernardino County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: JAT Associates, Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service or ''we'') for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). We are considering issuing a 30-year permit to the Applicant that would authorize take of the federally threatened desert tortoise (*Gopherus agassizii*) incidental to otherwise lawful activities associated with the construction and operation of the Joshua Tree Recreational Campground on 13.8 acres of their 314.6-acre property.

We are requesting comments on the permit application and on our preliminary determination that the proposed Habitat Conservation Plan (HCP) qualifies as a ''low effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended. We explain the basis for this possible determination in a draft Environmental Action Statement (EAS) and associated Low Effect Screening Form. The Applicant's Low Effect HCP describes the mitigation and minimization measures they would implement, as required in Section 10(a)(2)(B) of the Act, to address the effects of the project on the desert tortoise. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. The draft HCP and EAS are available for public review.

DATES: Written comments should be received on or before August 23, 2006.

ADDRESSES: Please address written comments to Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also send comments by facsimile to (805) 644–3958. To obtain copies of draft documents, see ''Availability of Documents'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jen Lechuga, HCP Coordinator, (see **ADDRESSES**) telephone: (805) 644–1766 extension 224.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the application, HCP, and EAS by contacting the HCP Coordinator (see **FOR FURTHER INFORMATION CONTACT**). Copies of the draft documents are also available for public inspection and review at the following locations: (1) U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003; (2) Joshua Tree Public Library, 6465 Park Blvd., Joshua Tree, California 92252; and (3) Ventura Fish and Wildlife Office Internet site: *http://www.fws.gov/ventura.*

Background

Section 9 of the Act and Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, the Service, under limited circumstances, may issue permits to cover incidental take, *i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found at 50 CFR 17.32 and 17.22, respectively. Among other criteria, issuance of such permits must not jeopardize the existence of federally listed fish, wildlife, or plants.

The proposed Joshua Tree Recreational Campground project is located in the unincorporated community of Joshua Tree, San Bernardino County, California. The Applicant proposes to construct, operate, and maintain campground facilities on 13.8 acres. Proposed construction on the 13.8 acres includes 22 camp sites, a fitness center, a reception/restaurant building, multiple salt water pools, massage treatment rooms, a horse stable, roads, and trails. Construction would be completed in two phases. Phase I would comprise approximately 62 percent of the total project area. The campground would be in operation for 3 to 5 years before Phase II construction begins. Construction of the two phases is expected to take 10 years.

The Applicant proposes to implement measures to minimize and mitigate for take of the desert tortoise within the project site. The Applicant has designed the project such that the footprint of the roads and structures are located where few desert tortoise signs were observed. For mitigation, they will restore and manage at a 1:1 ratio 13.8 acres of desert tortoise habitat on their 314.6-acre property. The Applicant also proposes to: (1) Halt destructive activities to desert tortoises and their habitat presently taking place on the site; (2) raise awareness of the desert tortoise for construction personnel, staff, and guests; (3) post signs and establish speed limits; (4) construct a desert tortoise-exclusion fence along the access road; (5) reduce the presence of desert tortoise predators; and (6) undertake various other measures to minimize impacts.

The impacts from construction and operation activities associated with the Joshua Tree Campground are considered to be negligible to the species as a whole because: (1) The amount of habitat being disturbed is small relative to the amount of habitat available within the Joshua Tree area, the West Mojave Recovery Unit, and within the wide range of the species as a whole; (2) most of the areas that will be disturbed during construction and operation of buildings on the site are of poor quality and probably support few if any desert tortoises due to ongoing illegal shooting, dumping, and off highway vehicular (OHV) use; (3) disturbance associated with construction of roads on the site is associated with habitat that has also been impacted, to a lesser extent by illegal dumping, shooting, and OHV use; (4) the construction of this park

will not serve to fragment desert tortoise populations in the Joshua Tree, California, area; and (5) one of the most likely forms of take is capture to move desert tortoises out of harm's way, resulting in temporary low impacts.

The Service's proposed action is to issue an incidental take permit to the Applicant, who would then implement the HCP. Two alternatives to the taking of listed species under the proposed action are considered in the HCP. Under the No-Action alternative, the proposed project would not occur and the HCP would not be implemented. This would avoid the immediate effects of habitat removal on the desert tortoise. However, without the HCP, habitat for the desert tortoise on the project site likely would continue to decline as a result of current shooting, dumping, and recreational OHV activities occurring on the site. Further, this alternative would not meet the Applicant's project goals or protect 13.8 acres of habitat for the benefit of the desert tortoise.

The Applicant's Alternate Site Alternative considered moving the project to an alternate location within the 314.6-acre property. This alternative entailed a more spread-out development with 11 additional campsites and 2 additional buildings in the southeastern region of the property. This location overlapped with the area most used by tortoises. The alternative was rejected because it would likely result in greater impacts to the desert tortoise and its habitat. In addition, the Applicant can achieve the project goals in the southwestern area of the property where there is less presence of desert tortoises.

The Service has made a preliminary determination that the HCP qualifies as a ''low-effect'' plan as defined by our Habitat Conservation Planning Handbook (November 1996). Our determination that an HCP qualifies as a low-effect plan is based on the following criteria: (1) Implementation of the plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to the environmental values or resources that would be considered significant. As more fully explained in our EAS and associated Low Effect Screening Form, the Applicant's proposal to build and operate the Joshua Tree Recreational Campground qualifies as a ''low effect'' plan for the following reasons:

(1) Approval of the HCP would result in minor or negligible effects on the desert tortoise and its habitat. The Service does not anticipate significant direct or cumulative effects to the desert tortoise resulting from the proposed development and operation of the project site.

(2) Approval of the HCP would not have adverse effects on unique geographic, historic, or cultural sites, or involve unique or unknown environmental risks.

(3) Approval of the HCP would not result in any cumulative or growth-inducing impacts and would not result in significant adverse effects on public health or safety.

(4) The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

(5) Approval of the HCP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

The Service therefore has made a preliminary determination that approval of the HCP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Based upon this preliminary determination, we do not intend to prepare further National Environmental Policy Act documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

We will evaluate the permit application, the HCP, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, the Service will issue a permit to the Applicant.

Public Review and Comment

If you wish to comment on the permit application, draft Environmental Action Statement or the proposed HCP, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Our practice is to make comments, including names, home addresses, etc., of respondents available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must provide a rationale demonstrating and documenting that disclosure would constitute a clearly unwarranted invasion of privacy. In the absence of exceptional, documented circumstances, this information will be released. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6).

Dated: July 18, 2006.

Diane K. Noda,

Field Supervisor, Ventura Fish and Wildlife Office, Ventura, California.

[FR Doc. E6–11718 Filed 7–21–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 8, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 8, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

VIRGINIA

Amherst County

Edgewood, 138 Garland Ave., Amherst, 06000706

Charles City County

Nance—Major House and Store, 10811 Courthouse Rd., Charles City, 06000707

Goochland County

Brightly, 2844 River Rd W, Goochland, 06000705

Henry County

Stone, R.L., House, 3136 Fairystone Park Hwy., Bassett, 06000708

[FR Doc. E6–11741 Filed 7–21–06; 8:45 am]

BILLING CODE 4312–51–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 26–27, 2006.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Ritz Carlton Amelia Island, 4750 Amelia Island Parkway, Amelia Island, FL.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–6429 Filed 7–21–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 7–8, 2006.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Vanderbilt University School of Law, Alexander Room, 131 21st Avenue South, Nashville, TN.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–6430 Filed 7–21–06; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 14–15, 2006.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: United States Courthouse, 700 Steward Street, Room 19205, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2006.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 06–6431 Filed 7–21–06; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a) (2) (B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 20, 2006, Lipomed Inc., One Broadway, Cambridge, Massachusetts 02142, made application, by letter and by renewal, to the Drug Enforcement Administration (DEA) to be registered as an Importer in the basic classes of controlled substances in Schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Methaqualone (2565)	I
Gamma-Hydroxybutyric Acid (2010)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2-5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphyenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (bulk) (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II
Sufentanil (9740)	II

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA **Federal Register** Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA **Federal Register** Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 23, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11688 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 26, 2006, Sigma Aldrich Research BioChemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxy-amphetamine (7391)	I
4-Bromo-2, 5-dimethoxyphenethylamine (7392)	I
2, 5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405)	I
1-[1-2-Thienyl) cyclohexyl]phetamine (TCP) (7470)	I
1-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Nabilone (7379)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than September 22, 2006.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11691 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on January 24, 2006, Stepan Company, Natural Products Department., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substance for the manufacture of bulk controlled substances and distribution to its customer.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 23, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office

of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11689 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 6, 2006 and published in the **Federal Register** on March 13, 2006, (71 FR 12714), ISP Freetown Fine Chemicals, 238 South Main Street, Assonet, Massachusetts 02702, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import Phenylacetone to manufacture Amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of ISP Freetown Fine Chemicals to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated ISP Freetown Fine Chemicals to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11694 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 18, 2006 and published in the **Federal Register** on April 25, 2006, (71 FR 23949), Johnson Matthey Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Johnson Matthey Inc. to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11692 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 18, 2006 and published in the **Federal Register** on April 25, 2006, (71 FR 23949–23950), Noramco Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. Sections 823(a) and 952(a) and determined that the registration of Noramco Inc. to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11693 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 20, 2006, and published in the **Federal Register** on March 27, 2006, (71 FR 15219), Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Dextropropoxyphene (9273)	II
Fentanyl (9801)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers. In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabindiol as a synthetic intermediate. This controlled substance will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Organichem Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Organichem Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 10, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–11690 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8 a.m. to 4:30 p.m. on Monday, September 25, 2006. 8 a.m. to 4:30 p.m. on Tuesday, September 26, 2006.

Place: Courtyard by Marriott Detroit, 333 E. Jefferson Avenue, Detroit, Michigan 48226, Phone: 313–222–7700.

Status: Open.

Matters to be Considered: Site Visit to Michigan Department of Corrections; Observation of Michigan Prisoner ReEntry Initiative; Faith Based; Evidence-based practices, Institutional culture work; and pubic/private funding partnerships; PREA Update; Agency Reports.

For Further Information Contact: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 06–6427 Filed 7–21–06; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL3–92]

TUV Rheinland of North America, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of TUV Rheinland of North America, Inc., (TUV) for expansion of its recognition to use additional test standards, and presents the Agency's preliminary finding to grant this request for expansion. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: You must submit information or comments, or any request for extension of the time to comment, by the following dates:

- *Hard copy:* postmarked or sent by August 8, 2006.
- *Electronic transmission or facsimile:* sent by August 8, 2006.

ADDRESSES: You may submit information or comments to this notice—identified by docket number NRTL3–92—by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- OSHA Web site: *http://ecomments.osha.gov*. Follow the instructions for submitting comments on OSHA's Web page.
- *Fax:* If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- *Regular mail, express delivery, hand delivery and courier service:* Submit three copies to the OSHA Docket Office, Docket No. NRTL3–92, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov*, including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

Extension of Comment Period: Submit requests for extensions concerning this notice to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210. Or, fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Director, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3655, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that TUV Rheinland of North

America, Inc., (TUV) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). TUV's expansion request covers the use of additional test standards. OSHA's current scope of recognition for TUV may be found in the following informational Web page: *http://www.osha.gov/dts/otpca/nrtl/tuv.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' [1] by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational Web page for each NRTL, which details its scope of recognition. These pages can be accessed from our Web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

The most recent notice published by OSHA specifically related to TUV's recognition granted an expansion of its NRTL scope, which became effective on June 20, 2003 (68 FR 37030).

The current address of the TUV facility already recognized by OSHA is:

TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, CT 06470.

General Background on the Application

TUV has submitted an application, dated December 20, 2004 (see Exhibit 32–1) to expand its recognition to include 5 additional test standards. TUV then amended its application through follow-up requests to add 4 more test standards to its request (see Exhibit 32–2). The NRTL Program staff has determined that each of these nine standards is an ''appropriate test standard'' within the meaning of 29 CFR 1910.7(c). However, one of the standards is already in TUV's scope. Therefore, OSHA would approve eight test standards for the expansion. Following review of the application, OSHA deferred action on this notice pending resolution by the NRTL of certain findings from our on-site visit of the NRTL. These findings have been satisfactorily resolved, permitting this notice to be processed. This notice has also been delayed through no fault of the NRTL.

TUV seeks recognition for testing and certification of products for demonstration of conformance to the following test standards:

UL 943 Ground-Fault Circuit-Interrupters
UL 991 Tests for Safety-Related Controls Employing Solid-State Devices
UL 1047 Isolated Power Systems Equipment
UL 1363 Relocatable Power Taps
UL 1662 Electric Chain Saws
UL 1664 Immersion-Detection Circuit-Interrupters
UL 1741 Inverters, Converters, Controllers and Interconnection System Equipment for Use With Distributed Energy Resources
UL 1863 Communications-Circuit Accessories

The designations and titles of the above test standards were current at the time of the preparation of this notice.

OSHA's recognition of TUV, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, if a test standard also covers any product(s) for which OSHA does not require such testing and certification, an NRTL's scope of recognition does not include that product(s).

Many UL test standards also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Preliminary Finding on the Application

TUV has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, NRTL Program assessment staff evaluated information pertinent to the request during an on-site visit of the NRTL and recommended that TUV's recognition be expanded to include the additional test standards (see Exhibit 32–3). Our review of the application file, the staff's recommendation, and other pertinent documents indicate that TUV can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion for the eight additional test standards listed above. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether TUV has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comments should consist of pertinent written documents and exhibits. Should you need more time to comment, you must request it in writing, including reasons for the request. OSHA must receive your written request for extension at the address provided above no later than the last date for comments. OSHA will limit any extension to 30 days, unless the requester justifies a longer period. We may deny a request for extension if it is not adequately justified. You may obtain or review copies of TUV's requests, the staff's recommendation, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. Docket No. NRTL3–92 contains all materials in the record concerning TUV's application.

The NRTL Program staff will review all timely comments and, after resolution of issues raised by these comments, will recommend whether to grant TUV's expansion request. The Assistant Secretary will make the final decision on granting the expansion and, in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR Section 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

[1] Properly certified means, in part, that the product is labeled or marked with the NRTL's ''registered'' certification mark (i.e., the mark the NRTL uses for its NRTL work) and that the product certification falls within the scope of recognition of the NRTL.

Signed at Washington, DC, this 15th day of June, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary.

[FR Doc. E6–11676 Filed 7–21–06; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271–LR; ASLBP No. 06–849–03–LR]

Atomic Safety and Licensing Board; In the Matter of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Vermont Yankee Nuclear Power Station)

July 18, 2006.

Before Administrative Judges: Alex S. Karlin, Chairman, Dr. Richard E. Wardwell, Dr. Thomas S. Elleman.

Order (Setting Oral Argument Schedule and Inviting Written Limited Appearance Statements)

On June 20, 2006, the Board issued an order tentatively scheduling oral argument in this proceeding on Tuesday, August 1, 2006, and Wednesday, August 2, 2006. That order indicated that the time and location of the oral argument would be set forth in a subsequent order.

The Board hereby orders and confirms that it will hear oral argument from representatives of the petitioners, the applicant, and the NRC Staff,[1] commencing at 9 a.m. on Tuesday, August 1, 2006, in the multi-purpose room at Brattleboro Union High School, located at 131 Fairground Road in Brattleboro, Vermont. As necessary, oral argument will continue and recommence at 9 a.m. on Wednesday, August 2, 2006. The Board plans to adjourn each day no later than 6 p.m.

The oral argument will proceed as follows. First, we will hear a short opening statement, limited to ten minutes, from each participant. Second, the Board will hear argument on the individual contentions listed below.[2] Except where otherwise specified, for each listed contention the petitioner will have a total of twenty minutes, the applicant will have fifteen minutes, and the NRC Staff will have ten minutes. Five minutes of a petitioner's time will be reserved for rebuttal unless, at the outset of argument on that contention, the petitioner chooses an alternative allocation (up to a maximum of ten minutes rebuttal). All time periods include the time for responding to questions from the Board. For those contentions not listed below, no oral argument is necessary in order for the Board to reach its decision.

In formulating their arguments, participants should keep in mind that the Board will have read their pleadings and should focus solely on the critical points in controversy as those issues have emerged in the pleadings. The main purpose of the oral argument is to allow the Board to clarify its understanding of legal and factual points to assist it in deciding the issues presented by the pleadings. Oral arguments will be conducted in accordance with the following schedule:

1. Call to order, introductory remarks.
2. Opening statement by each participant.
3. State of Massachusetts Contention 1. For this contention the petitioner will have a total of thirty minutes, the applicant will have twenty minutes, and the NRC Staff will have twenty minutes.
4. State of Vermont Contention 2. For this contention the petitioner will have a total of twenty-five minutes, the applicant will have twenty minutes, and the NRC Staff will have ten minutes.
5. State of Vermont Contention 1.
6. State of Vermont Contention 3.
7. NEC Contention 1.
8. NEC Contention 2.
9. NEC Contention 3.
10. NEC Contention 4.
11. NEC Contention 5.
12. NEC Contention 6.[3]
13. Adjourn.

Given that the purpose of this proceeding is to evaluate the admissibility of the petitioners' contentions and the legal issues presented in the participants' pleadings, oral argument will only be heard from the participants. Members of the public are welcome to attend and observe this proceeding. As this is an adjudicatory proceeding, the Board intends to conduct an orderly hearing and signs, banners, posters, and displays are prohibited in accordance with NRC policy. *See* Procedures for Providing Security Support for NRC Public Meetings/Hearings, 66 FR 31,719 (June 12, 2001). All interested persons should arrive early and allow sufficient time to pass through security screening.

Oral limited appearance statements in accord with 10 CFR 2.315(a) will not be heard on August 1 and 2, 2006. If contentions are admitted after the oral argument is complete, then oral limited appearance statements may be heard at a later date. In the interim, interested individuals may submit written limited appearance statements related to the issues in this proceeding. Such written statements may be submitted at any time and should be sent either by (1) mail to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, with a copy to the Chairman of this Licensing Board at Mail Stop T–3F23, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; (2) e-mail to the Office of the Secretary at *hearingdocket@nrc.gov*, with a copy to the Board Chairman (c/o Marcia Carpentier, *mxc7@nrc.gov*); or (3) fax to the Office of the Secretary at 301–415–1101 (facsimile verification number: 301–415–1966), with a copy to the Board Chairman at 301–415–5599 (facsimile verification number: 301–415–7550).

It is so *ordered.*

For the Atomic Safety and Licensing Board.[4]

Dated: July 18, 2006 in Rockville, Maryland.

Alex S. Karlin,

Administrative Judge.

[FR Doc. E6–11675 Filed 7–21–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment

[1] The four petitioners are the Vermont Department of Public Service; the Massachusetts Attorney General; the New England Coalition (NEC); and the Town of Marlboro, Vermont. The applicant consists of two entities, Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc. The petitioners, applicant, and the NRC Staff are sometimes collectively referred to as the "participants."

[2] The participants are encouraged to enter into stipulations that will serve to reduce or eliminate issues or contentions.

[3] The Board will not hear oral argument from any participant on the contention proffered by the Town of Marlboro. However the Town of Marlboro may want to use some of the ten minutes allocated for its opening statement to address the issue as to whether the town is an "interested * * * local governmental body" within the meaning of 10 CFR 2.315(c).

[4] Copies of this order were sent this date by Internet e-mail transmission to counsel or a representative for (1) applicant Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.; (2) petitioners Town of Marlboro, Vermont, the Massachusetts Attorney General, the Vermont Department of Public Service, and the New England Coalition; and (3) the NRC staff.

to Facility Operating License No. NPF–30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The proposed amendment would (1) delete the containment atmosphere gaseous radioactivity monitor from Technical Specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' and (2) revise existing conditions, required actions, completion times, and surveillance requirements in TS 3.4.15 to account for the monitor being deleted. The licensee submitted this amendment request in its application dated June 29, 2006. This application revised the licensee's application dated August 26, 2005, for which a notice of consideration of issuance of an amendment to facility operating license and opportunity for a hearing was published in the **Federal Register** on February 28, 2006 (71 FR 10079).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed change has been evaluated and determined to not increase the probability or consequences of an accident previously evaluated. The proposed change does not make hardware changes and does not alter the configuration of any plant system, structure, or component (SSC). The proposed change only removes the containment atmosphere gaseous radioactivity monitor as an option for meeting the OPERABILITY requirements for TS 3.4.15. The TS will continue to require diverse means of leakage detection equipment, thus ensuring that [RCS] leakage due to cracks would continue to be identified prior to propagating to the point of a pipe break and the plant shutdown accordingly. Therefore, the consequences of an accident [previously evaluated] are not increased.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed change does not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases [for the Callaway Plant]. The proposed change does not affect any SSC associated with an accident initiator. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

Response: No.

The proposed change does not alter any Reactor Coolant System (RCS) leakage detection components. The proposed change only removes the containment atmosphere gaseous radioactivity monitor as an option for meeting the OPERABILITY requirements for TS 3.4.15. This change is required since the level of radioactivity in the Callaway reactor coolant has become much lower than what was assumed in the FSAR [(Final Safety Analysis Report) when the plant was licensed] and the gaseous channel [(monitor)] can no longer promptly detect a small RCS leak under normal [operating] conditions. The proposed amendment continues to require diverse means of [RCS] leakage detection equipment with [the] capability to promptly detect RCS leakage. Although not required by TS, additional diverse means of leakage detection capability are available as described in the FSAR Section 5.2.5. Early detection of [RCS] leakage, as the potential indicator of a crack(s) in the RCS pressure boundary, will thus continue to be in place so that such a condition is known and appropriate actions taken well before any such crack would propagate to a more severe condition. Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309,

which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) 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. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated June 29, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of July 2006.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–11674 Filed 7–21–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Generating Station (WCGS), located in Coffey County, Kansas.

The proposed amendment would revise Technical Specification 5.5.9, ''Steam Generator (SG) Program,'' by

changing the ''Refueling Outage 14'' to ''Refueling Outage 15'' in two places. This change would extend the provisions for SG tube repair criteria and inspections that were approved for Refueling Outage 14, and the subsequent operating cycle, in Amendment No. 162 issued April 28, 2005, to Refueling Outage 15, and the subsequent operating cycle. This was proposed in the licensee's application dated June 30, 2006.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria do[es] not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed changes to the steam generator tube inspection criteria, are the steam generator tube rupture (SGTR) event and the steam line break (SLB) accident.

During the SGTR event, the required structural integrity margins of the steam generator tubes will be maintained by the presence of the steam generator tubesheet. Steam generator tubes are hydraulically expanded in the tubesheet area. Tube rupture in tubes with cracks in the tubesheet is precluded by the constraint provided by the tubesheet. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, discussed in [Nuclear Energy Institute] NEI 97–06, Revision 2, and Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] Steam Generator Tubes,'' are maintained for both normal and postulated accident conditions.

The proposed change does not affect other systems, structures, components or operational features. Therefore, the proposed changes result in no significant increase in the probability of the occurrence of a[n] SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event. Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter.

The probability of a[n] SLB is unaffected by the potential failure of a steam generator tube as this failure is not an initiator for a[n] SLB.

The consequences of a[n] SLB are also not significantly affected by the proposed change. During a[n] SLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the midplane.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (*i.e.*, a[n] SLB) is limited by flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications. The primary-to-secondary leak rate during postulated SLB accident conditions would be expected to be less than that during normal operation for indications near the bottom of the tubesheet (*i.e.*, including indications in the tube-end welds). This conclusion is based on the observation that while the driving pressure causing leakage increases by approximately a factor of two, the flow resistance associated with an increase in the tube-to-tubesheet contact pressure, during a[n] SLB, increases by approximately a factor of 6. While such a leakage decrease is logically expected, the postulated accident leak rate could be conservatively bounded by twice the normal operating leak rate if the increase in contact pressure is ignored. Since normal operating leakage is limited to less than 0.104 gpm (150 gpd) per TS 3.4.13, ''RCS Operational LEAKAGE,'' the associated accident condition leak rate, assuming all leakage to be from lower tubesheet indications, would be bounded by 0.208 gpm, twice the normal operational leakage. This value is well within the assumed accident leakage rate of 1.0 gpm discussed in WCGS Updated Safety Analysis Report, Table 15.1–3, ''Parameters Used in Evaluating the Radiological Consequences of a Main Steam Line Break.'' Hence it is reasonable to omit any consideration of inspection of the tube, tube-end weld, bulges/overexpansions or other anomalies below 17 inches from the top of the hot leg tubesheet. Therefore, the consequences of a[n] SLB accident remain unaffected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any new equipment, create [any] new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes maintain the required structural margins of the steam generator tubes for both normal and accident conditions. Nuclear Energy Institute (NEI) 97–06, ''Steam Generator Program Guidelines,'' and RG 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' are used as the bases in the development of the limited hot leg tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, ''Reactor coolant pressure boundary,'' GDC 15, ''Reactor coolant system design,'' GDC 31, ''Fracture prevention of reactor coolant pressure boundary,'' and GDC 32, ''Inspection of reactor coolant pressure boundary,'' by reducing the probability and consequences of a[n] SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a[n] SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For

circumferentially oriented cracking, Westinghouse letter LTR-CDME–05–82-P, ''Limited Inspection of the Steam Generator Tube Portion Within the Tubesheet at Wolf Creek Generating Station,'' defines a length of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot leg tubesheet inspection depth criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited hot leg tubesheet inspection depth criteria.

Therefore, the proposed changes do not involve a significant reduction in any margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of

the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) 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. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated June 30, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of July 2006.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–11672 Filed 7–21–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), for operation of the Wolf Creek Generating Station (WCGS), located in Coffey County, Kansas.

The proposed amendment would (1) delete the containment atmosphere gaseous radioactivity monitor from Technical Specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' and (2) revise existing conditions, required actions, completion times, and surveillance requirements in TS 3.4.15 to account for the monitor being deleted. The licensee submitted this amendment request in its application dated June 26, 2006. This application revised the licensee's application dated August 26, 2005, for which a notice of consideration of issuance of an amendment to facility operating license and opportunity for a hearing was published in the **Federal Register** on October 25, 2005 (70 FR 61663).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

The proposed change has been evaluated and determined to not increase the probability or consequences of an accident previously evaluated. The proposed change does not make hardware changes and does not alter the configuration of any plant system, structure, or component (SSC). The proposed change only removes the containment atmosphere gaseous radioactivity monitor as an option for meeting the OPERABILITY requirements for TS 3.4.15. The TS will continue to require diverse means of leakage detection equipment, thus ensuring that [RCS] leakage due to cracks would continue to be identified prior to propagating to the point of a pipe break and the plant shutdown accordingly. Therefore, the consequences of an accident [previously evaluated] are not increased.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed change does not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases [for WCGS]. The proposed change does not affect any SSC associated with an accident initiator. Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

Response: No.

The proposed change does not alter any Reactor Coolant System (RCS) leakage detection components. The proposed change only removes the containment atmosphere gaseous radioactivity monitor as an option for meeting the OPERABILITY requirements for TS 3.4.15. This change is required since the level of radioactivity in the WCGS reactor coolant has become much lower than what was assumed in the USAR [(Updated Safety Analysis Report) when the plant was licensed] and the gaseous channel [(monitor)] can no longer promptly detect a small RCS leak under normal [operating] conditions. The proposed amendment continues to require diverse means of [RCS] leakage detection equipment with [the] capability to promptly detect RCS leakage. Although not

required by TS, additional diverse means of leakage detection capability are available as described in the Updated Safety Analysis Report Section 5.2.5. Early detection of [RCS] leakage, as the potential indicator of a crack(s) in the RCS pressure boundary, will thus continue to be in place so that such a condition is known and appropriate actions taken well before any such crack would propagate to a more severe condition. Based on this evaluation, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by:

(1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) 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. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated June 26, 2006, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 14th day of July 2006.

For the Nuclear Regulatory Commission.

Jack Donohew,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–11673 Filed 7–21–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of July 24, 31, August 7, 14, 21, 28, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered

Week of July 24, 2006

Wednesday, July 26, 2006

1:50 p.m. Affirmation Session (Public Meeting) (Tentative)

a. Pa'ina Hawaii, LLC, unpublished April 27, 2006 Memorandum and Order (accepting the intervenor's and NRC Staff's Joint Stipulation regarding two admitted environmental contentions) (Tentative).

b. David Geisen, LBP–06–13 (May 19, 2006) (Tentative).

c. Exelon Generation Company, LLC (Early Site Permit for Clinton ESP), System Energy Resources, Inc. (Early Site Permit for Grand Gulf ESP) (Tentative).

d. Florida Power & Light Co., et al., Docket Nos. 50–250–LT, et al., International Brotherhood of Electrical Workers' ''Petition to File Motion to Intervene and Protest Out-of-Time'' and ''Motion for Hearing and Right to Intervene and Protest'' (Tentative).

Thursday, July 27, 2006

9:30 a.m. Briefing on Office of International Programs (OIP) Programs, Performance, and Plans (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Briefing on Equal Employment Opportunity (EEO) Programs. (Public Meeting) (Contact: Barbara Williams, 301–415–7388).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of July 31, 2006—Tentative

There are no meetings scheduled for the Week of July 31, 2006.

Week of August 7, 2006—Tentative

There are no meetings scheduled for the Week of August 7, 2006.

Week of August 14, 2006—Tentative

There are no meetings scheduled for the Week of August 14, 2006.

Week of August 21, 2006—Tentative

There are no meetings scheduled for the Week of August 21, 2006.

Week of August 28, 2006—Tentative

There are no meetings scheduled for the Week of August 28, 2006.

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The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 19, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–6443 Filed 7–20–06; 12:54 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54162; File No. SR–FICC–2006–08]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Removing References to Outdated EPN Reports

July 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 2, 2006, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will delete references to ''Message Purge Report'' and ''Message Recovery Report'' in FICC's Mortgage-Backed Securities Division's EPN rulebook.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to delete references to ''Message Purge Report'' and ''Message Recovery Report'' in FICC's Mortgage-Backed Securities Division's EPN rulebook because FICC no longer provides these reports to its members.

FICC believes that the proposed rule change is consistent with Section 17A of the Act[3] and the rules and regulations thereunder because it reflects a change in a service of FICC that does not adversely affect the safeguarding of securities or funds in the custody or control of FICC or for which it is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)[4] of the Act and Rule 19b–4(f)(4)[5] thereunder because it effects a change in an existing service of FICC that does not adversely affect the safeguarding of securities or funds in FICC's control or for which FICC is responsible and does not significantly affect FICC's or its participants' respective rights or obligations. 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 an e-mail to *rule-comments@sec.gov*. Please include File No. SR–FICC–2006–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–FICC–2006–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query=*. 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 submission should refer to File No. SR–FICC–2006–08 and should be submitted on or before August 14, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11680 Filed 7–21–06; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(4).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54163; File No. SR–NSCC–2006–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Enhancements to ACATS-Fund/SERV Processing Capabilities

July 17, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 30, 2006, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rules to enhance the Automated Customer Account Transfer Service (''ACATS'') processing capabilities for NSCC members that outsource some or all of their mutual fund processing services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change would modify NSCC's Rules to enhance the ACATS processing capabilities for NSCC members that outsource some or all of their mutual fund processing services.

ACATS enables members of NSCC to effect automated transfers of customer accounts among themselves.[5] In operation since 1985, ACATS was designed to facilitate compliance with New York Stock Exchange (''NYSE'') and National Association of Securities Dealers (''NASD'') rules that require NYSE and NASD members to use clearing agency automated customer account transfer services and to effect customer account transfers within specified time frames.[6] In 1989, ACATS was enhanced to permit the automated transfer of book share mutual fund assets for mutual funds associated with NSCC fund members and mutual fund processors (''ACATS-Fund/SERV''). In an account transfer containing eligible book share mutual fund assets, account reregistration information is routed from the NSCC member through ACATS to fund members through ACATS-Fund/SERV.

The Current Process

In a standard ACATS transfer, the member receiving the customer account initiates the account transfer by electronically submitting data from the Transfer Initiation Form to NSCC. The account status then moves to ''request'' status, during which time the member delivering the customer account may validate the transfer by submitting to NSCC a detailed listing of the account assets or may reject the transfer. By submitting the asset listing, the delivering member acknowledges the transfer, and the status changes from ''request'' to ''review.''

During the review status, the receiving member examines the account/assets for creditworthiness, etc., while the delivering member reviews the account to ensure the assets are properly listed. If mutual fund assets are listed, the receiving member submits a fund registration input record through ACATS. The purpose of this record is to request that the delivering member reregister the mutual fund assets in the name of the receiving member. During this process, the account status then progresses to ''sett prep.''

At the beginning of sett prep, the fund registration input record is sent through ACATS-Fund/SERV to the delivering member which must either reject or acknowledge the reregistration request in accordance with the provisions of NSCC's Rules. During the sett prep stage, the account is frozen in ACATS (*i.e.*, no adjustments or rejects are permitted) and the following business day the transfer status moves to ''settle close,'' and the account transfer settles. At this time, NSCC moves continuous net settlement (''CNS'')-eligible securities into CNS, and for all non-CNS-eligible positions (such as mutual fund assets) and cash balances, the asset value is debited to the delivering member and credited to the receiving member.

Proposed Modification

NSCC understands that a number of its members outsource or are seeking to outsource some or all of their mutual fund processing using the services of some third party such as another broker-dealer or a bank or trust company. NSCC believes that the outsourcing has or will cause processing issues with regard to mutual fund assets that are part of an ACATS transfer because it is the third party processing entity and not the NSCC receiving member that has or will have the direct contractual relationship with the delivering member. Currently, the NSCC receiving member (and not its third party processing entity) is identified on account transfer/registration instructions. Therefore, if the receiving member uses a third party processing entity, the delivering member will reject such request/instructions. In these instances, all transfers of customer positions in eligible mutual funds would need to be processed manually and affected members would be unable to benefit from the efficiency of automated transfers through ACATS.

To accommodate these members, NSCC proposes modifying Section 16 of Rule 52 (Mutual Fund Services) to permit one NSCC member to appoint another NSCC member or a Mutual Fund/Insurance Services Member as its ACATS-Fund/SERV Agent with regard to the reregistration of eligible mutual fund assets.

There will be no change to the ACATS process or to the requirements and obligations of ACATS receiving members and delivering members. An ACATS-Fund/SERV Agent must be another NSCC member or Mutual Fund/Insurance Services Member. An ACATS-Fund/SERV Agent may act on behalf of multiple NSCC members, but

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] NSCC Rule 50.

[6] NYSE Rule 412 and NASD Uniform Practice Code Section 11870.

each member may designate only one ACATS-Fund/SERV Agent.

A member must notify NSCC of its designation of an ACATS-Fund/SERV Agent in such form and within such timeframe as is acceptable to NSCC, and the ACATS-Fund/SERV Agent must acknowledge to NSCC its consent to this designation. The receiving member must acknowledge to NSCC that the receiving member shall at all times continue to be responsible for all provisions of NSCC's Rules, specifically with regard to ACATS and ACATS-Fund/SERV transactions, including any and all actions taken by its ACATS-Fund/SERV Agent.

NSCC will maintain a relationship table of those members that designate an ACATS-Fund/SERV Agent. In instances where an ACATS-Fund/SERV Agent has been appointed, NSCC will substitute the receiving member's clearing number and member name on registration/transfer instructions transmitted to the delivering member with those of the ACATS-Fund/SERV Agent. Conversely, on acknowledgements/instructions from the delivering member, NSCC will replace the ACATS-Fund/SERV Agent's clearing number and member name with those of the receiving member. No additional ACATS or ACATS-Fund/SERV fees will be incurred in connection with this process.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [7] and the rules thereunder because it will further automate and facilitate the customer account transfer process, which can be expected to reduce processing errors and delays that are typically associated with manual processes. These changes would foster cooperation and coordination with persons engaged in account transfers and furthers the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[7] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(4) [9] thereunder because the proposed rule effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSCC–2006–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2006–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com*.

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–NSCC–2006–06 and should be submitted on or before August 14, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11681 Filed 7–21–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54158; File No. SR–Phlx–2006–17]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Listing Standards for Broad-Based Index Options

July 17, 2006.

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 March 1, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. On April 12, 2006, the Phlx filed Amendment No. 1 to the proposed rule change.[3] On July 14, 2006, the Phlx filed Amendment No. 2 to the proposed rule change.[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] In Amendment No. 2, the Phlx made technical and clarifying changes to the proposal.

Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rules 1000A (Applicability and Definitions), 1001A (Position Limits) and 1009A (Designation of the Index) to adopt ''generic'' listing standards pursuant to Rule 19b–4(e) under the Act[5] and position limits for broad-based index options. The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx 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 Phlx proposes to adopt Phlx Rule 1009A(d) to establish initial listing standards for broad-based index options. The proposal will allow the Phlx to list and trade, pursuant to Rule 19b–4(e) under the Act,[6] broad-based index options that meet the listing standards in Phlx Rule 1009A(d). The listing standards require, among other things, that the underlying index be broad-based, as defined in Phlx Rule 1000A(b)(11);[7] that options on the index be a.m.-settled; that the index be capitalization-weighted, price-weighted, modified capitalization-weighted, or equal dollar-weighted; and that the index be comprised of at least 50 securities, all of which must be ''NMS stocks,'' as defined in Rule 600 of Regulation NMS.[8] In addition, Phlx Rule 1009A(d) requires that the index's component securities meet certain minimum market capitalization and average daily trading volume requirements; that no single component account for more than 10% of the weight of the index and that the five highest weighted components represent no more than 33% of the weight of the index; that the index value be widely disseminated at least every 15 seconds; and that the Phlx have written surveillance procedures in place with respect to the index options. Phlx Rule 1009A(d) also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the Phlx and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index. The Phlx represents that its surveillance procedures are adequate to properly monitor the trading of broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to Phlx Rule 1009A(d). Additionally, the Exchange must reasonably believe that it has adequate system capacity to support the trading of any index options listed pursuant to Phlx Rule 1000A(d).

The Phlx also proposes to adopt Phlx Rule 1009A(e), which establishes maintenance standards for broad-based index options listed pursuant to Phlx Rule 1009A(d). In addition, the Phlx proposes to amend Phlx Rule 1001A(a) to establish a position limit of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to Phlx Rule 1009A(d).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–17. 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

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4(e).

[7] The Exchange is also proposing to amend Phlx Rule 1000A to clarify the definitions of broad-based (market) indexes as well as narrow-based (industry) indexes.

[8] Rule 600 of Regulation NMS defines an ''NMS stock'' to mean ''any NMS security other than an option.'' An ''NMS security'' is ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.'' *See* 17 CFR 242.600.

For purposes of consistency, the Exchange is also proposing to amend Phlx Rule 1009A(b)(8), which indicates conditions that an underlying index must satisfy for the Exchange to list narrow-based index options pursuant to the generic Rule 19b–4(e) listing standards, to reference ''NMS stock'' as defined in Rule 600 of Regulation NMS under the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2006–17 and should be submitted on or before August 14, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

To list options on a particular broad-based index, the Phlx currently must file a proposed rule change with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder. However, Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') will not be deemed a proposed rule change pursuant to Rule 19b–4(c)(1) if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.

As described more fully above, the Phlx proposes to establish listing standards for broad-based index options. The Commission's approval of the Phlx's listing standards for broad-based index options will allow options that satisfy the listing standards to begin trading pursuant to Rule 19b–4(e), without constituting a proposed rule change within the meaning of Section 19(b) of the Act and Rule 19b–4, for which notice and comment and Commission approval is necessary.[13] The Phlx's ability to rely on Rule 19b–4(e) to list broad-based index options that meet the requirements of Phlx Rule 1009A(d) potentially reduces the time frame for bringing these securities to the market, thereby promoting competition and making new broad-based index options available to investors more quickly.

The Commission notes that the Phlx has represented that it has adequate trading rules, procedures, listing standards, and surveillance program for broad-based index options. Phlx's existing index option trading rules and procedures will apply to broad-based index options listed pursuant to Phlx Rule 1009A(d). Other existing Phlx rules, including provisions addressing sales practices and margin requirements, also will apply to these options. In addition, the Phlx proposes to establish position and exercise limits of 25,000 contracts on the same side of the market for broad-based index options listed pursuant to Phlx Rule 1009A(d).[14] The Commission believes that the proposed position and exercise limits should serve to minimize potential manipulation concerns.

The Phlx represents that its surveillance procedures are adequate to properly monitor the trading of broad-based index options and that it intends to apply its existing surveillance procedures for index options to monitor trading in broad-based index options listed pursuant to Phlx Rule 1009A(d). In addition, because Phlx Rule 1009A(d) requires that each component of an index be an ''NMS stock,'' as defined in Rule 600 of Regulation NMS under the Act, each index component must trade on a registered national securities exchange or through Nasdaq.[15] Accordingly, the Phlx will have access to information concerning trading activity in the component securities of an underlying index through the Intermarket Surveillance Group (''ISG'').[16] Phlx Rule 1009A(d) also provides that non-U.S. index components that are not subject to a comprehensive surveillance sharing agreement between the Phlx and the primary market(s) trading the index components may comprise no more than 20% of the weight of the index.[17] The Commission believes that these requirements will help to ensure that the Phlx has the ability to monitor trading in broad-based index options listed pursuant to Phlx Rule 1009A(d) and in the component securities of the underlying indexes.

The Commission believes that the requirements in Phlx Rule 1009A(d) regarding, among other things, the minimum market capitalization, trading volume, and relative weightings of an underlying index's component stocks are designed to ensure that the markets for the index's component stocks are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. In addition, Phlx Rule 1009A(d) requires that the underlying index be ''broad-based,'' as defined in Phlx Rule 1000A(b)(11).[18] The Commission believes that these requirements minimize the potential for manipulating the underlying index.

The Commission believes that the requirement in Phlx Rule 1009A(d) that the current index value be widely disseminated at least once every 15 seconds by one or more major market data vendors[19] during the time an index option trades on the Phlx should provide transparency with respect to current index values and contribute to the transparency of the market for

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities product. See Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[14] Under Phlx Rule 1002A, exercise limits for index option contracts are equivalent to the position limits described in Phlx Rule 1001A.

[15] Recently, the Commission approved The NASDAQ Stock Market LLC's application to become a registered national securities exchange. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006). At the time of the Commission's consideration of this matter, The NASDAQ Stock Market is still operating as a subsidiary of the National Association of Securities Dealers (''NASD''), a registered national securities association.

[16] The ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. All of the registered national securities exchanges and NASD are members of the ISG. In addition, futures exchanges and non-U.S. exchanges and associations are affiliate members of the ISG.

[17] However, such non-U.S. index components, as ''NMS stocks,'' would be registered under Section 12 of the Act and listed and traded on a national securities exchange or Nasdaq, where there is last sale reporting.

[18] Phlx Rule 1000A(b)(11) defines ''broad-based index'' to mean ''an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.''

[19] The Phlx stated that '' '[m]ajor market data vendor' for the purposes of Phlx Rule 1009A(d)(11) includes, but is not limited to, the Options Price Reporting Authority, the Consolidated Tape Association (administers the Consolidated Tape and Consolidated Quotation Plans), Nasdaq Index Dissemination Service, and securities information vendors such as Bloomberg and Reuters.''

broad-based index options. In addition, the Commission believes, as it has noted in other contexts, that the requirement in Phlx Rule 1009A(d) that an index option be settled based on the opening prices of the index's component securities, rather than on closing prices, could help to reduce the potential impact of expiring index options on the market for the index's component securities.[20]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of filing in the **Federal Register**. The Exchange has requested accelerated approval of the proposed rule change. The proposal implements listing and maintenance standards and position and exercise limits for broad-based index options substantially identical to those recently approved for the International Securities Exchange, Inc., the American Stock Exchange LLC and the CBOE.[21] The Commission does not believe that the Exchange's proposal raises any novel regulatory issues. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[22] to approve the proposed rule change, as amended, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Phlx–2006–17), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Nancy M. Morris,

Secretary.

[FR Doc. E6–11682 Filed 7–21–06; 8:45 am]

BILLING CODE 8010–01–P

[20] *See, e.g.*, Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving a Chicago Board Options Exchange, Incorporated (''CBOE'') proposal to establish opening price settlement for S&P 500 Index options).

[21] *See* Securities Exchange Act Release Nos. 52578 (October 7, 2005), 70 FR 60590 (October 18, 2005) (SR–ISE–2005–27); 52781 (November 16, 2005), 70 FR 70898 (November 23, 2005) (SR–Amex–2005–069); and 53266 (February 9, 2006), 71 FR 8321 (February 16, 2006) (SR–CBOE–2005–59).

[22] 15 U.S.C. 78s(b)(2).

[23] *Id.*

[24] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10528]

California Disaster # CA–00034 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Economic Injury Disaster Loan (EIDL) declaration for the State of California Disaster #CA–00034 dated 07/06/2006.

Incident: Fishery Resource Disaster.

Incident Period: 05/01/2006 through 08/31/2006.

Effective Date: 07/13/2006.

EIDL Loan Application Deadline Date: 04/06/2007.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Economic Injury Disaster Loan declaration for the fishery resource disaster under 308(b) of Interjurisdictional Fisheries Act of 1986, as amended, to help West Coast fishing communities in Oregon and California as determined by the Secretary of Commerce, is hereby amended to correct the incident period. The incident period is 05/01/2006 through 08/31/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–11620 Filed 7–21–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10527]

Oregon Disaster # OR–00013 Declaration of Economic Injury

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Economic Injury Disaster Loan (EIDL) declaration for the State of Oregon Disaster # OR–00013 dated 07/06/2006.

Incident: Fishery Resource Disaster.

Incident Period: 05/01/2006 through 08/31/2006.

Effective Date: 07/13/2006.

EIDL Loan Application Deadline Date: 04/06/2007.

ADDRESSES: Submit completed loan applications to: Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Economic Injury Disaster Loan declaration for the fishery resource disaster under 308(b) of Interjurisdictional Fisheries Act of 1986, as amended, to help West Coast fishing communities in Oregon and California as determined by the Secretary of Commerce, is hereby amended to correct the incident period. The incident period is 05/01/2006 through 08/31/2006.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–11639 Filed 7–21–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5473]

Culturally Significant Objects Imported for Exhibition Determinations: ''Enduring Myth: The Tragedy of Hippolytos & Phaidra''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Enduring Myth: The Tragedy of Hippolytos & Phaidra,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display

of the object at The J. Paul Getty Museum, Malibu, California, from on or about August 24, 2006, until on or about December 4, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 14, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–11725 Filed 7–21–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5470]

United States Climate Change Technology Program

The United States Climate Change Technology Program requests expert review of the Working Group III contribution (''Climate Change 2007: Mitigation of Climate Change'') to the Intergovernmental Panel on Climate Change Fourth Assessment Report.

The Intergovernmental Panel on Climate Change (IPCC) was established by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988. In accordance with its mandate and as reaffirmed in various decisions by the Panel, the major activity of the IPCC is to prepare comprehensive and up-to-date assessments of policy-relevant scientific, technical, and socio-economic information relevant for understanding the scientific basis of climate change, potential impacts, and options for mitigation and adaptation. The First Assessment Report was completed in 1990, the Second Assessment Report in 1995, and the Third Assessment Report in 2001. Three working group volumes and a synthesis report comprise the Fourth Assessment Report, with all to be finalized in 2007. Working Group I assesses the scientific aspects of the climate system and climate change; Working Group II assesses the vulnerability of socio-economic and natural systems to climate change, potential negative and positive consequences, and options for adapting to it; and Working Group III assesses options for limiting greenhouse gas emissions and otherwise mitigating climate change. These assessments are based upon the peer-reviewed literature and are characterized by an extensive and open review process involving both scientific/technical experts and governments before being accepted by the IPCC.

The IPCC Secretariat has informed the U.S. Department of State that the second-order draft of the Working Group III contribution to the Fourth Assessment Report is available for Expert and Government Review. The Climate Change Technology Program (CCTP) office is coordinating collection of U.S. expert comments and the review of these collations by panels of Federal scientists and program managers to develop a consolidated U.S. Government submission. Instructions on how to format comments are available at *http://www.climatetechnology.gov/library/ipcc/wg3-4ar-review.htm,* as is the document itself and other supporting materials.

If you choose to submit comments for potential inclusion or consideration as part of the U.S. Government review, please do not send the same set of comments to the IPCC WGIII Technical Support Unit. Properly formatted comments should be sent to *wg3-4AR-USGreview@climatetechnology.gov* by close of business, Wednesday, 23 August 2006 to be considered for inclusion in the U.S. Government collation. Include ''IPCC WGIII'' and reviewer surname in the e-mail subject title to facilitate processing.

For further information, please contact Michael Curtis, U.S. Climate Change Technology Program, U.S. Department of Energy, Office of Policy and International Affairs, 1000 Independence Ave., SW., Washington, DC 20585 (*CCTPinfo@climatetechnology.gov*).

Dated: July 17, 2006.

Trigg Talley,

Office Director, Acting, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. E6–11733 Filed 7–21–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 7, 2006

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–25313.
Date Filed: July 3, 2006.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 496—Resolution 010u, Special Passenger Amending from Thailand to Africa, Middle East (Memo 0304) and (Memo 0294). Intended effective date: July 13, 2006.

Docket Number: OST–2006–25316.
Date Filed: July 5, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC12 North Atlantic Canada-Europe, Expedited Resolution 002cj (Memo 0121). Intended effective Date: September 1, 2006.

Docket Number: OST–2006–25319.
Date Filed: July 5, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC12 North Atlantic USA-Europe and Mail Vote 492 (except Austria, Belgium, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland) (Memo 0194). Intended effective date: September 1, 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–11696 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 7, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–25318.
Date Filed: July 5, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 26, 2006.
Description: Application of ANA & JP Express Co., Ltd., requesting a foreign air carrier permit (a) to engage in scheduled foreign air transportation of property and mail between any point or points in Japan, on the one hand, and Chicago, IL (via a technical stop at Anchorage), on the other hand, and (b) to engage in charter foreign air transportation of property and mail between any point or points in Japan and any point or points in the United States and to provide other charters pursuant to the Department's charter regulations. AJV requests that the Department process this Application under the simplified non-hearing procedures specified in Subpart B of Part 302 of the Department's regulations.

Renee V. Wright,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–11695 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Harrisburg International Airport, Middletown, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Susquehanna Area Regional Airport Authority (SARAA) under the provisions of Title I of the Aviation Safety and Noise Abatement Act, as amended, (Public Law 96–193) (hereinafter referred to as ''the Act'') and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 13, 2006, the FAA determined that the noise exposure maps submitted by the SARAA under part 150 were in compliance with applicable requirements.

EFFECTIVE DATES: The effective date of the FAA's approval of the Noise Compatibility Program is July 7, 2006.

FOR FURTHER INFORMATION CONTACT: Edward S. Gabsewics, CEP, Environmental Protection Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, Telephone 717–730–2932. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for the Harrisburg International Airport, effective July 7, 2006. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred in as the ''Act'') [recodified as 49 USC Section 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Camp Hill, Pennsylvania.

The SARAA submitted to the FAA on December 16, 2005, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from mid-2003 to December 2005.

The Harrisburg International Airport's Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on January 13, 2006. Notice of this determination was published in the **Federal Register** on January 31, 2006.

The Harrisburg International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from 2004 to beyond 2010. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. Section 47504 (formerly Section 104(b) of the Act). The FAA began its review of the program on January 13, 2006 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained ten proposed actions for noise mitigation (one more abatement measure, six land use measures, and three program

management measures). The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved by the FAA effective July 7, 2006.

Approval was granted for all ten of the ten specific program measures. The approved measures include: Encourage noise-attenuating standards in airport development; Amend local comprehensive plans by adopting the Part 150 Noise Compatibility Plan as their noise compatibility elements; Adopt guidelines for discretionary review of development projects; Adopt noise overlay zoning to prohibit development of selected noise-sensitive land uses within the Future (2010) NEM 65+ DNL noise contour; Encourage local jurisdictions not to allow an increase in residential density in the residential or agricultural zoning districts within the Future (2010) NEM 65+ DNL noise contour; Develop and implement a voluntary residential acquisition program within the Future (2010) NEM 65+ noise contour; Initiate a formal study (study only) to evaluate the noise levels at various churches located within the Future (2010) NEM/NCP 65+ DNL noise contour for eligibility for sound insulation (eligibility based on FAA funding criteria); Establish a Noise Abatement Advisory Committee; Establish a pilot/community awareness program; and Update the Noise Exposure Maps and Noise Compatibility Program.

These determinations are set forth in detail in a Record of Approval signed by the Acting Associate Administrator for Airports on July 7, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the following offices:

Federal Aviation Administration Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011 and

Susquehanna Area Regional Airport Authority, Harrisburg International Airport, One Terminal Drive, Suite 300, Middletown, PA 17057.

The Record of Approval also will be available online at *http://www.faa.gov/arp/environmental/14cft150/index14.cfm*.

Issued in Camp Hill, Pennsylvania, July 11, 2006.

Wayne T. Heibeck,

Manager, Harrisburg Airports District Office.

[FR Doc. 06–6424 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement and Hold Scoping Meetings for Federal Aviation Administration Approval of Airline Operations Specifications To Accommodate Proposed Scheduled Air Service Into Mammoth Yosemite Airport, Mammoth Lakes, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and to hold one (1) public scoping meeting and one (1) governmental and public agency scoping meeting for Federal Aviation Administration (FAA) approval of Airline Operations Specifications to accommodate proposed scheduled air service into Mammoth Yosemite Airport (MMH). This notice also serves as formal notice of FAA's termination and withdrawal of its Notice of Intent to Prepare an EIS for the Proposed Expansion of MMH published in Federal Register (FR) Volume 68 Number 214 dated November 5, 2003. The Town of Mammoth Lakes has withdrawn its prior proposal to expand facilities at Mammoth Yosemite Airport and EIS is no longer required.

SUMMARY: The FAA is issuing this notice to advise the public that an EIS will be prepared for the proposed approval of Operation Specifications for Horizon Air to provide commercial airline service with regional jets into Mammoth Yosemite Airport, Mammoth Lakes, California utilizing Bombardier DHC–8–402 (Q400). The establishment of scheduled commercial service into Mammoth Yosemite Airport also necessitates a change in the airport's 14 CFR Part 139 Certification from Class IV to Class I.

If the FAA determines the potential environmental impacts of the proposed actions are not significant, FAA may consider, after public notification and agency coordination, completing the NEPA process for this proposal as an Environmental Assessment and issuing a Finding of No Significant Impact and Record of Decision.

To ensure that all significant issues related to the proposed action are identified, one (1) public scoping meeting and one (1) governmental and public agency scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Camille Garibaldi, Environmental Protection Specialist, San Francisco Airports District Office, Federal Aviation Administration, Western-Pacific Region, 831 Mitten Road, Room 210, Burlingame, California 94010–1303. Telephone: 650/876–2778 extension 613. Comments on the scope of the EIS should be submitted to the address above and must be received no later than 5:00 p.m. Pacific Daylight Time, on Wednesday, August 30, 2006.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA), as the lead agency, will prepare an EIS that will disclose the potential environmental impacts of FAA approval of Airline Operations Specifications to accommodate proposed scheduled air service into Mammoth Yosemite Airport (MMH). Horizon Air has provided the FAA with a letter of intent to initiate passenger service into Mammoth Yosemite Airport using the Bombardier DHC 8–402 (Q400). The establishment of scheduled commercial service into Mammoth Yosemite Airport also necessitates a change in the airport's Operating Certificate from Class IV to Class I, pursuant to Title 14, Code of Federal Regulations, Part 139.

The FAA has determined that an EIS is the most appropriate NEPA document at this time. In making this determination, FAA has considered the injunction issued by the U.S. District Court for the Northern District of California for the Town of Mammoth Lake's proposed expansion of the airport, and the resources potentially affected by establishment of scheduled air carrier service.

In November of 2005, the Town of Mammoth Lakes representatives withdrew their proposed runway expansion project to Mammoth Yosemite Airport in favor of a reduced proposal for resumption of scheduled regional air carrier service that would be accommodated within the existing configuration of the airport. As a result of this decision, the FAA has terminated preparation of an EIS for the proposed expansion of Mammoth Yosemite Airport. See FR Volume 68, Number 214. Should FAA identify potential impacts to any resource designated under 49 U.S.C. 303(c) (commonly known as Section 34(f)), the EIS will also serve as FAA's Section 4(f) statement.

Horizon Air is proposing to begin scheduled regional air carrier service using existing facilities at Mammoth Yosemite Airport beginning in December of 2007 with two flights per day from Los Angeles International Airport during the winter season, (December to April). Proposed winter service is projected to increase to a

maximum of eight flights per day by the year 2010. The aviation activity forecasts project the addition of two flights per day during the summer months beginning sometime in 2011. Horizon Air has provided the FAA with a written expression of interest to begin scheduled service utilizing Q–400 aircraft.

The Town of Mammoth Lakes, sponsor for Mammoth Yosemite Airport, holds a Class IV (unscheduled service) certificate pursuant to 14 CFR Part 139. The airport is located approximately five miles east of the Town of Mammoth Lakes and north of U.S. Route 395 in Mono County, California. The airport has one east-west oriented runway (9/27) with a parallel and connecting taxiway system. Runway 9/27 is paved with asphalt and is 7,000 feet long by 100 feet wide. The airport has a field elevation of 7,128-feet above mean sea level. The airport currently accommodates unscheduled air carrier operations and general aviation aircraft operations and provides facilities including aircraft hangars and outdoor tiedowns.

The following Alternatives will be evaluated in the EIS; additional reasonable alternatives may be evaluated in the EIS as a result of the scoping process.

No Action Alternative: This alternative consists of no change to Horizon Air operation specifications and no change would occur to the current Part 139 Class IV (unscheduled) certificate status of the airport.

Proposed Action: This alternative consists of FAA approval of operation specifications for Horizon Air for scheduled service to Mammoth Yosemite Airport using regional aircraft and approval of a Class I (scheduled service) Part 139 certificate for Mammoth Yosemite Airport. The proposed service would utilize existing Runway 9/27 and existing airport facilities without the construction of new facilities.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues, alternatives and impacts related to the proposed action and the alternatives are addressed and all significant issues are identified. Written comments and suggestions concerning the scope of the EIS may be mailed to the FAA informational contact listed above and must be received no later than 5 p.m., Pacific Daylight Time, on Wednesday, August 30, 2006.

Public Scoping Meetings: The FAA will hold one (1) public and one (1) governmental and public agency scoping meeting to solicit input from the public as well as various Federal, State and local agencies which have jurisdiction by law or have special expertise with respect to any environmental issue associated with the proposed project. A scoping meeting specifically for governmental and public agencies will be held on Thursday, August 24, 2006 from 1:00 p.m. to 4:00 p.m., Pacific Time, at the Minaret Village Shopping Center, Suite Z, Town Council Chambers, 437 Old Mammoth Road, Mammoth Lakes, CA. The public scoping meeting will be held at the same location on Thursday, August 24, 2006, from 5 p.m. to 8 p.m. Pacific Daylight Time.

Issued in Hawthorne, California, on July 17, 2006.

George Aiken,

Acting Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 06–6423 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–25230]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Emergency Federal Register Notice.

SUMMARY: The Department of Transportation has submitted the following emergency processing public information collection request to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This notice announces that the Information Collection Requested abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. Comments should be directed to the Office of Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

DATES: OMB approval has been requested by August 2, 2006.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Kathryn Henry, NHTSA 400 Seventh Street, SW., Room 5236, NPO–520, Washington, DC 20590. Ms. Kathryn Henry's telephone number is (202) 366–6918. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: Tombras—NHTSA Segmentation Profiling Questionnaire.

OMB Control Number: To Be Assigned.

Affected Public:

- Individual households.
- Licensed drivers ages 18 to 44 who consume alcohol at a rate of at least four drinks per occasion if the respondent is male or three drinks per occasion if the respondent is female; and who consume alcohol at these rates two or more times per week.

Form Number: NHTSA–1014.

Abstract: The study will gain a comprehensive understanding of the demographics, lifestyle traits and attitudes about drinking and driving among licensed drivers who are at high risk of driving while impaired. By having this information, NHTSA and its state partners can develop and implement more highly targeted and more effective communication campaigns to deter people from drinking and driving.

Estimated Annual Burden: Hours of burden—266.

Number of Respondents: Estimated 800.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be 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.

Issued on: July 12, 2006.

Susan Gorcowski,

Associate Administrator for the Office of Communications and Consumer Information.

[FR Doc. E6–11742 Filed 7–21–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34902]

Michigan Air-Line Railway Co.—Acquisition and Operation Exemption—Rail Line of Coe Rail, Inc.

Michigan Air-Line Railway Co. (MAL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Coe Rail, Inc., and operate approximately 8.07 miles of rail line between milepost 50.7, at a point of connection to CSX Transportation, Inc., approximately 1,000 feet west of Wixom Road at or near Wixom, and end of track at milepost 42.63 at the west edge of Arrowhead Road in West Bloomfield Township, in Oakland County, MI.

MAL certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

Consummation was scheduled to take place no earlier than July 5, 2006 (7 days after filing).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34902, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle St., Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 17, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–11591 Filed 7–21–06; 8:45 am]

BILLING CODE 4915–01–P

Corrections

Federal Register

Vol. 71, No. 141

Monday, July 24, 2006

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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 54017; File No. SR–Phlx–2006–38]

Self–Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend a Pilot Concerning Priority in Trades Involving Synthetic Option Orders

Correction

In notice document 06–5679 beginning on page 36596 in the issue of Tuesday, June 27, 2006, make the following correction:

On page 36596, in the third column, directly below the subject line should appear ''June 19, 2006.''.

[FR Doc. C6–5679 Filed 7–21–06; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54094; File No. SR–Amex–2006–42]

Self–Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval To a Proposed Rule Change and Amendment No. 1 Thereto Relating to a Retroactive Suspension of Transaction Charges for Specialist Orders in the Nasdaq–100 Tracking Stock® (QQQQ)

Correction

In notice document E6–10762 appearing on page 39135 in the issue of Tuesday, July 11, 2006, make the following correction:

In the second column, directly below the subject line should appear ''July 3, 2006.''.

[FR Doc. Z6–10762 Filed 7–21–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 24, 2006

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 32

2006–2007 Refuge-Specific Hunting and Sport Fishing Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018–AU61

2006–2007 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 three refuges to the list of areas open for hunting and/or sport fishing programs and increase the activities available at six other refuges. We also propose to implement 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 2006–2007 season.

DATES: We must receive your comments on or before August 16, 2006.

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 ''Request for Comments'' under **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 in all States except Alaska 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 our/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. 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 fish and 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 (container for carrying fish) 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 language of existing regulations.

Plain Language Mandate

In this proposed 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 Refuge System, using the word ''allow'' instead of ''permit'' when we do not require the use of a permit for an activity, and using active voice (i.e., ''We restrict entry into the refuge'' vs. ''Entry into the refuge is restricted'').

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee, as amended by the National Wildlife Refuge System Improvement Act of 1977 [Improvement Act]) (Administration Act) and the Refuge Recreation Act of 1962 (16 U.S.C. 460k–460k–4) (Recreation Act) govern the administration and public use of refuges.

Amendments enacted by the Improvement Act built 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 our 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 with the mission for which the refuge was established. 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 Improvement 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 prepare and approve, at the appropriate Regional Office and in Washington, documentation of National Environmental Policy Act (NEPA) and the Endangered Species Act; and we consult with the State and, where appropriate, Tribal wildlife management agency. The Regional Director(s) certify that the opening of these refuges to hunting and/or sport fishing has been found to be compatible with the purpose(s) for which the respective refuge(s) were established, and the Refuge System mission. Copies of the compatibility determinations for these respective refuges are available by request to the Regional office noted under the heading ''Available Information for Specific Refuges.''

The annotated chart below summarize our proposed changes for the 2006–2007 season. The key below the chart explains the symbols used:

TABLE 1.—CHANGES FOR 2006–2007 HUNTING/FISHING SEASON

National Wildlife Refuge	State	Migratory bird hunting	Upland hunting	Big game hunting	Fishing
Agassiz	MN	B	B	Previously published.	
Hamden Slough	MN	A		A	
Blackwater	MD	B	B	Previously published.	Previously published.
Cape May	NJ	Previously published.		Previously published.	D
Whittlesey Creek	WI	Previously published.		B	
Holt Collier*	MS		A	A	
Bayou Cocodrie**	LA	E	E	E	E
Tensas River	LA	E	E	E	Previously published.
Upper Ouachita	LA	E	E	C/E	E
Black Coulee	MT	Previously published.	Previously published.	F	
Creedman Coulee	MT	Previously published.	F	F	
Hewitt Lake	MT	Previously published.	F	F	
Lake Thibadeau	MT	Previously published.	F	F	

A = Refuge added and activities opened.
B = Refuge already listed, added hunt category.
C = Refuge already listed, added species to hunt category.
D = Refuge already listed, added fishing.
E = Refuge already listed and opened to this activity, added land.
F = Refuge opened to activity in past but omitted from 50 CFR due to administrative oversight.
* Refuge was created from existing land that was part of Yazoo NWR Complex, which was already open to all 3 hunting opportunities in 50 CFR.
** Current regulations not altered even though new land acquired.

We are adding three refuges to the list of areas open for hunting and/or sport fishing and increasing opportunities at six refuges.

Lands acquired as ''waterfowl production areas'' under the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d(c)), 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 (WMDs) to the list of refuges open for all four activities in 50 CFR part 32 this year: Benton Lake WMD, Bowdoin WMD, Charles M. Russell WMD, Northeast Montana WMD, and Northwest Montana WMD, all in the State of Montana.

We are correcting administrative errors in 50 CFR part 32. We are correctly reflecting hunting opportunities for four refuges in the State of Montana (Black Coulee, Creedman Coulee, Hewitt Lake, and Lake Thibadeau). These refuges were open to all three hunting activities in the 1983 CFR. The publication of a final rule (49 FR 36737, September 19, 1984), which codified the 1984 CFR with

administrative technical amendments, resulted in these four refuges being mistakenly dropped from the upland and/or big game hunting lists. We are now correcting those errors for these refuges.

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 regulations at each refuge, to increase understanding and compliance with these regulations, and to make enforcement of these regulations more efficient. In addition to now finding these regulations in 50 CFR part 32, visitors to our refuges will usually find them 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, 27, and 32 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.

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. You may comment via e-mail to: *refuge system policy comments@fws.gov.* Please submit e-mail comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include: ''Attn: 1018–AU61'' and your full name and return mailing address in your e-mail 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 e-mail message, contact us directly at (703) 358–2036.

2. U.S. mail or hand-delivery/courier: 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. In light of increased security measures, please call (703) 358–2036 before hand delivering comments.

3. You may fax comments to: Chief, Division of Conservation Planning and Policy, National Wildlife Refuge System, at (703) 358–2248.

4. Finally, Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions at that site for submitting 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. Also, 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.

Public Comment

Department of the Interior policy is, whenever practicable, to afford the public a meaningful opportunity to participate in the rulemaking process. The process of opening refuges is done in stages, with the fundamental work being performed on the ground at the refuge and in the community where the program is administered. In these stages, the public is given other opportunities to comment, for example, on the comprehensive conservation plans and the compatibility determinations. The second stage is this document, when we publish the proposed rule in the **Federal Register** for additional comment, commonly a 30-day comment period.

There is nothing contained in this annual regulation outside the scope of the annual review process where we add refuges or determine whether individual refuges need modifications, deletions, or additions made to them. We make every attempt to collect all of the proposals from the refuges nationwide and process them expeditiously to maximize the time available for public review. We believe that a 30-day comment period, through the broader publication following the earlier public involvement, gives the public sufficient time to comment and allows us to establish hunting and fishing programs in time for the upcoming seasons. 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.

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. Such a delay would jeopardize establishment of hunting and sport fishing programs this year, or shorten their duration.

Even after issuance of a final rule, we accept comments, suggestions, and concerns for consideration for any appropriate subsequent rulemaking.

When finalized, we will incorporate these regulations into 50 CFR part 32. Part 32 contains general provisions and refuge-specific regulations for hunting and sport fishing on refuges.

Clarity of This Rule

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 proposed 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 (*e.g.*, grouping and order of sections, use of headings, paragraphing) 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 proposed 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 Executive Order (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 proposed 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. However, a brief assessment follows to clarify the costs and benefits associated with this proposed rule.

The purpose of this proposed rule is to add three refuges to the list of areas open for hunting and/or sport fishing programs and increase the activities available at six other refuges. Fishing and hunting are two of the wildlife-dependent uses of national wildlife refuges that Congress recognizes as legitimate and appropriate, and 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 545 existing national wildlife refuges already have programs which allow fishing and hunting. Not all refuges have the necessary resources and landscape that would make 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 proposed rule both establishes hunting and/or fishing programs and expands existing activities at the following refuges: Agassiz and Hamden Slough NWRs in Minnesota, Blackwater NWR in Maryland, Holt Collier NWR in Mississippi, Cape May NWR in New Jersey, Whittlesey Creek NWR in Wisconsin, and Bayou Cocodrie, Tensas River, and Upper Ouachita NWRs in Louisiana.

The annotated table on pages 7 and 8 (Table 1) summarizes proposed changes (new refuges, new refuge hunting and/or fishing categories, added species, added land, and administrative corrections) for the 2006–2007 season. The key below the table explains the symbols used.

In addition to the proposed changes to refuge activities in Table 1, we are correcting the following administrative errors in 50 CFR part 32. The publication of a 1984 final rule (49 FR 36737, September 19, 1984), which codified the 1984 CFR with administrative technical amendments, resulted in four refuges (Black Coulee, Creedman Coulee, Hewitt Lake, and Lake Thibadeau NWRs all in the State of Montana) being mistakenly dropped from the upland and big game hunting lists. This proposed rule corrects this error reflecting those hunting opportunities. There are no new economic impacts resulting from this correction because recreational activities never ceased at those refuges.

We generally manage lands acquired as ''waterfowl production areas'' under the Migratory Bird Hunting and Conservation Stamp Act (16 U.S.C. 718d(c) as part of wetland management districts (WMDs). These WMDs 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 WMDs, all in the State of Montana, to the list of refuges open for all four activities in part 32 this year: Benton Lake WMD, Bowdoin WMD, Charles M. Russell WMD, Northeast Montana WMD, and Northwest Montana WMD. 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 the addition of these wetland management districts to the list in 50 CFR part 32.

Costs Incurred

Costs incurred by this proposed regulation would be minimal, if any. We expect any law enforcement or other refuge actions related to recreational activities to be included in any usual monitoring of the refuge. Therefore, we expect any costs to be negligible.

Benefits Accrued

Benefits from this proposed regulation would be derived from the new fishing and hunting days from opening the refuges to these activities. If the refuges establishing new fishing and hunting programs were a pure addition to the current supply of such activities, it would mean an estimated increase of 8,352 user days of hunting and 975 user days of fishing (Table 2). These new fishing and hunting days would generate: (1) Consumer surplus,[1] and (2) expenditures associated with fishing and hunting on the refuges.

TABLE 2.—ESTIMATED CHANGE IN FISHING AND HUNTING OPPORTUNITIES IN 2006/07

Refuge	Current hunting and/or fishing days (FY04)	Additional fishing days	Additional hunting days	Total additional fishing and hunting days
Agassiz	740		75	75
Hamden Slough	0		325	325
Blackwater	11,390		950	950
Cape May	8,550	500		500
Whittlesey Creek	100		30	30
Bayou Cocodrie	7,400	140	1,122	1,262
Tensas River	28,850		3,175	3,175
Upper Ouachita	18,220	335	2,675	3,010
Total Days Per Year	75,250	975	8,352	9,327

Assuming the new days are a pure addition to the current supply, the additional days would create consumer surplus of approximately $454,000 annually ([975 days × $48.92 CS per day] + [8,352 days × $48.67 CS per day]) (Table 3). However, the participation trend is flat in fishing and hunting activities because the number of

[1] The difference between the total value people receive from the consumption of a particular good and the total amount they pay for the good.

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 fishing and/or hunting opportunities. Therefore, the additional consumer surplus is likely to be smaller.

TABLE 3.—ESTIMATED CHANGE IN ANNUAL CONSUMER SURPLUS FROM ADDITIONAL FISHING AND HUNTING OPPORTUNITIES IN 2006/07 (2005 $)

	Fishing	Hunting	Total fishing and hunting
Total Additional Days	975	8,352	9,327
Avg. Consumer Surplus per Day [2]	$48.92	$48.67	
Change in Total Consumer Surplus	$47,697	$406,492	$454,189

In addition to benefits derived from consumer surplus, this proposed rule would also have benefits from the recreation-related expenditures. Due to the unavailability of site-specific expenditure data, we use the national estimates from the 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation to identify expenditures for food and lodging, transportation, and other incidental expenses. Using the average expenditures for these categories with the maximum expected additional participation on the Refuge System yields approximately $68,700 in fishing-related expenditures and $831,300 in hunting-related expenditures (Table 4).

TABLE 4.—ESTIMATION OF THE ADDITIONAL EXPENDITURES WITH AN INCREASE OF ACTIVITIES IN 7 REFUGES AND THE OPENING OF 1 REFUGE TO FISHING AND/OR HUNTING FOR 2006/07

	U.S. total expenditures in 2001	Average expenditures per day	Current refuge expenditures w/o duplication (FY2004)	Possible additional refuge expenditures
Fishing:				
Total Days Spent	557 Mil		7,045,382	975
Total Expenditures	39.3 Bil	$70	$496,671,534	$68,734
Trip Related	16.2 Bil	$29	$204,287,312	$28,271
Food and Lodging	6.5 Bil	$12	$81,974,145	$11,344
Transportation	3.9 Bil	$7	$49,005,482	$6,782
Other	5.8 Bil	$10	$73,307,685	$10,145
Hunting:				
Total Days Spent	228 Mil		2,378,813	8,352
Total Expenditures	22.7 Bil	$100	$236,759,998	$831,263
Trip Related	5.8 Bil	$25	$60,334,509	$211,834
Food and Lodging	2.7 Bil	$12	$28,142,621	$98,809
Transportation	2.0 Bil	$9	$20,554,019	$72,165
Other	1.1 Bil	$5	$11,637,870	$40,860

By having ripple effects throughout the economy, these direct expenditures are only part of the economic impact of waterfowl hunting. 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 sportfishing activities (2.79) from the report ''Sportfishing in America'' for the estimated increase in direct expenditures yields a total economic impact of approximately $2.5 million (2005 dollars) (Southwick Associates, Inc., 2003). (Using a local impact multiplier would yield more accurate and smaller results. However, we employed the national impact multiplier due to the difficulty in developing local multipliers for each specific region.)

Since we know that most of the 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; 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 $2.5 million, and most likely considerably less. Since 80 percent of the participants travel less than 100 miles to engage in hunting and 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 $492,000 annually.

In summary, we estimate that the additional fishing and hunting opportunities would yield approximately $454,000 in consumer surplus and $492,000 in recreation-related expenditures annually. The 10-year quantitative benefit for this rule would be $4.9 million ($4.3 million discounted at 3 percent or $3.7 million discounted at 7 percent).

b. This proposed rule will not create inconsistencies with other agencies' actions. This action pertains solely to the management of the Refuge System. The fishing and hunting activities located on national wildlife refuges account for approximately 1 percent of the available supply in the United States. Any small, incremental change in the supply of fishing and hunting

[2] Due to the unavailability of consistent consumer surplus estimates for these various site-specific activities, benefit transfer is used. National average consumer surplus estimates for fishing and for hunting are used for this analysis. The estimates are from: Pam Kaval and John Loomis, ''Updated Outdoor Recreation Use Values with Emphasis on National Park Recreation,'' October 2003.

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 national wildlife refuges.

d. This proposed rule will not raise novel legal or policy issues. This proposed rule adds three refuges to the list of areas open for hunting and/or sport fishing programs and increases the activities available at seven other refuges. This proposed rule continues the practice of allowing recreational public use of national wildlife refuges. Many refuges in the Refuge System currently have opportunities for the public to hunt and fish on refuge lands.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act [SBREFA] of 1996) (5 U.S.C. 601, *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule does not increase the number of recreation types allowed on the System but establishes hunting and/or fishing programs on three refuges and expands activities at six other refuges. As a result, opportunities for wildlife-dependent recreation on national wildlife refuges will increase. The changes in the amount of allowed use(s) are likely to increase visitor activity on these national wildlife refuges. But, as stated in the *Regulatory Planning and Review* section, 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.

Many small businesses within the retail trade industry (such as hotels, gas stations, taxidermy shops, bait and tackle shops, etc.) may benefit from some increased refuge visitation. A large percentage of these retail trade establishments in the majority of affected counties qualify as small businesses (Table 5).

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. Using the estimate derived in the *Regulatory Planning and Review* section, we expect approximately $492,000 to be spent in total in the refuges' local economies. The maximum increase ($2.5 million if all spending were new money) at most would be less than 1 percent for local retail trade spending (Table 5).

TABLE 5.—COMPARATIVE EXPENDITURES FOR RETAIL TRADE ASSOCIATED WITH ADDITIONAL REFUGE VISITATION FOR 2006/2007

[Thousands, 2005 dollars]

Refuge/county(ies)	Retail trade in 2002	Estimated maximum addition from new activities	Addition as a percent of total	Total number retail establish.	Establish. with <10 emp.
Agassiz:					
Marshall, MN	$77,841.0	$3.7	0.005	43	35
Hamden Slough:					
Becker, MN	340,523.3	15.8	0.005	159	117
Blackwater:					
Dorchester, MD	251,552.7	46.2	0.018	123	91
Cape May:					
Cape May, NJ	1,501,452.1	24.5	0.002	776	643
Whittlesey Creek:					
Ashland, WI	179,600.0	1.5	0.001	94	70
Bayou Cocodrie:					
Concordia, LA	131,726.0	61.5	0.047	82	60
Tensas River:					
Franklin, LA	199,210.3	51.5	0.026	83	63
Madison, LA	75,763.2	51.5	0.068	42	31
Tensas, LA	23,183.1	51.5	0.222	26	22
Upper Ouachita:					
Morehouse, LA	224,510.3	73.3	0.033	115	91
Union, LA	123,511.2	73.3	0.059	70	57

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 spending near the affected refuges. Therefore, we certify that this proposed 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.*). An initial/final Regulatory

Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

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. Would not have an annual effect on the economy of $100 million or more. The additional fishing and hunting opportunities at these refuges would generate angler and hunter expenditures with an economic impact estimated at $2.5 million per year (2005 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. Would 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 would have only a slight effect on the costs of hunting and fishing opportunities for Americans. Under the assumption that any additional hunting and fishing opportunities would be of high 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 fishing generated by this proposed rule. We do not expect this proposed rule to affect the supply or demand for fishing and hunting opportunities in the United States and, therefore, it should not affect prices for fishing and hunting equipment and supplies, or the retailers that sell equipment. Additional refuge hunting and fishing opportunities would account for less than 0.001 percent of the available opportunities in the United States.

c. Would 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 $2.5 million annually in impact. Therefore, this rule would have no measurable economic effect on the wildlife-dependent industry, which has annual sales of equipment and travel expenditures of $72 billion nationwide. Refuges that establish hunting and fishing programs may hire additional staff from the local community to assist with the programs, but this would not be a significant increase because we are only opening three refuges to hunting and/or fishing and only six refuges are increasing activities by this proposed rule.

Unfunded Mandates Reform Act

Since this proposed rule would apply to public use of federally owned and managed refuges, it would not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule would 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, this proposed rule would not have significant takings implications. This regulation would affect only visitors at national wildlife refuges and describe what they can do while they are on a refuge.

Federalism (E.O. 13132)

As discussed in the Regulatory Planning and Review and Unfunded Mandates Reform Act sections above, this proposed rule would 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.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the proposed rule would 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 would 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 proposed rule would add three refuges to the list of areas open for hunting and/or sport fishing and increase the activities at six refuges, and make 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 national wildlife refuges with Tribal governments having adjoining or overlapping jurisdiction before we propose the regulations.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by the Office of Management and Budget 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. We are seeking further OMB approval for other necessary information collection.

Endangered Species Act Section 7 Consultation

In preparation for new openings, we comply with section 7 of the Endangered Species Act. Copies of the section 7 evaluations may be obtained by contacting the regions listed under *Available Information for Specific Refuges.* For the proposals to open, or to add opportunities at, national wildlife refuges for hunting and/or fishing, we have determined that: At Hamden Slough National Wildlife Refuge, Bayou Cocodrie National Wildlife Refuge (for the Louisiana black bear), and Tensas River National Wildlife Refuge the actions are not likely to adversely affect listed species or designated critical habitat. For the proposals at Bayou Cocodrie National Wildlife Refuge (with regard to proposed black bear critical habitat and the bald eagle), Whittlesey Creek National Wildlife Refuge, Cape

May National Wildlife Refuge, and Blackwater National Wildlife Refuge, we have determined the actions will have no affect on any listed species or critical habitat. For Upper Ouachita National Wildlife Refuge and Agassiz National Wildlife Refuge we have determined the actions may affect but are not likely to adversely affect listed species/critical habitat.

We also comply with section 7 of the ESA when developing Comprehensive Conservation Plans (CCPs) 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.

National Environmental Policy Act

We analyzed this proposed rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 516 Departmental Manual (DM) 6, Appendix 1. This proposed 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 publication of proposed amendments to refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10). Concerning the actions that are the subject of this proposed rulemaking, NEPA has been complied with at the project level where each proposal was developed. This is consistent with the Department of the Interior instructions for compliance with NEPA where actions are covered sufficiently by an earlier environmental document (516 DM 3.2A).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge CCPs and/or other step-down management plans, pursuant to our refuge planning guidance in 602 Fish and Wildlife Service Manual (FW) 1, 3, and 4. We prepare these 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. Copies of all plans and NEPA compliance are available from the refuges at the addresses provided below.

Available Information for Specific Refuges

Individual refuge headquarters retain information regarding public use programs and conditions that apply to their specific programs and maps of their respective areas. If the specific refuge you are interested in is not mentioned below, then contact the appropriate Regional offices 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, Suite 1692, 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, Box 1306, 500 Gold Avenue, Albuquerque, New Mexico 87103; Telephone (505) 248–7419

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, Twin Cities, Minnesota 55111; Telephone (612) 713–5401. Hamden Slough National Wildlife Refuge, 21212 210th Street, Audubon, Minnesota 56511; Telephone (218) 439–6319

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, 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) 679–7166. Holt Collier National Wildlife Refuge, 728 Yazoo Refuge Road, Hollandale, Mississippi 38748; Telephone (662) 839–2638

Region 5—Connecticut, Delaware, District of Columbia, 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) 253–8306. Cape May National Wildlife Refuge, 24 Kimbles Beach Road, Cape May Court House, New Jersey 08210; Telephone (609) 463–0994

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) 786–3545

Primary Author

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List of Subjects in 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 32—[AMENDED]

1. 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.

2. Amend § 32.7 ''What refuge units are open to hunting and/or sport fishing?'' by:

a. Adding Holt Collier National Wildlife Refuge in the State of Mississippi;

b. Adding Benton Lake Wetland Management District, Bowdoin Wetland Management District, Charles M. Russell Wetland Management District, Northeast Montana Wetland Management District, and Northwest Montana Wetland Management District in the State of Montana; and

c. Revising the name of ACE Basin National Wildlife Refuge to read Ernest F. Hollings ACE Basin National Wildlife Refuge in the State of South Carolina and placing the revised listing in the correct alphabetical order.

3. Amend § 32.20 Alabama by:

a. Revising paragraph C.2. of Cahaba River National Wildlife Refuge;

b. Revising paragraph B.7. of Choctaw National Wildlife Refuge; and

c. Revising paragraphs B.5. and C.4. of Eufaula National Wildlife Refuge to read as follows:

§ 32.20 Alabama.

* * * * *

Cahaba River National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

2. We prohibit the use of firearms for hunting deer on the refuge. However, you may archery hunt in the portions of the refuge that are open for deer hunting during the archery, shotgun, and muzzleloader seasons established by the State.

* * * * *

Choctaw National Wildlife Refuge

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B. Upland Game Hunting. * * *

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7. We prohibit the mooring and storing of boats from legal sunset to legal sunrise.

* * * * *

Eufaula National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

* * * * *

5. We prohibit the mooring and storing of boats from 1½ hours after legal sunset to 1½ hours before legal sunrise.

C. Big Game Hunting. * * *

* * * * *

4. All youth hunters age 15 and under 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 10–15) within the Bradley Unit on weekends during October where an adult must supervise youth age 15 or under. One adult may supervise no more than one youth hunter.

* * * * *

4. Amend § 32.22 Arizona by:

a. Revising paragraphs A.1 through A.3, B., and C.2. of Buenos Aires National Wildlife Refuge; and

b. Revising paragraph A.11.viii. and adding paragraphs A.13. and A.14. of Havasu National Wildlife Refuge;

§ 32.22 Arizona.

* * * * *

Buenos Aires National Wildlife Refuge

A. Migratory Game Bird Hunting.

* * *

1. We allow portable or temporary blinds and stands, but you must remove them at the end of each hunt day.

2. We prohibit the use of flagging tape, reflective tape, or other signs or markers used to identify paths to mark tree stands, blinds, or other areas.

3. The No-Hunt Zones include all Service property east of milepost 7 of Arivaca Road within the Arivaca Creek Management Area, all Service property in Brown Canyon, all Service property within ¼ mile (.4 km) of refuge residences, and the posted No-Hunt Zone encompassing refuge headquarters and area bounded by the 10-Mile (16 km) Pronghorn Drive auto tour loop.

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. Conditions A1 through A3 apply.

2. We require hunting groups using more than four horses to possess and carry a refuge special use permit.

3. We require each hunter using horses to provide water and feed and clear all horse manure from campsites.

4. We prohibit upland game hunting on the refuge from June 1 through August 19.

C. Big Game Hunting. * * *

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2. Conditions A1 through A3, B2, and B3 apply.

* * * * *

Havasu National Wildlife Refuge

A. Migratory Game Bird Hunting.

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11. * * *

* * * * *

viii. We allow waterfowl hunting on Wednesdays, Saturdays, and Sundays. Waterfowl hunting ends at 12 p.m. (noon) MST. Hunters must be out of the slough area by 1 p.m. MST.

* * * * *

13. We prohibit the use of all air-thrust boats and/or air-cooled propulsion engines, including floating aircraft.

14. Hunting dogs must be under the immediate control of the hunter at all times.

* * * * *

5. Amend § 32.23 Arkansas by:

a. Revising paragraphs B.6., B.12., adding paragraphs B.13., and B.14., revising paragraphs C., D.1., D.7., D.8., D.9., D.10., and adding paragraphs D.11. through D.14. of Holla Bend National Wildlife Refuge; and

b. Revising paragraphs A.2., A.6., A.8., A.10., A.15., C.7., C.8., C.12., and C.16. of White River National Wildlife Refuge to read as follows:

§ 32.23 Arkansas.

* * * * *

Holla Bend National Wildlife Refuge

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B. Upland Game Hunting. * * *

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6. We prohibit possession or use of alcoholic beverage(s) while hunting (see § 32.2(j)).

* * * * *

12. We prohibit hunting within 150 feet (45 m) of roads and trails open to motor vehicle use.

13. We prohibit marking trails with tape, ribbon, paint, or any other substance other than biodegradable materials.

14. We allow the use of nonmotorized boats during the hunting season, but we prohibit hunters leaving boats on the refuge overnight (see § 27.93 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 B14 apply.

2. Archery/crossbow season for deer and turkey begins October 1 and continues through December 10.

3. The refuge will conduct one youth-only (between ages 12–15 at the beginning of the gun deer season in Zone 7) quota deer hunt. This hunt will take place after the archery season (typically in December). Specific hunt dates and application procedures will be available at the refuge office in September. 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.

4. We open spring and fall archery turkey hunting during the State spring and fall turkey season for this zone.

5. We close spring archery turkey hunting during scheduled turkey quota gun hunts.

6. 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 one 2-day quota spring turkey hunt (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.

7. 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.

8. We only allow portable deer stands. Hunters 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 and 27.94 of this chapter).

9. Hunters must permanently affix the owner's name and address to all deer stands on the refuge.

10. We prohibit the use of dogs during big game hunting.

11. We prohibit hunting from paved, graveled, and mowed roads and mowed trails (see § 27.31 of this chapter).

12. We prohibit hunting with the aid of bait, salt, or ingestible attractant (see § 32.2(h)).

13. We prohibit all forms of organized drives.

14. You must check all game at the refuge check station.

D. Sport Fishing. We allow sport fishing and frogging in accordance with State regulations subject to the following conditions:

1. Conditions B7, B8, and B10 apply.

* * * * *

7. We will allow only bank fishing in Long Lake year-round from legal sunrise to legal sunset. Access to this bank fishing area is through the parking area off of Hwy 155.

8. We only allow bow fishing from legal sunrise to legal sunset during August.

9. We allow frogging from May 1 to May 31. We only allow frogging on those areas of the old river channel that connect with the Arkansas River.

10. Anglers must enter and exit the refuge from designated roads and parking areas.

11. We prohibit anglers from leaving their boats unattended overnight on any portion of the refuge (see § 27.93 of this chapter).

12. We require a Special Use Permit for all commercial fishing activities on the refuge.

13. We prohibit possessing turtle (see § 27.21 of this chapter).

14. We prohibit hovercraft, personal watercraft (Jet Skis, etc.), and airboats.

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White River National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. We allow duck hunting from legal shooting hours until 12:00 p.m (noon).

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6. You may take coot and woodcock during the State season.

* * * * *

8. Waterfowl hunters may enter and access the refuge no earlier than 4:30 a.m.

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10. We prohibit boating December 1 through January 31 in the South Unit Waterfowl Hunt Area, except from 4:30 a.m. to 1 p.m. on designated hunt days.

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15. We prohibit loaded weapons in a vehicle or boat while under power (see § 27.42(b) of this chapter). We define ''loaded'' as shells in the gun or ignition device on a muzzleloader.

* * * * *

C. Big Game Hunting. * * *

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7. You may hunt the North or South Unit by muzzleloader or modern gun 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 hunting on the North Unit for 4 consecutive days following the 3-day muzzleloader quota hunt.

* * * * *

12. If you harvest deer and turkey on the refuge, you must immediately record the zone number on your hunting license and later at an official check station.

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16. We allow access and refuge use during quota hunt to anglers and nonconsumptive users.

* * * * *

6. Amend § 32.28 Florida by:

a. Revising paragraphs A.1., A.2., A.3., A.11., A.13., A.14., A.15., and adding paragraphs A.16., and A.17., revising paragraphs D.8., D.9., and removing paragraph D.10. of Arthur R. Marshall Loxahatchee National Wildlife Refuge;

b. Revising paragraphs D.2., D.4., D.5., and adding paragraphs D.6., D.7., and D.8. of Hobe Sound National Wildlife Refuge;

c. Revising paragraphs D.4. through D.14. and adding paragraphs D.15. through D.20. of J.N. ''Ding'' Darling National Wildlife Refuge;

d. Revising paragraphs A.7. and A.10., adding paragraph A.16., revising paragraphs B.1., B.2., B.3., C.1., C.7., and C.23., removing paragraph C.24., and redesignating paragraphs C.25. and C.26. as paragraphs C.24. and C.25. of Lower Suwannee National Wildlife Refuge;

e. Revising paragraphs A., D.2., D.3., D.9., and D.11. of Merritt Island National Wildlife Refuge;

f. Revising paragraphs B.3. through B.9., revising the introductory text of paragraph C., revising paragraphs C.7. through C.10., and C.12. of St. Marks National Wildlife Refuge; and

g. Revising paragraphs C., D.6., and D.7. and removing paragraphs D.8. and D.9. of St. Vincent National Wildlife Refuge to read as follows:

§ 32.28 Florida.

* * * * *

Arthur R. Marshall Loxahatchee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. You must possess and carry a signed refuge waterfowl hunt permit while hunting. Only original permits are lawful. Internet copies are not valid.

2. We allow hunting in the interior of the refuge south of latitude line 26.27.130 and north of mile markers 12 and 14. We prohibit hunting from canals, levees, or those areas posted as closed.

3. The refuge open waterfowl season is concurrent with the State season. The refuge participates in both the early experimental and regular seasons. Hunters may only take duck and coot.

* * * * *

11. Hunters must complete a daily bag report card and place it in an entrance fee canister each day prior to exiting the refuge.

* * * * *

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).

14. We require all boats operating outside of the main perimeter canals (the L–40 Canal, L–39 Canal, L–7 Canal, and L–101 Canal) in interior areas of the refuge and within the hunt area, to fly a 12 inch by 12 inch (30 cm x 30 cm) orange flag, 10 feet (3 m) above the vessel's waterline.

15. We prohibit motorized vehicles of any type on the levees and undesignated routes (see § 27.31 of this chapter).

16. Hunters, their vehicles, boats, equipment, and other belongings are subject to inspection by Service law enforcement officers.

17. For emergencies or to report violations, contact law enforcement personnel at 1–800–307–5789. Law enforcement officers may be monitoring VHF Channel 16.

* * * * *

D. Sport Fishing. * * *

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8. Conditions A13, A14, A15, and A17 apply.

9. Anglers, their vehicles, boats, equipment, and other belongings are subject to inspection by Service law enforcement officers.

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Hobe Sound National Wildlife Refuge

D. Sport Fishing. * * *

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2. We allow salt-water fishing along the Atlantic Ocean and Indian River

Lagoon year-round in accordance with State recreational fishing regulations.

* * * * *

4. We only allow the use of rods and reels and poles and lines, and anglers must attend them at all times.

5. We allow only two poles per angler and those poles must be attended at all times (In conjunction with the Martin County, Florida two-pole ordinance.)

6. We prohibit motorized vehicles of any type on the fire roads, undesignated routes, and areas posted as closed (see § 27.31 of this chapter).

7. Anglers, their vehicles, boats, equipment, and other belongings are subject to inspection by Service law enforcement officers.

8. For emergencies or to report violations, contact law enforcement personnel at 1–800–307–5789. Law enforcement officers may be monitoring VHF Channel 16.

J. N. ''Ding'' Darling National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

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4. We allow the take of blue crab with the use of dip nets only.

5. The daily limit of blue crab is 20 per person (including no more than 10 females).

6. We prohibit kite surfing, kite boarding, wind surfing, sail boarding, and any similar type of activities.

7. We only allow vessels propelled by polling, paddling, or floating in the post ''no-motor zone'' of the Ding Darling Wilderness Area. All motors, including electric motors, must be in a nonuse position (out of the water) when in the ''no-motor zone.''

8. We prohibit camping on all refuge lands and overnight mooring of vessels on all refuge waters.

9. You may only launch vessels at designated sites on the refuge.

10. We allow public access to Wildlife Drive and Indigo Trail beginning at 7:30 a.m., except on Fridays, when we close Wildlife Drive to all public access.

11. All visitors (e.g., anglers and photographers) must exit refuge lands and waters no later than ½ hour after legal sunset.

12. We allow fishing and crabbing from the bank on the impoundment side only (left side) of Wildlife Drive. We prohibit all public entry into the impoundments.

13. We prohibit commercial fishing and crabbing (see § 27.21 of this chapter).

14. We prohibit the possession or use of seines or trot lines.

15. We prohibit the use of cast nets from Wildlife Drive or any structure affixed to shore.

16. All fish must remain in whole condition.

17. We prohibit consumption of alcohol or possession of open alcohol containers on refuge lands and waters (see § 32.2(j)).

18. We prohibit airboats, Hovercraft, and personal watercraft (Go Devils, Jet Skis, jet boats, and Wave Runners).

19. Vessels must not exceed slow speed/minimum wake in refuge waters.

20. We close to public entry islands (including rookery islands) except for designated trails.

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Lower Suwannee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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7. We prohibit hunting from all refuge roads open to public vehicle travel. We prohibit hunting within 150 feet (45 m) of the Dixie Mainline and Lower Suwannee Nature Drive (Levy Loop Road).

* * * * *

10. We prohibit guiding or participating in a guided hunt where a fee is charged.

* * * * *

16. We prohibit cleaning of game within 1,000 feet (300 m) of any developed public recreation area, game check station, or gate.

B. Upland Game Hunting. * * *

1. Conditions A1 through A16 apply.

2. You may only possess .22 caliber rimfire rifle (.22 magnum prohibited) firearms (see § 27.42 of this chapter), shotguns with shot no larger than 4 common and bows with arrows that have judo or blunt tips. We prohibit possession of arrows capable of taking big game during the upland game hunting season.

3. We allow night hunting in accordance with State regulations for raccoon and opossum on Wednesday through Saturday nights from legal sunset until legal sunrise during the month of February.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A16 apply.

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7. We prohibit hunting from a tree in which a metal object has been inserted (see § 32.2(i)).

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23. You may only take bearded turkeys and only during the State spring turkey season.

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Merritt Island 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 current signed Merritt Island National Wildlife Refuge hunt permit at all times while hunting waterfowl on the refuge.

2. You must possess and carry (or hunt within 30 yards (27 m) of a hunter who possesses) a valid refuge waterfowl hunting quota permit while hunting areas 1 or 4 from the beginning of the regular waterfowl season through December 31. No more than four hunters will hunt using a single valid refuge waterfowl hunting quota permit.

3. You may hunt Wednesdays, Saturdays, Sundays, and all Federal holidays that fall within the State's waterfowl season.

4. You may hunt in four designated areas of the refuge as delineated in the refuge hunting regulations map. We prohibit hunters to enter the normal or expanded restricted areas of the Kennedy Space Center.

5. You may only hunt waterfowl on refuge-established hunt days from the legal shooting time until 1 p.m.

6. You may enter no earlier than 4 a.m. for the purpose of waterfowl 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 age 18.

9. We prohibit accessing a hunt area from Black Point Wildlife Drive. You may not leave vehicles parked on 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 within 15 feet (4.5 m) or shooting from any portion of a dike, dirt road, or railroad grade.

12. We prohibit hunting or shooting within 150 yards (135 m) of SR 402, SR 406, or any paved road right-of-way.

13. All hunters must stop at posted refuge waterfowl check stations and report statistical hunt information to refuge personnel.

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D. Sport Fishing. * * *

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2. We prohibit fishing after legal sunset or before legal sunrise, except that we allow fishing at night from a vessel in the open waters of Mosquito

Lagoon, Indian River Lagoon, Banana River, and Haulover Canal.

3. We allow launching of boats for night fishing activities only from Bair's Cove, Beacon 42, and Bio Lab boat ramps.

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9. Vessels must not exceed idle speed in Bairs Cove and KARS Marina.

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11. We prohibit fishing within the normal or expanded restricted areas of the Kennedy Space Center (KSC), unless those areas are officially designated by KSC as special fishing opportunity sites.

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St. Marks National Wildlife Refuge

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B. Upland Game Hunting. * * *

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3. You may use .22 caliber or small rim-fired rifles, shotguns with nontoxic shot (#4 bird shot or smaller) (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.

4. You must unload all firearms for transport in vehicles (uncap muzzleloaders) (see § 27.42 of this chapter).

5. We prohibit dogs in the hunt area.

6. There is no limit on the size or number of feral hog that hunters may take.

7. We allow hunting on designated areas of the refuge. Contact the refuge office for specific dates.

8. We prohibit hunting from any named or numbered road.

9. We prohibit cleaning of game within 1,000 feet (300 m) of any residence, developed public recreation area, or game check station.

C. Big Game Hunting. We allow hunting of white-tailed deer, feral hog, and either-sex turkey in accordance with State regulations subject to the following conditions:

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7. We prohibit the use of flagging, paint, blazes, or reflective trail markers.

8. There are two fall archery hunts: hunters may harvest either-sex deer, either-sex turkey, or feral hog 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 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. See condition C10 for game limits. Contact the refuge office for specific dates.

10. The bag limit for white-tailed deer is two deer per scheduled hunt period. We allow hunters to harvest two antlerless deer per scheduled hunt period. We define antlerless deer as no visible antler above the hairline. State daily bag limits apply to antlerless deer. Or hunters may harvest one antlerless deer and one antlered deer per hunt. Antlered deer must have at least 3 points, 1 inch (2.5 cm) or greater in length on one antler to be harvested. We prohibit harvesting of spike-antlered bucks. There is no limit on feral hogs. The scheduled hunt periods vary, contact the refuge office for specific dates.

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12. There is one mobility-impaired hunt on the Panacea Unit in the area west of County Road 372. Hunters may have an able-bodied hunter accompany them. You may transfer permits issued to able-bodied assistants. We limit those hunt teams to harvesting white-tailed deer and feral hog within the limits described in condition C10. Contact the refuge office for specific dates.

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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 the hunter must possess and carry them while hunting. Only signed permits are valid. We only allow people with a signed refuge hunt permit on the island during the hunt periods. Contact the refuge office for details on obtaining a permit. We will charge fees for the hunts.

2. We restrict hunting to three hunting periods: sambar deer, raccoon, and feral hog (primitive weapons); white-tailed deer, raccoon, and feral hog (archery); and white-tailed deer, raccoon, and feral hog (primitive weapons). Contact the refuge office for specific dates. Hunters may check in and set up campsites and stands 1 day prior to the scheduled hunt. Hunters must leave the island and remove all equipment by 11 a.m. the day following the scheduled hunt.

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. 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 State regulations.

5. We restrict camping and fires (*see* § 27.95(a) of this chapter) to the two designated camping areas. We may restrict or ban fires during dry periods.

6. We prohibit the use or possession of alcoholic beverages during the refuge hunt period (*see* § 32.2(j)).

7. 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 and 27.94 of this chapter).

8. You may only retrieve game from the closed areas if accompanied by a refuge officer.

9. We issue permits for the sambar deer hunt by random drawing. You may obtain applications from the refuge office.

10. We limit weapons to primitive weapons on the sambar deer hunt and the primitive weapons white-tailed deer hunt. We limit the archery hunt to bow and arrow. Weapons must meet all State regulations. We prohibit crossbows during our hunts except with State permit.

11. We only allow stand, still, and stalk hunting. We prohibit game drives.

12. We prohibit the use of flagging, paint, blazes, or reflective trail markers.

13. 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.

14. Nonmovement stand hours for all hunts will be from legal morning shooting time until 9 a.m.

15. We prohibit discharging of weapons (including cap firing) in campgrounds (*see* § 27.42 of this chapter).

16. Weapons must have the caps removed from muzzleloaders and arrows quivered before and after legal shooting hours.

17. 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.

18. We prohibit motorized equipment, generators, or land vehicles (except bicycles).

19. Bag limits:

i. Sambar deer hunt—one sambar deer of either sex, 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 hog or raccoon.

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.

20. We prohibit bringing live game into the check station.

21. Hunters must observe quiet time in the campground between 9 p.m. and 5 a.m. We prohibit loud or boisterous behavior or activity.

22. We prohibit domestic animals.

D. Sport Fishing. * * *

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6. We only allow the use of rods and reels or poles and lines in the refuge lakes. You must attend your fishing equipment at all times.

7. You may only take fish species and fish limits authorized by State regulations. We prohibit the taking of frog or turtle.

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7. Amend § 32.29 Georgia by:

a. Revising paragraph D.4. of Banks Lake National Wildlife Refuge;

b. Adding paragraph C.22. of Bond Swamp National Wildlife Refuge;

c. Revising paragraphs C.2., C.9., and D.3. of Harris Neck National Wildlife Refuge;

d. Revising paragraph C.2.v. of Okefenokee National Wildlife Refuge;

e. Adding paragraph C.18. of Piedmont National Wildlife Refuge;

f. Revising paragraphs C.3., C.5., redesignating paragraphs C.6. through C.10. as paragraphs C.7. through C.11. and adding a new paragraph C.6. of Savannah National Wildlife Refuge; and

g. Revising paragraphs C.8. and C.9. of Wassaw National Wildlife Refuge to read as follows:

§ 32.29 Georgia.

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Banks Lake National Wildlife Refuge

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D. Sport Fishing. * * *

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4. We prohibit swimming, wading, jet skiing, water skiing, and the use of airboats.

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Bond Swamp National Wildlife Refuge

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C. Big Game Hunting. * * *

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22. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license. One adult may supervise no more than one youth hunter.

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Harris Neck National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. Each hunter may place one stand on the refuge during the week preceding each hunt, but you must remove stands by the end of each hunt (see §§ 27.93 and 27.94 of this chapter).

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9. During the archery hunt we allow only bows (no crossbows).

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D. Sport Fishing. * * *

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3. We close the Barbour River Landing (boat ramp and parking areas) to the public from 12 a.m. (midnight) to 4 a.m.

Okefenokee National Wildlife Refuge

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C. Big Game Hunting. * * *

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v. You must tag your deer with special refuge tags. There is a limit of two deer of either sex per day.

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Piedmont National Wildlife Refuge

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C. Big Game Hunting. * * *

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18. Youth hunters age 15 and under must remain within sight and normal voice contact of an adult age 21 or older possessing a valid hunting license. One adult may supervise no more than one youth hunter.

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Savannah National Wildlife Refuge

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C. Big Game Hunting. * * *

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3. We only allow bows (no crossbows) for deer and hog hunting during the archery hunt.

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5. We only allow shotguns with slugs, muzzleloaders, and bows (no crossbows) for deer and hog hunting throughout the designated hunt area during the November gun hunt and the March hog hunt. However, we allow high-powered rifles north of Interstate Highway 95 only. We prohibit handguns.

6. You may place one stand on the refuge for 2 consecutive days during the October archery hunt, the November gun hunt, and the March hog hunt. You must remove your stand by legal sunset of the second day of each 2-day period. Your name, address, and phone number must be marked on your stand.

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Wassaw National Wildlife Refuge

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C. Big Game Hunting. * * *

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8. We allow bows (no crossbows) 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 (no crossbows), and primitive weapons during the gun hunt.

* * * * *

8. Amend § 32.32 Illinois by:

a. Revising the introductory text of paragraph A., revising paragraph A.2., adding paragraph A.3., and revising paragraph D. of Chautauqua National Wildlife Refuge;

b. Revising Crab Orchard National Wildlife Refuge;

c. Revising paragraphs A., B.1., C.1., and D. of Cypress Creek National Wildlife Refuge;

d. Revising paragraphs A.1., A.2., B., C., and D.1. of Emiquon National Wildlife Refuge;

e. Revising paragraphs D.3. and D.4. of Meredosia National Wildlife Refuge;

f. Revising paragraphs A.1., A.2., B., C., and D. of Middle Mississippi River National Wildlife Refuge; and

g. Revising paragraphs A.1., A.2., B., C., and D.4. of Two Rivers National Wildlife Refuge to read as follows:

§ 32.32 Illinois.

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Chautauqua 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:

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2. Hunters must remove boats, decoys, blinds, and blind materials at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 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 allow fishing on Lake Chautauqua from January 15 through

October 15. We prohibit fishing in the Waterfowl Hunting Area during the waterfowl hunting season.

2. We allow bank fishing from legal sunrise to legal sunset from October 16 to January 14 between the boat ramp and the fishing trail in the North Pool and from Goofy Ridge Public Access to the west gate of the north pool water control structure.

3. Motorboats must not exceed ''no-wake'' speeds.

4. The public may not enter Weis Lake on the Cameron-Billsbach Unit of the refuge from October 16 through January 14.

Crab Orchard 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. Hunters may hunt waterfowl, by daily permit drawing, on the controlled areas of Grassy Point, Carterville, and Greenbriar land areas, as well as on Orchard, Sawmill, Turkey, and Grassy islands from ½ hour before legal sunrise to posted closing times each day during the goose season. Hunters may hunt waterfowl in these areas, including the lake shoreline, only from existing refuge blinds during the goose season.

2. We prohibit waterfowl hunting in the restricted use area of Crab Orchard Lake.

3. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

4. Hunting blinds must be a minimum of 200 yards (180 m) apart.

5. Hunters must remove all boats, decoys, blinds, blind materials, and other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

6. Goose hunters outside the controlled goose hunting area on Crab Orchard Lake must hunt from a blind that is on shore or anchored a minimum of 200 yards (180 m) away from any shoreline. Waterfowl hunters may also hunt on the east shoreline in Grassy Bay.

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 conditions:

1. We prohibit upland game hunting in the controlled goose hunting areas during the goose hunting season, except we allow furbearer hunting from legal sunset to legal sunrise.

2. We prohibit upland game hunting within 50 yards (45 m) of all designated public use facilities, including but not limited to parking areas, picnic areas, campgrounds, marinas, boat ramps, public roads, and established hiking trails listed in the refuge trails brochure.

3. We prohibit hunters using rifles or handguns with ammunition larger than .22 caliber rimfire, except they may use black powder firearms up to and including .40 caliber.

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 require all deer and turkey hunters using the restricted use area to check in at the refuge visitor contact station prior to hunting.

2. We allow deer hunting with archery equipment only in the following areas:

i. In the controlled goose hunting area;

ii. On all refuge lands north of Illinois State Route 13; and

iii. In the area north of the Crab Orchard Lake emergency spillway and west of Crab Orchard Lake.

3. We prohibit big game hunting within 50 yards (45 m) of all designated public use facilities, including but not limited to parking areas, picnic areas, campgrounds, marinas, boat ramps, public roads, and established hiking trails listed in the refuge trails brochure.

4. You must remove all portable hunting stands, blinds, and other hunting equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

5. Condition A3 applies.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. On Crab Orchard Lake west of Wolf Creek Road:

i. Anglers may fish from boats all year.

ii. Anglers must remove all trotlines/jugs from legal sunrise until legal sunset from the Friday immediately prior to Memorial Day through Labor Day.

2. On Crab Orchard Lake east of Wolf Creek Road:

i. Anglers may fish from boats March 15 through September 30.

ii. Anglers may fish all year at the Wolf Creek and Route 148 causeways.

3. Anglers must check and remove fish from all jugs and trotlines daily.

4. We prohibit using stakes to anchor any trotlines.

5. Anglers must tag all trotlines with their name and address.

6. We prohibit anglers using jugs or trotlines with any flotation device that has previously contained any petroleum-based material or toxic substance.

7. Anglers must attach a buoyed device that is visible on the water's surface to all trotlines.

8. Anglers may use all noncommercial fishing methods, except they may not use any underwater breathing apparatus.

9. On A–41, Bluegill, Managers, Honkers, and Vistors Ponds:

i. Anglers may fish only from legal sunrise to legal sunset March 15 through September 30.

ii. We prohibit anglers from using boats or floatation devices.

10. Anglers may not submerge any pole or similar object to take or locate any fish.

11. Organizers of all fishing events must possess a refuge-issued permit.

12. We prohibit anglers from fishing within 250 yards (225 m) of an occupied waterfowl hunting blind.

13. We restrict motorboats to slow speeds leaving ''no wake'' in Cambria Neck, and within 150 feet (45 m) of any shoreline, swimming area, marina entrance, boat ramp, or causeway tunnel on Crab Orchard, Little Grassy, or Devils Kitchen Lakes.

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. Hunters must remove all boats, decoys, blinds, blind materials, stands, and platforms (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

3. We prohibit the construction or use of permanent blinds, platforms, and scaffolds (see § 27.92 of this chapter).

4. We prohibit outboard motors larger than 10 hp.

5. We prohibit the use of paint, flagging, reflectors, tacks, or other manmade materials to mark trails or hunting locations.

6. We allow dove hunting beginning on September 1 and continuing on the following Mondays, Wednesdays, and Saturdays throughout the State season.

7. We allow the use of hunting dogs, provided the dogs are under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

8. On the Bellrose Waterfowl Reserve:

i. We prohibit all upland game hunting, big game hunting, and 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.

xii. All hunting parties must hunt over a minimum of 12 decoys at each blind site.

B. Upland Game Hunting. * * *

1. Conditions A1, A2, A3, A4, A5, and A7 apply.

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C. Big Game Hunting. * * *

1. Conditions A1, A2, A3, A4, 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 A4 applies.

2. Anglers must remove all boats and fishing equipment (see § 27.93 of this chapter) brought onto the refuge at the end of each day's fishing activity.

3. We prohibit the use of trotlines, jugs, yo-yos, nets, or any commercial fishing equipment except in areas where State regulation authorizes commercial tackle.

4. We prohibit the use of more than two poles per angler and more than two hooks or lures per pole.

5. We prohibit possession of bass less than 15 inches (37.5 cm) in length from refuge ponds.

6. We prohibit possession of more than six channel catfish from refuge ponds.

Emiquon National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see §§ 27.93 and 27.94 of this chapter).

2. Hunters must remove boats, decoys, blinds, and blind materials (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

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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: We allow access for hunting from 1 hour before legal sunrise until legal sunset.

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 prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.93 of this chapter).

2. You must remove all portable hunting stands and blinds from the area at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. * * *

1. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

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Meredosia National Wildlife Refuge

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D. Sport Fishing. * * *

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3. We prohibit leaving boats on refuge waters overnight (see § 27.93 of this chapter).

4. Motorboats must not exceed ''no-wake'' speeds.

Middle Mississippi River National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We prohibit the construction or use of permanent blinds, stands, scaffolds, or platforms (see § 27.92 of this chapter).

2. Hunters must remove boats, blinds, blind materials, stands, decoys, and other hunting equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

B. Upland Game Hunting. We allow hunting of upland game on the refuge in accordance with State regulations subject to the following condition: We allow hunting of furbearers only from legal sunrise to legal sunset.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on the refuge in accordance with State regulations subject to the following conditions:

1. The Harlow and Meissner Island Divisions are only open to archery hunting.

2. Conditions A1 and A2 apply.

3. On refuge lands where archery and firearm hunting seasons (shotgun, rifle, muzzleloader) run concurrent, archery hunters must comply with firearm blaze-orange, safety requirements for the State in which they are hunting (i.e., Missouri or Illinois).

D. Sport Fishing. We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. We close the Meissner Island Division to all sport fishing.

2. We prohibit the taking of turtle and frog (see § 27.21 of this chapter).

3. We only allow fishing from legal sunrise to legal sunset.

4. Anglers must remove all fishing devices (see § 27.93 of this chapter) at the end of each day's fishing.

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Two Rivers National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We prohibit the construction or use of permanent blinds, stands, scaffolds, or platforms (see § 27.92 of this chapter).

2. Hunters must remove boats, decoys, blinds, and blind materials (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

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 condition: We allow hunting from legal sunrise to legal sunset.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey 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. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

2. Hunters must remove all portable hunting stands and blinds from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. * * *

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4. Anglers must remove boats and all other fishing devices (see § 27.93 of this chapter) at the end of each day's fishing activity.

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9. Amend § 32.33 Indiana by:

a. Revising paragraphs B., C., and D. of Big Oaks National Wildlife Refuge;

b. Revising paragraphs B., C., and D. of Muscatatuck National Wildlife Refuge; and

c. Revising Patoka River National Wildlife Refuge and Management Area to read as follows:

§ 32.33 Indiana.

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Big Oaks National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of squirrel in accordance with

State regulations subject to the following conditions:

1. We require a refuge access permit.

2. We allow the use of hunting dogs only during the squirrel hunting season. Hunters must ensure that all hunting dogs wear a collar displaying the owner's name, address, and telephone number.

3. Hunters must hunt only in assigned areas. We prohibit trespass into an unassigned hunt area.

4. In areas posted ''Area Closed,'' we prohibit entry, including hunting.

5. We prohibit the use of flagging tape and reflective tacks.

6. We allow the use of squirrel hunting dogs only in the day-use area.

7. Permitted squirrel hunters are the only hunters authorized to possess a rifle (only .22 rimfire) on the refuge.

8. Squirrel hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

9. We prohibit the use or possession of handguns on the refuge.

10. We require that hunters check all harvested game taken on the refuge at the refuge check station.

11. We require all refuge hunters to hunt with a partner. We require hunting partners to know the location of their partner while hunting. Youth hunters, anyone age 17 or under, must be directly supervised by a responsible adult age 18 or older.

12. We prohibit possession of alcoholic beverages on the refuge (see § 32.2(j)).

13. Hunters must possess and carry a compass while hunting on the refuge.

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, B3, B4, B5, B9, B10, B11, B12, and B13 apply.

2. The refuge access permit will contain bag limits and license requirements.

3. We allow the use of portable hunting stands and blinds. All hunting stands and blinds may be left in the field overnight only if the hunter will be hunting that same location the following day. We prohibit tree steps or screw-in steps (see § 32.2(i)).

D. Sport Fishing. We allow fishing on the Old Timbers Lake in accordance with State regulations subject to the following conditions:

1. We require a refuge access permit.

2. We only allow fishing with a rod and reel or pole and line.

3. We prohibit the use of trotlines.

4. We allow only boats rowed, paddled, or powered by an electric trolling motor on the Old Timbers Lake.

5. We prohibit retaining black bass, largemouth bass, smallmouth bass, and spotted bass between 12 and 15 inches (30 and 37.5 cm).

Muscatatuck National Wildlife Refuge

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B. Upland Game Hunting. We allow hunting of quail, squirrel, and rabbit on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit discharge of firearms within 100 yards (90 m) of an occupied dwelling.

2. We only allow the use of hunting dogs for hunting rabbit and quail, provided the dogs are under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

3. We only allow .22 caliber rifles with rimfire ammunition and shotgun for upland game hunting.

4. We prohibit quail, squirrel, and rabbit hunting during refuge deer hunts.

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. Condition B1 applies.

2. You must possess and carry a refuge permit during the State muzzleloader deer season.

3. You must possess and carry a refuge permit during the deer archery hunting season that overlaps with the State muzzleloader deer season.

4. Our late archery season deer hunt opens at the end of the State muzzleloader season and ends at the conclusion of the State late archery season.

5. We prohibit the construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

6. Hunters may take only one deer per day from the refuge.

7. We only allow spring turkey hunting on the refuge, and hunters must possess a refuge 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 only allow the use of boats on Stanfield Lake. We prohibit the use of gasoline-or electric-powered boat motors. We allow manual-(foot or hand) propelled boats.

2. We allow the use of belly boats or float tubes in all designated fishing areas.

3. We only allow fishing with rod and reel or pole and line.

4. We prohibit harvest of frog and turtle (see § 27.21 of this chapter).

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 Area in accordance with State regulations subject to the following conditions:

1. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

2. Hunters must remove all boats, decoys, blinds, and blind materials after each day's hunt (see §§ 27.93 and 27.94 of this chapter).

3. We only allow motorboats on Snakey Point Marsh east of the South Fork River and the Patoka River. All other areas are open to either manual-powered boats or boats with battery-driven motors only.

4. Motorboats must not exceed ''no wake'' speeds.

5. We prohibit the use of powered airboats on the refuge.

6. We close the Cane Ridge Wildlife Management Area to all hunting.

B. Upland Game Hunting. We allow hunting of bobwhite quail, cottontail rabbit, squirrel (gray and fox), turkey, red and gray fox, coyote, opossum, and raccoon in accordance with State regulations subject to the following conditions:

1. You must possess and carry a refuge permit for all furbearer hunting.

2. We allow the use of 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 the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

2. Condition A6 applies.

3. We prohibit marking trails with tape, ribbons, paper, paint, tacks, tree blazes, or other devices.

D. Sport Fishing. We allow sport fishing on all areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow sport fishing in accordance with State regulations on the main channel of the Patoka River.

2. All other refuge waters are subject to the following conditions:

i. We allow fishing from legal sunrise to legal sunset.

ii. We only allow fishing with rod and reel or pole and line.

iii. The minimum size limit for large-mouth bass on Snakey Point Marsh is 14 inches (35 cm).

iv. You must possess and carry a refuge permit to take bait fish, crayfish, snapping turtle, and bullfrog.

3. Anglers must remove boats at the end of each day's fishing activity (see § 27.93 of this chapter).

4. Conditions A2 through A5 apply.

10. Amend § 32.34 Iowa by revising paragraphs B., C., and D. of DeSoto National Wildlife Refuge to read as follows:

§ 32.34 Iowa.

* * * * *

DeSoto National Wildlife Refuge

* * * * *

B. Upland Game Hunting. We allow youth hunting of ring-necked pheasant on designated areas of the refuge in accordance with the States of Iowa and Nebraska regulations. The refuge manager will annually determine and publish hunting seasons, dates, and designated areas.

C. Big Game Hunting. We allow hunting of white-tailed deer and wild turkey on designated areas of the refuge in accordance with States of Iowa and Nebraska regulations subject to the following conditions:

1. The refuge manager will annually determine and publish hunting seasons and dates and include them in the refuge access permit.

2. You must possess and carry a refuge access permit at all times while in the hunting area. Hunters may only enter the hunting areas within the dates listed on the Refuge Access Permit.

3. All areas open to hunting may be accessed by hunters with a valid Iowa or Nebraska resident hunting permit. Reciprocity exists, with both States allowing hunters with either resident permit to access refuge hunting land in either State.

4. Hunters holding nonresident Nebraska or nonresident Iowa permits may only hunt on the ground that lies within the State that issued the nonresident permit.

5. We allow hunters in the designated area from 3 hours before legal sunrise until 2 hours after legal sunset.

6. We require all hunters using the designated archery hunting areas to individually register their name and vehicle at the parking area prior to entering the archery area. After hunting, hunters must complete the daily registration by recording the number of hours hunted and kill information.

7. All hunters must be in possession of a valid Entrance Fee Permit.

8. Hunters may use only portable stands. Hunters must remove all portable stands and other property after the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

9. We prohibit shooting on or over any refuge road open to vehicle traffic within 30 feet (9 m) of the centerline.

10. We prohibit field dressing of any big game within 100 feet (30 m) of the centerline of any refuge road.

11. We prohibit use of two-way mobile radio transmitters to communicate the location or direction of game or to coordinate the movement of other hunters.

D. Sport Fishing. We allow sport fishing in DeSoto Lake in accordance with the States of Iowa and Nebraska regulations subject to the following conditions:

1. We allow ice fishing in DeSoto Lake January 2 through the end of February. The refuge manager may open DeSoto Lake to ice fishing before January 2 or after the end of February, depending on ice conditions.

2. We allow the use of pole and line or rod and reel fishing in DeSoto Lake from April 15 through October 14. The refuge manager may open DeSoto Lake to fishing as early as April 1, depending on waterfowl usage each year.

3. We allow the use of archery and spear fishing for nongame fish only from April 15 through October 14.

4. When the lake is open to ice fishing, we prohibit motor-or wind-driven conveyances on the lake.

5. We allow the use of portable ice fishing shelters on a daily basis from January 2 through the end of February. The refuge manager may open DeSoto Lake to the use of ice fishing shelters before January 2 or after the end of February, depending on ice conditions.

6. Anglers may use no more than two lines and two hooks per line, including ice fishing.

7. We prohibit the use of trotlines, float lines, bank lines, or setlines.

8. Anglers must adhere to minimum length and creel limits as posted.

9. We prohibit anglers leaving any personal property, litter, fish or any parts thereof, on the banks, in the water, or on the ice.

10. We prohibit digging or seining for bait.

11. We prohibit take or possession of turtle or frog at any time (see § 27.21 of this chapter).

12. We limit boating to ''no-wake'' speeds, not to exceed 5 miles per hour.

13. We allow anglers on the refuge from ½ hour before legal sunrise to ½ hour after legal sunset.

* * * * *

11. Amend § 32.35 Kansas by revising paragraphs A.1. through A.3., adding paragraph A.4., revising paragraphs B.1., B.2., adding paragraphs B.3. and B.4., revising paragraphs C.1. through C.3., adding paragraphs C.4. and C.5., and revising paragraph D. of Marais des Cygnes National Wildlife Refuge to read as follows:

§ 32.35 Kansas.

* * * * *

Marais des Cygnes National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. 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.

2. We prohibit discharge of firearms within 150 yards (135 m) of any residence or occupied building.

3. We only allow temporary portable blinds and blinds made from natural vegetation.

4. You must remove boats, decoys, portable blinds, and other personal property from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. * * *

1. Condition A2 applies.

2. We prohibit centerfire and rimfire rifles and pistols.

3. You may only possess bow and arrow or shotguns smaller than 10 gauge while hunting upland game.

4. We require the use of approved nontoxic shot (see § 32.2(k)).

C. Big Game Hunting. * * *

1. Conditions A2, A3, A4, B2, and B4 apply.

2. You must possess and carry a refuge access permit to hunt deer and spring turkey.

3. We prohibit hunting with the aid of or distribution of any feed, salt, or other mineral (see § 32.2(h)).

4. We allow the use of portable tree stands. You must label portable tree stands left overnight with your name and phone number so it is visible from the ground.

5. You may install portable tree stands no sooner than September 15, and you must remove them by January 15 of each year.

D. Sport Fishing. We allow fishing on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

* * * * *

12. Amend § 32.36 Kentucky by revising paragraphs A.6. and A.8., removing paragraph A.10., redesignating paragraphs A.11. through A.18. as paragraphs A.10. through A.17., and revising paragraphs B.1., B.3., B.5., B.6., and C.1. of Clarks River National Wildlife Refuge to read as follows:

§ 32.36 Kentucky.

* * * * *

Clarks River National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

6. To track game in or retrieve game from a posted closed area of the refuge, the hunter must first receive authorization from the refuge manager at 270–527–5770 or the law enforcement officer at 270–703–2836.

* * * * *

8. We close portions of abandoned railroad tracks within the refuge boundary to vehicle access (see § 27.31 of this chapter).

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1 through A13 apply.

* * * * *

3. You may not kill or cripple a wild animal without making a reasonable effort to retrieve the animal and harvest a reasonable portion to be included in your daily bag limit.

* * * * *

5. You may possess only approved nontoxic shot (see § 32.2(k)) while hunting small game.

6. You may hunt coyote only during any daytime refuge hunt with weapons and ammunition allowed for that hunt.

C. Big Game Hunting. * * *

1. Conditions A1 through A17 and B3 apply.

* * * * *

13. Amend § 32.37 Louisiana by:

a. Revising paragraphs A. and B. of Atchafalaya National Wildlife Refuge;

b. Revising paragraphs D.1. and D.2. of Bayou Sauvage National Wildlife Refuge;

c. Revising the introductory text of paragraph A., revising paragraphs A.1., A.3., and A.4., removing paragraph A.10., redesignating paragraphs. A.11. through A.13. as paragraphs A.10. through A.12., revising newly designated paragraph A.10., and revising paragraphs B.4., B.6., C.1., C.2., C.7., C.9., D.3., and D.5. of Bayou Teche National Wildlife Refuge;

d. Revising the introductory text of paragraph A., revising paragraphs A.1., A.7., and A.10., adding paragraph A.14., revising the introductory text of paragraph B., revising paragraphs B.3., B.4., C.4., C.5., C.6., and C.8., removing paragraphs C.9. and C.10., and revising paragraphs D.1. and D.3. of Big Branch Marsh National Wildlife Refuge;

e. Adding paragraph C.8. of Black Bayou Lake National Wildlife Refuge;

f. Revising paragraphs A.1., A.2., A.3., A7., and A.8., adding paragraph A.11., revising paragraphs B.1. and B.2., removing paragraph B.3., redesignating paragraphs B.4. through B.8. as paragraphs B.3. through B.7., revising paragraph B.3., removing paragraph B.9., revising paragraphs C.1., C.2., C.4., and C.5., removing paragraph C.8., redesignating paragraphs C.9 through C.11. as paragraphs C.8. through C.10., revising newly designated paragraph C.8., revising the introductory text of paragraph D., and revising paragraph D.2. of Bogue Chitto National Wildlife Refuge;

g. Revising paragraphs A., D.2., D.4., D.5., D.7., D.14., and D.15. of Cameron Prairie National Wildlife Refuge;

h. Revising paragraphs A.2., A.5., A.10., A.17., and A.18., adding paragraphs A.26. through A.28., revising paragraphs B.1. and B.3., adding paragraph B.6., revising paragraphs C.1., C.2., C.4., D.2., and D.7., and removing paragraph D.11. of Cat Island National Wildlife Refuge;

i. Revising the introductory text of paragraph A., revising paragraph A.4., adding paragraph A.17., revising paragraph B.1., adding paragraph B.11., revising paragraph C.1., adding paragraphs C.12. and C.13., and revising paragraph D.1. of Catahoula National Wildlife Refuge;

j. Revising paragraph A.6. and adding paragraph C.11. of D'Arbonne National Wildlife Refuge;

k. Revising paragraphs A.1. and A.7., removing paragraph A.10., redesignating paragraphs A.11. through A.13. as paragraphs A.10. through A.12., revising newly designated paragraphs A.10. and A.12., revising paragraph B.4., the introductory text of paragraph C., and paragraphs C.1., D.1., and D.4. of Delta National Wildlife Refuge;

l. Revising the introductory text of paragraph A., revising paragraphs A.5., A.15., A.19., A.21., adding paragraph B.8., revising paragraphs C.1. and C.2., removing paragraph C.5., redesignating paragraphs C.6. through C.9. as paragraphs C.5. through C.8., and revising paragraphs C.6., D.6., D.8., and D.15. of Grand Cote National Wildlife Refuge;

m. Revising paragraphs A.1., A.7., and A.8., revising the introductory text of paragraph C., removing paragraph C.5., redesignating paragraphs C.6. through C.12. as paragraphs C.5. through C.11., and revising paragraphs C.6. and D.5. of Lacassine National Wildlife Refuge;

n. Revising the introductory text of paragraph A., revising paragraphs A.5., A.11., and A.13., adding paragraph A.24., revising paragraph B.2., adding paragraph B.7., revising paragraphs C.1., C.2., and C.3., removing paragraph C.4., and redesignating paragraphs C.5. through C.17. as paragraphs C.4. through C.16., revising paragraphs C.4. and C.10., and adding paragraphs C.17. and C.18. of Lake Ophelia National Wildlife Refuge;

o. Revising paragraphs A.3., A.5., C.1., C.3., C.6., D.3., and D.4. of Mandalay National Wildlife Refuge;

p. Adding paragraph C.9. of Red River National Wildlife Refuge;

q. Revising paragraph A., D.4., D.7., D.7.i., D.8., D.8.ii., D.8.viii., and D.8.xii. of Sabine National Wildlife Refuge;

r. Revising paragraphs A.4., A.5., A.7., A.10., A.11., A.13., B.2., B.5., B.6., B.7., C.3., C.4., C.6., C.7., C.8., and C.9. through C.15., adding paragraphs C.16. through C.18., and revising paragraph D. of Tensas River National Wildlife Refuge; and

s. Revising paragraphs A.2., A.3., A.4., A.8., A.12., and B.2., the introductory text of paragraph C., revising paragraphs C.3. and C.4., and adding paragraphs C.11. and C.12. of Upper Ouachita National Wildlife Refuge to read as follows:

§ 32.37 Louisiana.

* * * * *

Atchafalaya 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: Hunting must be in accordance with State-issued Sherburne Wildlife Management Area regulations.

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: Hunting must be in accordance with State-issued Sherburne Wildlife Management Area regulations.

* * * * *

Bayou Sauvage National Wildlife Refuge

* * * * *

D. Sport Fishing. * * *

1. The refuge is open from 30 minutes before legal sunrise to 30 minutes after legal sunset.

2. We allow sport fishing and shellfishing year-round on all refuge lands south of the Intracoastal Waterway, from the banks of U.S. Highway 11, and within the banks of the borrow canal and borrow pits between U.S. Highway 11 and Interstate 10. We close the remainder of the refuge from November 1 through January 31.

* * * * *

Bayou Teche National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of migratory waterfowl 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 hunt permit while hunting on the refuge. This permit is free and available on the front cover of the refuge brochure.

* * * * *

3. Youth hunters under age 16 must have completed a State-approved Hunter Education Course and possess and carry a card or certification of completion. Each youth hunter under age 16 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. We require all adult supervisors and hunters of migratory waterfowl to possess and carry a State hunter safety course card or certificate.

4. We require waterfowl hunters to remove all portable blinds, boats, decoys, and other personal equipment from the refuge by 1 p.m. daily.

* * * * *

10. We allow waterfowl hunting in Centerville, Garden City, and Bayou Sale Units during the State waterfowl season. We open no other units to migratory waterfowl hunting.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

4. We allow hunting 7 days per week beginning with the opening of the State season in Centerville, Garden City, Bayou Sale, North Bend—East, and North Bend—West Units through the last day of the State waterfowl season in the West Zone. We open no other units to the hunting of upland game.

* * * * *

6. Conditions A1, A2, A3, A5, A6, A7, A8, and A12 apply.

* * * * *

C. Big Game Hunting. * * *

1. We only allow hunting of deer with firearms (see § 27.42 of this chapter) during 5 specific days during October and November. A youth gun hunt will occur during the last weekend of October. The general gun hunt will occur during the final full weekend in November. The general gun hunt will be a lottery hunt. We will require a Lottery Hunt Permit. Hunters will find permit application procedures in the refuge brochure. The youth gun hunt includes both Saturday and Sunday. The general gun hunt includes 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 in the following units: Garden City, North Bend—East, and North Bend—West. The following units are open to archery deer hunting from the start of State archery season until January 31: Centerville, Bayou Sale, and Garden City (south of Garden City levee only). We close refuge archery hunting on those days that the refuge deer gun hunts occur.

* * * * *

7. We allow the use of portable deer stands according to State of Louisiana Wildlife Management Area regulations.

* * * * *

9. Conditions A1, A2, with the following exception to A3: One adult may supervise only one youth, A5, A6, A7, A8, B3, and B5 apply.

D. Sport Fishing. * * *

* * * * *

3. The refuge is open from legal sunrise until legal sunset unless stated otherwise.

* * * * *

5. Conditions A6 and A8 apply.

Big Branch Marsh National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, coot, goose, snipe, rail, gallinule, and woodcock 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 from 30 minutes before legal sunrise until 12 p.m. (noon), including the State special teal season and State youth waterfowl hunt.

* * * * *

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.

* * * * *

10. We prohibit hunting within 150 feet (45 m) of any road open to vehicle travel, any residence, or Boy Scout Road (see § 27.31 of this chapter).

* * * * *

14. We prohibit horses.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, and quail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

3. We only allow dogs to locate, point, and retrieve when hunting for quail.

4. Conditions A5 through A14 apply.

C. Big Game Hunting. * * *

* * * * *

4. You may take deer of either sex in accordance with State regulations. The State season limits apply.

5. Hunters may erect temporary deer stands 14 days prior to the start of deer season. Hunters must remove all deer stands within 14 days of the end of the refuge deer season (see §§ 27.93 and 27.94 of this chapter).

6. Hunters may take hogs only during the refuge deer archery hunt.

* * * * *

8. Conditions A5 through A14 apply, except in condition A7: One adult may supervise only one youth while hunting big game.

D. Sport Fishing. * * *

1. You may only fish from ½ hour before legal sunrise to ½ hour after legal sunset, except for in the Lake Road area.

* * * * *

3. We prohibit the use of trotlines, limblines, slat traps, gar sets, nets, or alligator lines on the refuge. You may take bait with cast nets 8 feet (2.4 m) in diameter or less.

* * * * *

Black Bayou Lake National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

8. 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)).

* * * * *

Boque Chitto National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We allow hunting from 30 minutes before legal sunrise until 12 p.m. (noon).

2. We allow woodcock hunting in accordance with State regulations using only 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. One adult may supervise up to two youth hunters.

* * * * *

7. We prohibit hunting within 150 feet (45 m) of any public road, refuge road, designated trail, building, residence, designated public facility, or

from or across aboveground oil or gas or electric facilities.

8. We prohibit possession of slugs, buckshot, rifle, or pistol ammunition unless otherwise specified.

* * * * *

11. We prohibit horses.

B. Upland Game Hunting. * * *

1. You may possess only approved nontoxic shot size #4 or smaller or .22 caliber rimfire or smaller.

2. You may use dogs for rabbit and squirrel from November 1 to the end of the State season except during the refuge gun and muzzleloader season.

3. You may use dogs for raccoon and opossum from January 1 through the last day of February.

* * * * *

6. Conditions A3 and A5 through A11 apply.

7. During the refuge deer gun season, all hunters except waterfowl hunters must wear a minimum of 400 square inches (2,600 cm2) of unbroken hunter orange as the outermost layer of clothing on the chest and back.

C. Big Game Hunting. * * *

1. Conditions A3 (one adult may only supervise one youth hunter during refuge gun deer hunts), A5 through A7, A10, B4, and B7 apply.

2. Hunters may erect temporary deer stands 14 days prior to the start of deer season. Hunters must remove all deer stands within 14 days of the end of the refuge deer season (see §§ 27.93 and 27.94 of this chapter).

* * * * *

4. We list specific dates for general gun big game hunts in the refuge hunt brochure.

5. We list specific dates for primitive weapons big game hunts in the refuge hunt brochure.

* * * * *

8. You may take hog as incidental game while participating in the refuge archery, primitive weapon, and general gun deer hunts only. We list specific dates for the special hog hunts in January and February in the refuge hunt brochure. During the special hog hunts you must use trained hog-hunting dogs to aid in the take of hog. During the special hog hunts you may take hog from 30 minutes before legal sunrise to 30 minutes after legal sunset, and you must use pistol or rifle ammunition not larger than .22 caliber rimfire or shotgun with nontoxic shot to take the hog after it has been caught by dogs.

* * * * *

D. Sport Fishing. We allow recreational fishing year-round in accordance with State regulations subject to the following conditions:

* * * * *

2. Conditions A9 and B4 apply.

* * * * *

Cameron Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of light and white-fronted goose, duck, coot, 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 dates in September, and you may obtain information from the refuge. We will accept permit applications September 1 through October 20 and limit applications to a choice of three dates. We will notify successful applicants.

2. All hunters born on or after September 1, 1969, 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 (age 16 and under) must remain within sight and normal voice contact of an adult age 21 or older. For waterfowl hunts, one adult may supervise no more than two youth hunters.

3. We require every hunter to possess and carry signed refuge hunting regulations and permit.

4. Each hunter must complete a Hunter Information Card at a self-clearing check station after each hunt and before leaving the refuge.

5. We allow dove hunting on designated areas during the first split of the State dove season only.

6. We allow snipe hunting on designated areas for the remaining portion of the State snipe season following closure of the State duck and coot season in the West Zone.

7. We prohibit hunting closer than 50 yards (45 m) of any public road, refuge road, trail, building, residence, or designated public facility.

8. We prohibit any person or group from acting as guide, outfitter, or in any other capacity in which any other individual(s) pay or promise to pay directly or indirectly for service rendered to any other person or persons hunting on the refuge, regardless of whether such payment is for guiding, outfitting, lodging, or club membership.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. You may recreationally 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.

* * * * *

4. On East Cove Unit, 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 canal and waterways adjacent to the Gibbstown Unit Bank Fishing Road and the Outfall Canal from March 15 through October 15.

* * * * *

7. We only allow recreational crabbing with cotton hand lines or dropnets up to 24 inches (60 cm) outside diameter. We prohibit using floats on crab lines.

* * * * *

14. We prohibit the use of ATVs, air-thrust boats, and personal motorized watercraft (Jet Skis) in any refuge area (see § 27.31(f) of this chapter).

15. You may operate outboard motors in refuge canals, bayous, and lakes. In the marsh we only allow trolling motors.

* * * * *

Cat Island National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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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.

* * * * *

5. You must use designated parking areas to participate in any refuge public use activity.

* * * * *

10. We prohibit transport of loaded weapons on an ATV (see § 27.42(b) of this chapter). For muzzleloaders, we define loaded as cap on primer.

* * * * *

17. We prohibit all other hunting during refuge lottery deer hunts.

18. We allow waterfowl hunting on Tuesdays, Thursdays, Saturdays, and Sundays until 12 p.m. (noon) during the designated State duck season.

* * * * *

26. We prohibit blocking of gates or trails (see § 27.31(h) of this chapter) with vehicles or ATVs.

27. We prohibit ATVs on trails/roads (see § 27.31 of this chapter) not specifically designated by signs for ATV use.

28. We prohibit handguns for hunting (see § 27.42 of this chapter).

B. Upland Game Hunting. * * *

1. Conditions A1 through A17 and A19 through A28 apply.

* * * * *

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 for squirrel hunting.

* * * * *

6. 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)).

C. Big Game Hunting. * * *

1. Conditions A1 through A17, A19 through A28, and B6 apply.

2. We allow archery-only deer hunting on the refuge during the State archery deer season.

* * * * *

4. We allow only portable deer stands. Hunters may erect stands 2 days before the beginning of the refuge archery season and must remove them the last day of the State archery season (see §§ 27.93 and 27.94 of this chapter). Hunters may erect stands 2 days before hunting season; however, they must place them in a nonhunting position at the conclusion of each day's hunt.

* * * * *

D. Sport Fishing. * * *

* * * * *

2. Conditions A1, A3, A4, A5, A9 (on the open portions of Wood Duck ATV Trail for wildlife-dependent activities throughout the year), A13 through A16, A19, and A21 through A28 apply.

* * * * *

7. We allow recreational crawfishing on the refuge subject to specific dates (see refuge brochure for details). The harvest limit is 100 pounds (45 kg) per permit per day.

* * * * *

Catahoula National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, coot, gallinule, woodcock, rail, and snipe on designated areas of the Bushley Bayou Unit in accordance with State hunting regulations subject to the following conditions:

* * * * *

4. We open the following ATV trails year-round: Round Lake Road; portions of Black Lake and Dempsey Lake Roads beginning at the designated parking areas; portions of Minnow Ponds Road at Highway 8 to Green's Creek Road and then south to Green's Creek Bridge.

* * * * *

17. We prohibit parking on the refuge for access to adjoining nonrefuge property.

B. Upland Game Hunting. * * *

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A14, A16, and A17 apply.

* * * * *

11. We require hunters participating in special dog seasons for rabbit and squirrel to wear a minimum of a hunter-orange cap. All other hunters and archers (while on the ground), except waterfowl hunters, also must wear a minimum of a hunter-orange cap during the special dog seasons for rabbit and squirrel.

C. Big Game Hunting. * * *

1. Conditions A1, A4 (at the Bushley Bayou Unit), A7 through A9, A12 through A14, A16, A17, B4 through B8 (big game hunting), and B11 apply.

* * * * *

12. We prohibit possession or distribution of bait or hunting with aid of bait, including any grain, salt, minerals or other feed or nonnaturally occurring attractant on the refuge (see § 32.2(h)).

13. Deer hunters hunting from concealed ground blinds must display a minimum of 400 square inches (2,600 cm2) of hunter orange above or around their blinds visible from 360°.

D. Sport Fishing. * * *

1. Conditions A4 (at the Bushley Bayou Unit), A7, A9, A13 (as a fishing guide), A14, A16, A17, B5, and B7 apply.

* * * * *

D'Arbonne National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

6. We prohibit hunting within 100 feet (30 m) of the maintained rights of way of roads (see § 27.31 of this chapter), and from aboveground oil or gas or electrical transmission facilities.

* * * * *

C. Big Game Hunting. * * *

* * * * *

11. 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)).

* * * * *

Delta National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We allow waterfowl hunting on Wednesdays, Thursdays, Saturdays, and Sundays from 30 minutes before legal sunrise until 12 p.m. (noon), including the State special teal season, State youth waterfowl season, and State light goose special conservation season.

* * * * *

7. We prohibit air-thrust boats, mud boats, and air-cooled propulsion engines on the refuge.

* * * * *

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.

* * * * *

12. We open the refuge from ½ hour before legal sunrise to ½ hour after legal sunset with the exception that hunters may enter the refuge earlier, but not before 4 a.m.

B. Upland Game Hunting. * * *

* * * * *

4. Conditions A4 through A10 (each adult may supervise no more than two youth hunters during upland game hunting), A11, and A12 apply.

C. Big Game Hunting. We only allow archery hunting of white-tailed deer and hog on designated areas of the refuge in accordance with State archery regulations subject to the following conditions:

1. Conditions A4 through A12 apply, with the following exception to condition A10: Each adult can only supervise one youth hunter.

* * * * *

D. Sport Fishing. * * *

1. We only allow recreational fishing and crabbing from ½ hour before legal sunrise until ½ hour after legal sunset. During State waterfowl hunting seasons; however, we only allow recreational fishing and crabbing from after 12 p.m. (noon) until ½ hour after legal sunset.

* * * * *

4. Conditions A8, A10, and A11 apply.

* * * * *

Grand Cote National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, mourning dove, snipe, rail, and woodcock on designated areas of the refuge (shown on the refuge hunting brochure map) in accordance with State regulations subject to the following conditions:

* * * * *

5. You must use designated parking areas to participate in any refuge public use activity.

* * * * *

15. We only allow nonmotorized boats or electric-powered motors.

* * * * *

19. We prohibit handguns for hunting (see § 27.42 of this chapter).

* * * * *

21. We allow only incidental take of mourning dove and snipe while migratory bird hunting on days open to waterfowl hunting.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

8. 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)).

C. Big Game Hunting. * * *

1. Conditions A1 through A16, A20, A26, and B8 apply.

2. We allow archery hunting in special designated units (see refuge brochure map) from the beginning of the State archery deer season until the end of the State archery deer season subject to refuge closures resulting from high water conditions.

* * * * *

6. Hunters may take one deer of either sex per day during the deer season except during State-designated ''bucks'' only seasons.

D. Sport Fishing. * * *

* * * * *

6. We allow recreational crawfishing on the refuge subject to specific date restrictions (see refuge brochure for details).

* * * * *

8. You may harvest 100 lbs. (45 kg) of crawfish per permit per day.

* * * * *

15. We prohibit launching boats with trailers, put or placed, in Coulee des Grues from refuge property.

Lacassine National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require every individual hunter to possess and carry a signed refuge hunting permit.

* * * * *

7. We prohibit hunting within 50 yards (45 m) of refuge canals; waterways; public roads; buildings; aboveground oil, gas, or electrical transmission facilities; or designated public facilities. Hunting parties must remain a distance of no less than 150 yards (135 m) away from another hunter.

8. All hunters born on or after September 1, 1969, 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 no more than two youth hunters.

* * * * *

C. Big Game Hunting. We allow archery as the only form of hunting for white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

6. We allow boats of all motor types and of 25 hp or less in Lacassine Pool.

* * * * *

D. Sport Fishing. * * *

* * * * *

5. We prohibit bank fishing from the Lacassine Pool Wildlife Drive.

* * * * *

Lake Ophelia National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, woodcock, snipe, rail, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

5. You must use designated parking areas to participate in any refuge public use activity.

* * * * *

11. We prohibit transport of loaded weapons on an ATV (see § 27.42(b) of this chapter). For muzzleloaders, we define loaded as cap on primer.

* * * * *

13. We prohibit all hunting during refuge lottery deer hunts.

* * * * *

24. We prohibit handguns for hunting (see § 27.42 of this chapter).

B. Upland Game Hunting. * * *

* * * * *

2. We allow squirrel and rabbit hunting in Hunt Unit 2B from the opening of the State season through December 10.

* * * * *

7. 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)).

C. Big Game Hunting. * * *

1. Conditions A1 through A3, A5 through A16, A19, A22, and B7 apply.

2. We require hunters to permanently attach their name, address, and phone number to the deer stand. Hunters may erect stands 2 days before hunting season; however, they must place stands in a nonhunting position at the conclusion of each hunt and remove them on the last day of the State archery deer season.

3. We allow archery hunting in Units 1A, 1B, 2A, and 2B subject to refuge-specific date and harvest restrictions (see refuge brochure for dates).

4. We allow youth deer hunting in the closed area during the lottery youth deer season.

* * * * *

10. We allow electric-powered or nonmotorized boats in Lake Ophelia subject to refuge-specific date restrictions (see refuge brochure for details).

* * * * *

17. We only allow turkey hunting during the first 14 days of the State season until 12 p.m. (noon).

18. We allow the use and possession of lead shot for turkey hunting.

* * * * *

Mandalay National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

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 under age 16 must remain within sight and normal voice contact of an adult age 21 or older. Each adult will supervise no more than two refuge-permitted youth hunters. We require all adult supervisors and hunters of migratory waterfowl to possess and carry a State Hunter Safety Course Certificate.

* * * * *

5. Only one adult may occupy a blind with up to two youths during a designated Lottery Youth Waterfowl Hunt. We allow no more than three hunters to hunt from a blind at one time during any waterfowl hunt.

* * * * *

C. Big Game Hunting. * * *

1. We open the refuge to hunting of deer and hog during the State archery season, except prior to 12 p.m. (noon) on Wednesdays and Saturdays during State waterfowl seasons, when we close areas north of the Intracoastal Waterway to hunting of big game.

* * * * *

3. You may take big game with archery equipment and in accordance with State law. From October 1 through October 15, State bucks-only regulations are in effect. From October 16 through February 15 you may take only one deer of either sex per day and hunters may possess only one deer. The State season

limits on deer apply. There is no daily or possession limit on feral hogs.

* * * * *

6. Conditions A3 (except that an adult may supervise only one youth), A4, and A7 apply.

D. Sport Fishing. * * *

* * * * *

3. We allow fishing in the refuge year-round.

4. The refuge is open from legal sunrise until legal sunset unless specifically stated otherwise.

* * * * *

Red River National Wildlife Refuge

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C. Big Game Hunting. * * *

* * * * *

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)).

* * * * *

Sabine National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of light and white-fronted goose, duck, and coot on areas designated by signs stating ''Waterfowl Hunting Only'' and delineated in the refuge regulations and on the 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 State teal season and during the regular State waterfowl season for the west zone.

3. We only allow hunters to enter the refuge and launch boats after 3 a.m. Shooting hours end at 12 p.m. (noon) each day.

4. All hunters born on or after September 1, 1969, must successfully complete a State-approved hunter education course and 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 no more than two youth hunters.

5. 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), unless otherwise posted. We prohibit refuge entrance through adjacent private property or using the refuge to access private property or leases.

6. 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).

7. We prohibit dragging boats across the levee.

8. We only allow operation of outboard motors in designated refuge canals and Old North Bayou. We allow trolling motors within the refuge marshes.

9. We prohibit air-thrust boats and personal motorized watercraft (e.g., Jet Skis) unless otherwise posted.

10. 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.

11. We prohibit hunting within 50 yards (45 m) of refuge canals, waterways, public roads, buildings, above-ground oil, gas or electrical transmission facilities, or designated public facilities. Hunting parties must maintain a distance of no less than 150 yards (135 m) away from another hunter.

12. Each hunter must complete a Hunter Information Card at a self-clearing check station after each hunt and before leaving the refuge.

13. We prohibit any person or group from acting as guide, outfitter, or in any other capacity in which any other individual(s) pay or promise to pay directly or indirectly for service 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 allow dogs to only locate, point, and retrieve when hunting for migratory game birds.

15. We prohibit all-terrain vehicles (ATVs) (see § 27.31(f) of this chapter).

D. Sport Fishing. * * *

* * * * *

4. We allow only nonmotorized boats in the 1A and 1B management units.

* * * * *

7. Crabbing: We allow recreational 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 up to 24 inches (60 cm) outside diameter. We prohibit use of floats on crab lines.

* * * * *

8. Cast Netting: We allow cast netting in designated areas of the refuge during the Louisiana Inland Shrimp Season subject to the following conditions:

* * * * *

ii. An adult age 21 or older must directly supervise all youths under age 18.

* * * * *

viii. You may only cast net from the bank and wharves at Northline, Hog Island Gully, and 1A–1B Public Use Areas or at sites along Highway 27 that provide developed safe access and that we do not post and sign as closed areas.

* * * * *

xii. We prohibit swimming and/or wading in the canals and waterways.

* * * * *

Tensas River National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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4. In areas posted ''Area Closed'' or ''No Waterfowl Hunting Zone,'' we prohibit hunting of migratory birds at any time. The Public Use Regulations brochure will be available at the refuge headquarters in July.

5. 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. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting migratory birds. Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles.

* * * * *

7. We allow nonmotorized boats, electric motors, and boats with motors 10 hp or less in refuge lakes, streams, and bayous. We require that boat passengers wear personal floatation devices when using a boat to access the refuge. Hunters must equip all motorized boats with navigation lights and use them according to State regulations. We prohibit boat storage on the refuge. Hunters must remove boats daily (see § 27.93 of this chapter).

* * * * *

10. We allow all-terrain vehicle (ATV) travel on designated trails for access typically from September 15 to the last day of the refuge squirrel season. We open designated trails from 4 a.m. to 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 25x12 with a 1 inch (2.5 cm) lug height and maximum allowable tire pressure of 7 psi. We require an affixed refuge ATV

permit that hunters may obtain from the refuge headquarters, typically in July. Hunters using the refuge physically challenged all-terrain trails must possess the State's Physically Challenged Program Hunter Permit. Additional physically challenged access information will be available at the refuge headquarters.

11. While visiting the refuge, we prohibit: Spotlighting; littering; fires; trapping, man-drives for game; possession of alcoholic beverages; flagging, engineer's tape, or paint; parking/blocking trail and gate entrances; and hunting within 150 feet (45 m) of a designated public road, maintained road, trail, fire breaks, dwellings, or aboveground oil and gas production facilities (see §§ 27.31(h), 27.94, 27.95(a) of this chapter, and 32.2(j)). We define a maintained road or trail as one which has been mowed, disked, or plowed and one which is free of trees.

* * * * *

13. We prohibit field dressing of game within 150 feet (45 m) of parking areas, maintained roads, and trails.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. We allow squirrel and rabbit hunting with and without dogs. We will allow hunting with dogs from the beginning of the State season and typically stopping the day before the refuge deer muzzleloader hunt. We do not require hunters to wear hunter orange during the squirrel and rabbit hunt without dogs. Squirrel and rabbit hunting with or without dogs will resume the day after the refuge deer muzzleloader hunt and will conclude the last day of the refuge squirrel season, which typically ends February 15.

* * * * *

5. In areas posted ''Area Closed,'' we prohibit upland game hunting at any time.

6. We allow .22 caliber rimfire weapons and 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. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Shotgun hunters must possess only an approved nontoxic shot when hunting upland game. Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles.

7. Conditions A7, A10, A11, and A13 apply.

C. Big Game Hunting. * * *

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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 are available at refuge headquarters in July. We prohibit hunters using a muzzleloader during this hunt.

4. We will conduct a 4-day quota youth deer hunt and a 1-day quota physically challenged deer hunt in the Greenlea Bend area typically in December and January. Hunt dates and permit application procedures will be available at the refuge headquarters in July.

* * * * *

6. Hunters may take only one deer (one buck or one doe) per day during refuge deer hunts.

7. We allow turkey hunting during 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 use and possession of lead shot while turkey hunting on the refuge. We allow use of nonmotorized bicycles on designated all-terrain vehicle trails. Although you may hunt turkeys without displaying a solid hunter-orange cap or vest during your turkey hunt, we do recommend its use.

8. Conditions A7, A8 (deer and turkey), A9, A10, A11, A13, A14 (deer and turkey hunters), and A15 (except that each adult may supervise no more than one youth hunter during big game hunts) apply.

9. In areas posted ''Area Closed,'' we prohibit big game hunting at any time. We designate ''Areas Closed'' on the public use regulations brochure maps, and they are closed to all hunts. We prohibit shooting into or across any closed area with a gun or archery equipment.

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. We allow shotgun hunters to use rifled slugs only when hunting deer. We prohibit hunters using or possessing buckshot while on the refuge. We prohibit target practicing or shooting to unload modern firearms on the refuge at any time. Hunters must unload and encase all guns transported in automobiles and boats or on all-terrain vehicles.

11. We allow muzzleloader hunters to discharge their muzzleloaders at the end of each hunt safely into the ground at least 150 feet (135 m) from any designated public road, maintained road, trail, fire breaks, dwellings, or above-ground oil and gas production facilities. We define a maintained road or trail as one which has been mowed, disked, or plowed and one which is free of trees.

12. Hunters must remove all stands, blind materials, and decoys from the refuge following each day's hunt.

13. We require deer hunters using muzzleloaders or modern firearms to display a solid hunter-orange cap on their head and a solid hunter-orange vest over their outermost garment covering their chest and back. Hunters must display the solid hunter-orange items the entire time while in the field.

14. We require muzzleloader hunters using ground blinds in reforested areas to display hunter orange outside of the blind, which is visible from all sides of the blind.

15. We require all deer and turkey hunters to report their game immediately after each hunt at the check station nearest to the point of take.

16. We prohibit baiting or the possession of bait while on the refuge at any time. We prohibit possession of chemical baits or attractants used as bait (see § 32.2(h)).

17. We prohibit use of climbing spikes or hunting from trees that contain screw-in steps, nails, screw-in umbrellas, or any metal objects that could damage trees (see § 32.2(i)).

18. We require a Tensas River National Wildlife Refuge Access Permit for all big game hunts. Hunters may find the permits on the front of the public use regulations brochure.

D. Sport Fishing. We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow anglers to enter the refuge no earlier than 4 a.m., and they must depart no later than 2 hours after legal sunset.

2. On areas open to fishing, State creel limits and regulations apply.

3. We prohibit the taking of turtle (see § 27.21 of this chapter).

4. We allow nonmotorized boats, electric motors, and boats with motors 10 hp or less in refuge lakes, streams, and bayous. We require that boat passengers wear personal floatation devices when using a boat to access to refuge. Anglers must equip all motorized boats with navigation lights and use them according to State regulations. We prohibit storage of boats on the refuge. Anglers must remove them daily (see § 27.93 of this chapter).

5. We allow all-terrain vehicle (ATV) travel on designated trails for access typically from September 15 to the last day of the refuge squirrel season. Designated trails are open from 4 a.m.

to no later than 2 hours after legal sunset unless otherwise specified. The only exception is the Mower Woods all-terrain trail, which is open year-round with the same time restrictions as the seasonal all-terrain trails. 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 of 48 inches (120 cm). We restrict ATV tires to those no larger than 25×12 with a 1-inch (2.5-cm) lug height and maximum allowable tire pressure of 7 psi. We require an affixed refuge ATV permit that anglers may obtain from the refuge headquarters typically in July. Anglers using the refuge physically challenged all-terrain trails must possess the State's Physically Challenged Program Hunter Permit. Additional physically challenged access information will be available at the refuge headquarters.

6. While visiting the refuge, we prohibit: Spotlighting; littering; fires; possession of alcoholic beverages; flagging, engineer's tape, or paint; and parking/blocking trail and gate entrances (see §§ 27.31(h), 27.94, 27.95(a) of this chapter, and 32.2(j)).

7. We prohibit fish cleaning with 150 feet (45 m) of parking areas, maintained roads, and trails.

Upper Ouachita National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

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, south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 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, south of the crude oil pipeline which runs through township 22N range 4E sections 2, 3, 4 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, south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

* * * * *

8. We prohibit hunting within 100 feet (90 m) of the maintained rights of way of roads; from or across ATV trails (see § 27.31 of this chapter); and from aboveground oil, gas, or electrical transmission facilities.

* * * * *

12. We prohibit any person or group from acting as a hunting guide, outfitter, or in any other capacity in which any other individual(s) pay or promise to pay directly or indirectly for service 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. * * *

* * * * *

2. We allow hunting west of the Ouachita River. We allow hunting on the east side of the Ouachita River outside the Mollicy levee, south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

* * * * *

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey (youth hunt only) on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

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, south of the crude oil pipeline which runs through Township 22N range 4E sections 2, 3, 4 within the levee.

4. The daily bag limit is one antlered and one anterless deer. State season limits apply.

* * * * *

11. We will hold a limited lottery youth turkey hunt on the Saturday of the State youth turkey hunt weekend.

12. 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)).

* * * * *

14. Amend § 32.38 Maine by:

a. Revising paragraphs A. and B., the introductory text of paragraph C., and paragraph C.2. of Lake Umbagog National Wildlife Refuge;

b. Revising paragraphs A.1., A.2., A.5., A.6., A.9. and A.10., adding paragraphs A.11. and A.12., and revising paragraphs B., C.1., C.2., C.4., C.5., C.12., C.14.ii., C.14.iii., and C.14.iv. of Moosehorn National Wildlife Refuge;

c. Revising paragraphs A.6. and A.7., removing paragraph A.8., and revising paragraphs B.1., B.4., and C. of Rachel Carson National Wildlife Refuge; and

d. Revising paragraphs B. and C. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

§ 32.38 Maine.

* * * * *

Lake Umbagog National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, snipe, duck, coot, and woodcock in accordance with State regulations, seasons, and bag limits subject to the following conditions:

1. Hunters 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 (e.g., orange camouflage), except when hunting waterfowl from a boat or blind or with waterfowl decoys.

2. We will provide permanent refuge blinds at various locations on the refuge that are available for public use by reservation. Hunters may make reservations for particular blinds up to 1 year in advance, for a maximum of 7 days, running Monday through Sunday during the hunting season. Hunters may make reservations for additional weeks up to 7 days in advance, on a space-available basis. We allow no other permanent blinds. Hunters must remove temporary blinds, boats, and decoys from the refuge following each day's hunt.

3. You may use trained dogs to assist in hunting and retrieval of harvested birds. Hunting with locating, pointing, and retrieving dogs on the refuge will be subject to the following conditions:

i. We prohibit dog training.

ii. We allow a maximum of two dogs per hunter.

iii. Hunters must pick up all dogs the same day they release them.

4. We open the refuge to hunting during the hours stipulated under the State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset.

5. We prohibit night hunting. Hunters will unload all firearms outside of legal hunting hours.

6. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) on refuge land.

B. Upland Game Hunting. We allow hunting of wild turkey, coyote (see big game), fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse in accordance with State regulations, seasons, and bag limits, subject to the following conditions:

1. We prohibit night hunting.

2. You may possess only approved nontoxic shot when hunting with a shotgun (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. Hunters must unload all firearms, and nock no arrows outside of legal hunting hours.

4. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) on refuge land.

5. 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 (*e.g.*, orange camouflage) except when hunting wild turkey. There is no hunter-orange requirement for wild turkey hunters.

6. We allow hunting of snowshoe hare, ring-necked pheasant, and ruffed grouse with trained dogs during State hunting seasons. Hunting with locating, pointing, and retrieving dogs on the refuge will be subject to the following conditions:

i. We prohibit dog training.

ii. We allow a maximum of two dogs per hunter.

iii. 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, coyote, and moose in accordance with State regulations, seasons, and bag limits subject to the following conditions:

* * * * *

2. We allow bear and coyote hunting with dogs during State hunting seasons. Hunting with trailing (locating) dogs on the refuge is subject to the following conditions:

i. Hunters must equip all dogs used to hunt bear or coyote 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 or coyote.

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).

* * * * *

Moosehorn National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require every hunter to possess and carry a personally signed refuge hunting permit. Permits and regulations are available from the refuge in person during normal business hours (8 a.m. to 4:30 p.m. Monday through Friday; closed on holidays) or by contacting the Project Leader at (207) 454–7161 or by mail (Moosehorn National Wildlife Refuge, 103 Headquarters Road, Baring, Maine 04694).

2. You must annually complete a Hunter Information Card and submit it by mail or in person at the refuge headquarters no later than 2 weeks after the close of the hunting season in March. If you do not comply with this requirement, we may suspend your future hunting privileges on Moosehorn National Wildlife Refuge.

* * * * *

5. You may hunt waterfowl (duck and goose) in that part of the Edmunds Division that lies north of Hobart Stream and west of U.S. Route 1, and in those areas east of U.S. Route 1, and refuge lands that lie south of South Trail; and in that portion of the Baring Division that lies west of State Route 191.

6. We prohibit hunting waterfowl in the Nat Smith Field and Marsh or Bills Hill Field or Ponds on the Edmunds Division.

* * * * *

9. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

10. You must remove portable or temporary blinds and decoys from the refuge following each day's hunt (see §§ 27.93 and 27.94 of this chapter).

11. We prohibit use of motorized or mechanized vehicles and equipment in designated Wilderness Areas. This includes all vehicles and items such as winches, pulleys, and wheeled game carriers. Animals harvested within the Wilderness Areas must be removed by hand without the aid of mechanical equipment of any type.

12. During the firearms deer and moose 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. However, waterfowl hunters are not required to wear hunter-orange clothing or material while hunting from a boat, blind, or in conjunction with waterfowl decoys.

B. Upland Game Hunting. We allow hunting of ruffed grouse, snowshoe hare, red fox, gray and red squirrel, raccoon, skunk, and woodchuck on designated areas of the Edmunds Division and that part of the Baring Division that lies west of State route 191 in accordance with State regulations, seasons, and bag limits, subject to the following conditions:

1. Conditions A1, A2, A9, A11, and A12 apply.

2. We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours, except for hunters pursuing raccoons at night.

3. We prohibit hunting of upland game species listed in the introductory text of this paragraph B. on refuge lands between April 1 and September 29.

4. You must register with the refuge office prior to hunting raccoon or red fox with trailing dogs.

C. Big Game Hunting. * * *

1. Conditions A1, A2, A11, and A12 apply.

2. We allow hunters to enter the refuge 2 hours before legal shooting hours, and they must exit the refuge by 1 hour past legal shooting hours, except for hunters pursuing eastern coyotes at night.

* * * * *

4. We allow eastern coyote hunting from October 1 to March 31.

5. If you harvest a bear, deer, moose, or coyote on the refuge, you must notify the refuge office in person or by phone within 24 hours and make the animal available for inspection by refuge personnel.

* * * * *

12. We prohibit use of firearms to hunt bear and coyote during the archery deer season on that part of the refuge that lies east of Route 191. We prohibit the use of firearms, other than a muzzleloader, to hunt bear and coyote during the deer muzzleloader season on that part of the refuge that lies east of Route 191.

* * * * *

14. * * *

i. * * *

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 main railroad grade and refuge boundary in a southwest direction to the upland edge of the Lower Barn Meadow Marsh; then it 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 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 to the Headquarters Road. It follows the Headquarters Road in a southerly direction to the Two Mile Meadow Road. It follows the westerly side of the Two Mile Meadow Road to the intersection with the Mile Bridge Road. It then follows Mile Bridge Road 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 (directly across from the Moosehorn Ridge Road gate). 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, east 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, following Cranberry Brook in a westerly direction to the point of origin.

* * * * *

Rachel Carson National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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6. We open the refuge to hunting during the hours stipulated by State regulations. We close the refuge to night hunting.

7. We close the Moody, Little River, Biddeford Pool, and Goosefare Brook divisions of the refuge to all migratory bird hunting.

B. Upland Game Hunting. * * *

1. Conditions A1 and A6 apply.

* * * * *

4. 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, A4, and A6 apply.

2. We allow hunting of deer with shotgun and archery only. We prohibit rifles and muzzleloading firearms.

3. We allow portable tree stands and ladders only (see § 32.2(i) of this chapter).

4. We close the Moody and Biddeford Pool divisions of the refuge to white-tailed deer hunting.

5. We allow archery on only those areas of the Little River division open to hunting.

6. We allow hunting of fox and coyote with archery or shotgun only during daylight hours of the State firearm deer season.

7. You must report any deer harvested to the refuge office within 48 hours.

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Sunkhaze Meadows 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 conditions:

1. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. We allow eastern coyote hunting from October 1 to March 31.

3. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour after legal shooting hours, except for hunters pursuing eastern coyotes at night.

C. Big Game Hunting. We allow hunting of black bear, bobcat, moose, and white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. During firearms big game seasons, you must wear in a conspicuous manner on head, chest, and back a minimum of 400 square inches (2600 cm2) of solid-colored-hunter-orange clothing or material.

2. We allow hunters to enter the refuge ½ hour before legal shooting hours, and they must exit the refuge by ½ hour past legal shooting hours.

3. We allow bear hunting from October 1 to the end of the State prescribed season. We prohibit use of bait during the hunting of bears.

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15. Amend § 32.39 Maryland by revising paragraphs A. and B. of Blackwater National Wildlife Refuge to read as follows:

§ 32.39 Maryland.

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Blackwater 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. We require refuge permits for all hunters regardless of age. We require that hunters possess a valid State hunting license, any required stamps, and a photo identification. Permits are nontransferable.

2. All refuge hunters must abide by the terms and conditions of the refuge permit.

B. Upland Game Hunting. We allow hunting of eastern wild turkey on designated areas of the refuge in accordance with State regulations subject to the following conditions: Conditions A1 and A2 apply.

* * * * *

16. Amend § 32.42 Minnesota by:

a. Revising Agassiz National Wildlife Refuge;

b. Revising Big Stone National Wildlife Refuge;

c. Adding Hamden Slough National Wildlife Refuge;

d. Revising paragraphs A.2. and A.6. of Minnesota Valley National Wildlife Refuge;

e. Revising Northern Tallgrass Prairie National Wildlife Refuge; and

f. Revising Upper Mississippi River National Wildlife and Fish Refuge to read as follows:

§ 32.42 Minnesota.

* * * * *

Agassiz National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of waterfowl on the Farmers Pool Unit area of the refuge in accordance with State regulations subject to the following conditions:

1. We allow a youth hunt only (age 16 and under). Youth hunters age 14 and under must be accompanied by an adult age 18 or older.

2. We prohibit vehicles and hunters from entering the refuge before 5:30 a.m. They must leave the refuge each day as soon as possible after legal hunting hours.

3. We prohibit the use of motorized boats.

4. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

5. You must remove all personal property, which includes boats, decoys, and blinds brought onto the refuge, each day of hunting (see §§ 27.93 and 27.94 of this chapter).

6. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times.

7. We prohibit the use of snowmobiles and ATVs.

8. We prohibit camping.

B. Upland Game Hunting. We allow hunting of ruffed grouse and sharp-tailed grouse on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunting from the opening of the State's deer firearms season to the close of the regular State's ruffed grouse and sharp-tailed grouse seasons.

2. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

3. We prohibit hunting in the closed areas around the administrative buildings.

4. Conditions A2 through A8 apply.

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:

1. We are currently closed to moose hunting until the population recovers.

2. Conditions A1, A3, A4, A5, A7, and A8 apply.

3. We allow scouting the day before the youth deer hunt and the deer firearms hunt.

4. We open archery hunting at the start of the State's deer firearms season and close according to the State's archery deer season.

5. We allow muzzleloader deer hunting following the State's muzzleloader season.

6. Hunters may use portable stands. We prohibit construction or use of permanent blinds, permanent platforms, or permanent ladders.

7. You must remove all stands and personal property from the refuge by legal sunset of each day (see §§ 27.93 and 27.94 of this chapter).

8. We prohibit hunters from occupying illegally set up or constructed ground and tree stands (see condition C2).

9. We allow the use of wheeled, nonmotorized conveyance devices (e.g., bikes, retrieval carts) except in Wilderness Areas.

10. We prohibit vehicles and hunters from entering the refuge during the youth deer hunt until after 6 a.m.

D. Sport Fishing. [Reserved]

Big Stone National Wildlife Refuge

A. Migratory Game Bird Hunting. We prohibit the hunting of migratory game birds. We allow the unarmed retrieval of waterfowl, legally taken outside the refuge, up to 100 yards (90 m) inside the refuge boundary.

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, Hungarian partridge, rabbit (cottontail and jack), squirrel (fox and gray), raccoon, fox (red and gray), and striped skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. We allow the use of hunting dogs for upland game bird hunting only, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

3. We prohibit the use of dogs for hunting furbearers.

4. You may only hunt fox, raccoon, and striped skunk from ½ hour before legal sunrise until legal sunset from September 1 through the last day of February.

5. We allow nonmotorized boats and boats using electric motors only in the Minnesota River channel. We prohibit boats on all other refuge waters.

6. We prohibit camping.

C. Big Game Hunting. We allow hunting of deer and turkey on designated areas in accordance with State regulations subject to the following conditions:

1. We allow the use of temporary stands, blinds, platforms, or ladders. Hunters may construct blinds using manmade materials only. We prohibit hunters bringing plants or their parts onto the refuge.

2. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

3. You must remove all stands, temporary blinds, platforms, ladders, materials brought onto the refuge, and other personal property from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

4. Turkey hunters may possess only approved nontoxic shot while in the field.

5. Conditions B5 and B6 apply.

D. Sport Fishing. We allow sport fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions B5 and B6 apply.

2. You must remove all ice fishing structures, devices, and personal property from the refuge following each day's fishing activity.

3. We allow only bank fishing on all refuge pools and open marshes.

* * * * *

Hamden Slough 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 only allow waterfowl hunting during the State's Youth Waterfowl Day.

2. Youth waterfowl hunters must be age 15 and under.

3. We will only allow waterfowl hunting in refuge tracts within Audubon and Riceville Townships.

4. We prohibit the use of motorized boats.

5. We prohibit the construction or use of permanent blinds, stands, or scaffolds.

6. You must remove all personal property, which includes boats, decoys, blinds, and blind materials (except for blinds made entirely of marsh vegetation) brought onto the refuge, following that day's hunt (see §§ 27.93 and 27.94 of this chapter).

7. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season.

8. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours.

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. We only allow hunting during the State's muzzleloader season with muzzleloaders.

2. Hunters may use portable stands. We prohibit construction or use of permanent blinds, permanent platforms, or permanent ladders.

3. Hunters must remove all stands and personal property from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

4. Condition A8 applies.

D. Sport Fishing. [Reserved]

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Minnesota Valley National Wildlife Refuge

A. Migratory Game Bird Hunting.

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2. We prohibit the use of motorized boats. We allow nonmotorized boats in areas open to waterfowl hunting during the waterfowl hunting seasons.

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6. We prohibit entry to hunting areas earlier than 2 hours before legal shooting hours, and all hunters must

exit within 2 hours after the close of the legal shooting hours.

* * * * *

Northern Tallgrass Prairie National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, rail (Virginia and sora only), woodcock, common snipe, and mourning dove in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot while in the field (see § 32.2(k)).

2. Hunters may construct temporary blinds using manmade materials only (see § 27.92 of this chapter). We prohibit hunters from bringing plants or their parts onto the refuge.

3. We prohibit the construction or use of permanent blinds, stands, scaffolds, and ladders.

4. We prohibit hunters from leaving boats, decoys, or other personal property unattended at any time (see §§ 27.93 and 27.94 of this chapter).

5. Hunters must remove boats, decoys, portable or temporary blinds, materials brought onto the refuge, and other personal property at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

6. We allow the use of hunting dogs, provided the dog is under the immediate control of the hunter at all times during the State-approved hunting season (see § 26.21(b) of this chapter).

7. We prohibit the use of motorized watercraft.

8. We prohibit camping.

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, Hungarian partridge, rabbit (cottontail and jack), squirrel (fox and gray), raccoon, opossum, fox (red and gray), badger, coyote, striped skunk, and crows on designated areas in accordance with State regulations subject to the following conditions:

1. Shotgun hunters may possess only approved nontoxic shot while in the field (see § 32.3(k)).

2. We allow the use of dogs for upland game bird hunting only, provided that the dogs remain under the immediate control of the hunter at all times, during the State-approved hunting season (see § 26.21(b) of this chapter).

3. We prohibit the use of dogs for hunting furbearers.

4. We close the refuge to all hunting from March 1 through August 31.

5. We allow hunting for coyote, striped skunk, raccoon, and fox from ½ hour before legal sunrise to legal sunset.

6. Conditions A7 and A8 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 allow the use of temporary stands, blinds, platforms, or ladders (see § 27.92 of this chapter). Hunters may construct blinds using manmade materials only. We prohibit hunters frombringing plants or their parts onto the refuge.

2. Conditions A3, A5, A7, and A8 apply.

3. Turkey hunters may possess only approved nontoxic shot while in the field.

D. Sport Fishing. [Reserved]

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Upper Mississippi River National Wildlife and Fish 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. 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.

2. We require permits for Potter's Marsh in Pool 13 except during the early teal season.

3. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

4. On Pools 4 through 11, you may not place or leave decoys on the refuge during the time from ½ hour after the close of legal shooting hours until 1 hour before the start of legal shooting hours.

5. This condition applies to Pools 4 through 11 only: We prohibit construction of permanent hunting blinds using manmade materials (see § 27.92 of this chapter). At the end of each day's hunt, you must remove all manmade blind materials you brought onto the refuge. Any blinds containing manmade materials left on the refuge are subject to immediate removal and disposal (see §§ 27.93 and 27.94 of this chapter). Manmade materials include, but are not limited to: Wooden pallets, lumber, railroad ties, fence posts (wooden or metal), wire, nails, staples, netting, or tarps. We allow you to leave only seasonal blinds, made entirely of natural vegetation and biodegradable twines, on the refuge. We consider all such blinds public property and open to use by any person on a first-come, first-served basis. We allow you to gather only willow, grasses, marsh vegetation, and dead wood on the ground from the refuge for blind-building materials. We prohibit cutting or removing any other refuge trees or vegetation.

6. We will phase out the construction and use of permanent hunting blinds for waterfowl hunting within the Savanna District of the refuge over a 3-year period. We will no longer allow permanent blinds on the refuge in Pool 12 after the 2006–2007 waterfowl hunting season, Pool 13 after the 2007–2008 season, and Pool 14 after the 2008–2009 season. The following regulations apply for phase-out of permanent hunting blinds:

i. All permanent blinds must have the current name, address, and telephone number of the blind owner, posted no smaller than 3″ x 5″ (7.5 cm x 12.5 cm) inside the blind.

ii. The blind's owner must remove from the refuge all blind materials, including old blind materials located within 100 yards (90 m) of the blind, within 30 days of the end of the waterfowl hunting season.

iii. After the phase-out year of permanent blinds in each pool, waterfowl hunting regulations will follow refuge regulations applicable to Pools 4–11, except that we require a 200 yard (180 m) spacing distance between hunters on the Illinois portions of the refuge in Pool 12, 13, and 14.

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. We allow hunting of upland game on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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.

2. In areas posted ''Area Closed,'' we only allow hunting beginning the day after the close of the applicable State duck hunting season until upland game season closure or March 15, whichever occurs first, except we allow spring turkey hunting during State seasons.

3. On areas open to hunting, we prohibit hunting or possession of firearms from March 16 until the opening of State fall hunting seasons, except we allow spring turkey hunting during State seasons.

4. Shotgun hunters may possess only approved nontoxic shot when hunting for any permitted birds or other small game, except wild turkey (see § 32.2(k)). We still allow possession of lead shot for hunting wild turkey.

5. You may use lights and dogs to hunt raccoons, and other specifically authorized small mammals, in accordance with State regulations. We allow such use of lights on the refuge at the point of take only. We prohibit all other uses of lights for hunting on the refuge.

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. We allow hunting of white-tailed deer on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Condition B1 applies.

2. In areas posted ''Area Closed,'' we only allow hunting beginning the day after the close of the applicable State duck hunting season until big game season closure or March 15, whichever occurs first.

3. On areas open to hunting, we only allow hunting or possession of firearms until season closure or March 15, whichever occurs first.

4. We prohibit construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

5. You must remove all stands from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 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. On Spring Lake ''Closed Areas,'' Carroll County, Illinois, we prohibit fishing from October 1 until the day after the close of the State duck hunting season.

2. On Mertes Slough, Buffalo County, Wisconsin, we allow only hand-powered boats or boats with electric motors.

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.

* * * * *

17. Amend § 32.43 Mississippi by:

a. Revising paragraphs A.15., C.4., and C.12., and adding paragraph D.8. of Hillside National Wildlife Refuge;

b. Adding Holt Collier National Wildlife Refuge;

c. Adding paragraph A.18., revising paragraphs B.1., C.4., C.8., and adding paragraph D.4. of Mathews Brake National Wildlife Refuge;

d. Revising paragraph A.15., B.1., B.6., C.14., C.18., and adding paragraph D.9. of Morgan Brake National Wildlife Refuge;

e. Revising paragraphs A., B., and C. of Noxubee National Wildlife Refuge;

f. Revising paragraphs A.17., B.1., C.21., D.1., and D.6. of Panther Swamp National Wildlife Refuge; and

g. Revising paragraphs B.4. and C.13. of Yazoo National Wildlife Refuge to read as follows:

§ 32.43 Mississippi.

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Hillside National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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15. We allow ATVs only on designated trails (see § 27.31 of this chapter) (see refuge brochure map). We restrict ATV tires to a maximum of 1 inch (2.5 cm) for both tread depth and lug height.

* * * * *

C. Big Game Hunting. * * *

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4. Conditions A5 through A7, A15, and B6 apply.

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12. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter). You may place stands on the refuge 7 days prior to and must remove them (see §§ 27.93 and 27.94 of this chapter) by day 7 after the close of the refuge deer season.

* * * * *

D. Sport Fishing. * * *

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8. Condition A15 applies.

Holt Collier National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of rabbit and furbearers on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We are open for hunting during the State season.

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 February 1 through 28.

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 fluorescent orange material visible above the waistline as an outer garment.

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. Each hunter 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 the possession of alcoholic beverages (see § 32.2(j)).

9. We prohibit the possession of plastic flagging tape.

10. We prohibit handguns.

11. You must unload and case guns (see § 27.42(b) of this chapter) transported in/on vehicles and boats under power.

12. You must park vehicles in such a manner as to not obstruct roads, gates, turnrows, or firelanes (see § 27.31(h) of this chapter).

13. 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.

14. We prohibit horses and mules.

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 B5 through B12 and B14 apply.

2. Hunts and hunt dates are available at the refuge headquarters in July, and we post them in the refuge brochure.

3. We allow archery hunting October 1 through January 31.

4. We prohibit organized drives for deer.

5. We only allow crossbows in accordance with State law.

6. We prohibit attaching stands to any power or utility pole.

7. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. [Reserved]

Mathews Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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18. Beginning the day before duck season opens and ending the last day of duck season, we will close refuge waters to all public use from 1 p.m. until 12 a.m. (midnight).

B. Upland Game Hunting. * * *

1. Conditions A4 and A18 apply.

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. Conditions A7 through A9, A18, and B5 apply.

* * * * *

8. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter). You may place stands on the refuge 7 days prior to and must remove them (see §§ 27.93 and 27.94 of this chapter) by day 7 after the close of the refuge deer season.

D. Sport Fishing. * * *

* * * * *

4. Condition A18 applies.

Morgan Brake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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15. We only allow ATVs on designated trails (see § 27.31 of this chapter) (see refuge brochure map). We restrict ATV tires to a maximum of 1 inch (2.5 cm) for both tread depth and lug height.

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1 and A5 (and we only allow one adult per youth hunter), and A6 through A15 apply.

* * * * *

6. We prohibit horses and mules.

C. Big Game Hunting. * * *

* * * * *

14. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter). You may place stands on the refuge 7 days prior to the opening of the refuge deer season, and you must remove them (see §§ 27.93 and 27.94 of this chapter) by day 7 after the close of the refuge deer season.

* * * * *

18. Conditions A5 through A7, A15, and B6 apply.

D. Sport Fishing. * * *

* * * * *

9. Condition A15 applies.

Noxubee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of goose, duck, woodcock, and coot on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We require permits for waterfowl hunting, and only two companions may accompany each permit holder.

2. There is no early teal season.

3. We allow waterfowl hunting from ½ hour before legal sunrise until 12 p.m. (noon) on Saturdays and Wednesdays.

4. Hunters must remove all decoys, blind material, and harvested waterfowl from the area no later than 12 p.m. (noon) each day (see §§ 27.93 and 27.94 of this chapter).

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.

6. Each day all waterfowl hunters must check in and out at the refuge's duck check station.

7. We prohibit possession of alcoholic beverages (see § 32.2(j)).

8. We prohibit handguns.

9. Waterfowl hunters may only possess approved nontoxic shot while in the field (see § 32.2(k)).

10. We prohibit leaving boats overnight on the refuge (see § 29.93 of this chapter).

11. During the deer firearm hunts, any person hunting woodcock or accompanying another person hunting must wear at least 500 square inches (3,250 cm^2) of unbroken fluorescent-orange material visible above the waistline as an outer garment.

B. Upland Game Hunting. We allow hunting of squirrel, rabbit, quail, opossum, raccoon, coyote, beaver, and nutria on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit upland game hunting within the designated areas for waterfowl hunting when this hunt is taking place.

2. We only allow shotguns with approved nontoxic shot for hunting upland game in greentree reservoirs 1, 2, and 4.

3. We only allow shotguns with a shot size no larger than No. 2 and rifles no larger than a standard .22 caliber for taking upland game (we prohibit .22 caliber magnums).

4. We only allow dogs for rabbit and squirrel hunting beginning on the first day after the last refuge deer hunt.

5. We allow the use of dogs for raccoon and opossum hunting between the hours of legal sunset and legal sunrise.

6. During the deer firearm hunts, any person hunting upland game or accompanying another person hunting must wear at least 500 square inches (3,200 cm^2) of unbroken fluorescent-orange material visible above the waistline as an outer garment.

7. Conditions A5, A7, A8, and A10 apply.

8. We prohibit horses and mules.

9. We prohibit hunting or entry into areas designated as being ''closed'' (see refuge brochure map).

10. We require hunters to obtain a refuge hunt permit brochure. This permit must be signed by them and in their possession at all times while hunting on the refuge.

11. Valid permit holders may take the following animals in season incidental to other upland game hunts with legal firearms used for that hunt: coyote, beaver, nutria, and feral hog.

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 A5, A7, A8, A10, B8, and B9 apply.

2. Hunts and hunt dates are available at refuge headquarters in July, and we identify them in the refuge brochure.

3. We require a fee permit for all refuge deer hunts. Hunters must sign this permit and have it in their possession at all times while hunting.

4. We prohibit organized drives for deer.

5. You may place portable stands on the refuge from September 1 through January 15 and must remove them by January 15.

6. Valid deer permit holders may also take feral hogs and coyotes while deer hunting.

7. We do not require turkey hunters to use nontoxic shot in greentree reservoirs 1, 2, and 4.

8. We prohibit big game hunting in the area designated for waterfowl hunting when this hunt is taking place.

* * * * *

Panther Swamp National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

17. We only allow ATVs, beginning the third Saturday in September through

February 28 on designated trails (see § 27.31 of this chapter) (see refuge brochure map). We restrict ATV tires to a maximum of 1 inch (2.5 cm) for both tread depth and lug height.

B. Upland Game Hunting. * * *

1. We allow hunting during the open State season except we close during only limited refuge gun and muzzleloader deer hunts. You may obtain information on the hunts and hunt dates both at the refuge headquarters in July and in the refuge brochure.

* * * * *

C. Big Game Hunting. * * *

* * * * *

21. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter). You may place stands on the refuge 7 days prior to the opening of the refuge deer season, and you must remove them (see §§ 27.93 and 27.94 of this chapter) by day 7 after the close of the refuge deer season.

* * * * *

D. Sport Fishing. * * *

1. We close all refuge waters during limited deer gun and muzzleloader hunts.

* * * * *

6. We allow ATVs for fishing access on designated gravel roads when we close such roads to vehicular traffic. We restrict ATV tires to a maximum of 1 inch (2.5 cm) of both tread depth or lug height.

* * * * *

Yazoo National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

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4. We prohibit horses and mules.

* * * * *

C. Big Game Hunting. * * *

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13. Stands adjacent to fields and tree plantations must be a minimum of 10 feet (3 m) above the ground. We prohibit attaching stands to any power or utility pole. You must dismantle blinds and tripods, and you must remove stands from the tree each day (see §§ 27.93 and 27.94 of this chapter). You may place the stands on the refuge 7 days prior to the opening of refuge deer season, and you must remove them (see §§ 27.93 and 27.94 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.

* * * * *

18. Amend § 32.44 Missouri by:

a. Revising paragraphs C.4., C.5., C.6., C.7., and adding paragraphs C.8. and D.3. of Clarence Cannon National Wildlife Refuge;

b. Revising Great River National Wildlife Refuge; and

c. Revising paragraph A.1., adding paragraphs A.4., and A.5., revising paragraphs B.1., B.7. and B.8., removing paragraph B.9., revising paragraphs C.1., C.2., and C.4. through C.9., D.4., and D.6. of Mingo National Wildlife Refuge to read as follows:

§ 32.44 Missouri.

* * * * *

Clarence Cannon National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

4. We prohibit the construction or use of permanent blinds, stands, platforms, or scaffolds (see § 27.92 of this chapter).

5. Hunters must remove all boats, blinds, blind materials, stands, platforms, scaffolds, and other hunting equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day's hunt.

6. We close the area south of Bryants Creek to deer hunting.

7. We require hunters to check in all harvested deer with refuge personnel prior to leaving the refuge.

8. You must park all vehicles in designated parking areas (see § 27.31 of this chapter).

D. Sport Fishing. * * *

* * * * *

3. Anglers must remove all boats and fishing equipment at the end of each day's fishing activity (see § 27.92 of this chapter).

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 blinds constructed on sites posted by the Illinois Department of Natural Resources.

B. Upland Game Hunting. We allow hunting of upland game species on Long Island and Fox Island Divisions of the refuge in accordance with State regulations subject to the following conditions:

1. We only open Long Island and Fox Island Divisions for upland game hunting from ½ hour before legal sunrise until ½ hour after legal sunset.

2. We close Fox Island Division to all upland game hunting from October 16 through December 31.

C. Big Game Hunting. We allow hunting of white-tailed deer and turkey on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit construction or use of permanent blinds, platforms, or ladders (see § 27.92 of this chapter).

2. Hunters must remove all portable hunting stands, blinds, and equipment from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

3. On the Fox Island Division, we only allow deer hunting during the ''Antlerless-Only'' portion of the State firearms deer season.

4. On the Delair Division, we only allow muzzleloader deer 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 3:00 p.m. each day.

v. Hunters must park all vehicles only in designated parking areas (see § 27.31 of this chapter).

5. 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.

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.

* * * * *

Mingo National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We allow the use of hunting dogs, provided the dogs are under the immediate control of the hunter at all times (see § 26.21(b) of this chapter).

* * * * *

4. You must remove boats, decoys, blinds, and blind materials (see §§ 27.93 and 27.94 of this chapter) brought onto the refuge at the end of each day's hunt.

5. We prohibit the construction or use of permanent blinds, stands, or scaffolds (see § 27.92 of this chapter).

B. Upland Game Hunting. * * *

1. The Public Hunting Area and the road leading to the Public Hunting Area from the Hunter Sign-In Station are open 1½ hours before legal sunrise until 1½ hours after legal sunset.

* * * * *

7. We require that all squirrel hunters wear a hat and also a shirt, vest, or coat of hunter orange so that the color is plainly visible from all sides during the overlapping portion of the squirrel and archery deer and turkey seasons. Camouflage orange does not satisfy this requirement.

8. Condition A3 applies.

C. Big Game Hunting. * * *

1. Conditions A3 and B1 apply.

2. We require that all hunters register at the Hunter Sign-In/Sign Out Stations and record the number of hours hunted and number of deer or turkey harvested.

* * * * *

4. You must remove all boats (see § 27.93 of this chapter) brought onto the refuge at the end of each day.

5. We require that all archery deer and turkey hunters must wear a hat and also a shirt, vest, or coat of hunter orange so that the color is plainly visible from all sides during the overlapping portion of the squirrel and archery deer and turkey seasons. Camouflage orange does not satisfy this requirement.

6. We allow spring turkey hunting. We only allow shotguns with approved nontoxic shot (see § 32.2(k)).

7. We prohibit the use of salt or mineral blocks.

8. We only allow portable tree stands from 2 weeks before to 2 weeks after the State archery deer season. You must clearly mark all stands with the owner's name, address, and phone number.

9. We only allow one tree stand per deer hunter.

D. Sport Fishing. * * *

* * * * *

4. Anglers must remove watercraft (see § 27.93 of this chapter) from the refuge at the end of each day's fishing activity.

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6. Anglers must attend trammel and gill nets at all times and plainly label them with the owner's name, address, and phone number.

* * * * *

19. Amend § 32.45 Montana by:

a. Adding Benton Lake Wetland Management District;

b. Adding paragraph A.3., and revising paragraphs B.3. and C. of Black Coulee National Wildlife Refuge;

c. Adding Bowdoin Wetland Management District;

d. Adding Charles M. Russell Wetland Management District;

e. Revising paragraphs A., B., and C. of Creedman Coulee National Wildlife Refuge;

f. Adding paragraph A.3. and revising paragraphs B. and C. of Hewitt Lake National Wildlife Refuge;

g. Revising paragraphs A., B., and C. of Lake Thibadeau National Wildlife Refuge;

h. Revising paragraphs A.1., A.2., adding paragraph A.16., and revising paragraph C.4. of Lee Metcalf National Wildlife Refuge;

i. Adding Northeast Montana Wetland Management District; and

j. Adding Northwest Montana Wetland Management District to read as follows:

§ 32.45 Montana.

* * * * *

Benton Lake Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas (WPA) throughout the District, excluding Sands WPA in Hill County and H–2–0 WPA in Powell County in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorboats.

2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow upland game hunting on WPAs throughout the District, excluding Sands WPA in Hill County and H–2–0 WPA in Powell County, in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (see § 32.2(k)).

2. We prohibit the use of horses for any purposes.

C. Big Game Hunting. We allow big game hunting on WPAs throughout the District, excluding Sands WPA in Hill County and H–2–0 WPA in Powell County, in accordance with State regulations subject to the following condition: Condition B2 applies.

D. Sport Fishing. We allow sport fishing on WPAs throughout the District in accordance with State regulations subject to the following conditions:

1. Condition A1 applies.

2. You must remove boats, fishing equipment, and other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

Black Coulee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

3. A portion of the land within the refuge boundary is private land (inholding); persons wishing to hunt the private land must gain permission from the landowner.

B. Upland Game Hunting. * * *

* * * * *

3. Condition A3 applies.

C. Big Game Hunting. We allow big game hunting on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands, portable blinds, and freestanding elevated platforms on the refuge from August 15 to December 15.

2. You must visibly mark portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number.

3. You must remove any other personal property brought onto the area at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Condition A3 applies.

* * * * *

Bowdoin Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on all Waterfowl Production Areas (WPA) (except Holm WPA) throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit use of motorboats.

2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow upland game hunting on all WPAs (except Holm WPA) throughout the District in accordance with State regulations subject to the following condition: Hunters may possess only approved nontoxic shot (see § 32.2(k)).

C. Big Game Hunting. We allow big game hunting on all WPAs (except Holm WPA) throughout the District in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands, portable blinds, and freestanding elevated platforms to be left on WPAs from August 15 to December 15.

2. You must label portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number. The label must be legible from the ground.

3. You must remove any other personal property brought onto the area at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. We only allow the use of archery, muzzleloader (as defined by State regulations), or shotgun on the McNeil Slough WPA.

D. Sport Fishing. We allow sport fishing on WPAs throughout the District

in accordance with State regulations subject to the following conditions:

1. We prohibit use of motorboats.

2. You must remove boats, fishing equipment, and other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

Charles M. Russell Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on all Waterfowl Production Areas (WPA) in accordance with State regulations subject to the following condition:

All watercraft and personal equipment must be removed following each day of hunting (see §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We only allow upland game bird hunting on all WPAs in accordance with State regulations subject to the following condition: Hunters may only possess approved nontoxic shot (see § 32.2(k)).

C. Big Game Hunting. We allow big game hunting on all WPAs in accordance with State regulations subject to the following conditions:

1. All tree stands must be visibly marked and identified with the hunter's name, address, phone number, and ALS number. Hunters must remove all tree stands no later than December 15 of each year.

2. We prohibit permanent stands, ladders, steps, screw-in spikes, nails, screws, and wire (see § 32.2(i)).

D. Sport Fishing. We allow sport fishing on all WPAs in accordance with State regulations subject to the following condition: Anglers must remove all motor boats and other personal equipment at the end of each day (see §§ 27.93 and 27.94 of this chapter).

Creedman Coulee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove on designated areas of the refuge in accordance with State regulations subject to the following condition:

1. Most of the land within the refuge boundary is private land (inholding); persons wishing to access the private land must gain permission from the landowner.

B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

C. Big Game Hunting. We allow big game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

* * * * *

Hewitt Lake National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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3. A portion of the land within the refuge boundary is private land (inholding); persons wishing to hunt the private land must gain permission from the landowner.

B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. You may only possess approved nontoxic shot (see § 32.2(k)).

2. Fox and coyote hunters may only use centerfire rifles, rim-fire rifles, or shotguns with approved nontoxic shot.

3. We prohibit the shooting or taking of prairie dogs.

4. Condition A3 applies.

C. Big Game Hunting. We allow big game hunting on designated portions of the refuge in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands, portable blinds, and freestanding elevated platforms on the refuge from August 15 to December 15.

2. You must visibly mark portable tree stands, portable blinds, and freestanding elevated platforms with your automated licensing system (ALS) number.

3. You must remove any other personal property brought onto the area at the end of each day (see §§ 27.93 and 27.94 of this chapter).

4. Condition A3 applies.

* * * * *

Lake Thibadeau National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, coot, swan, sandhill crane, and mourning dove in designated areas of the refuge in accordance with State regulations subject to the following condition:

1. Most of the land within the refuge boundary is private land (inholding); persons wishing to hunt the private land must gain permission from the landowner.

B. Upland Game Hunting. We allow hunting of pheasant, sharp-tailed grouse, sage grouse, gray partridge, fox, and coyote on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

C. Big Game Hunting. We allow big game hunting on designated areas of the refuge in accordance with State regulations subject to the following condition: Condition A1 applies.

* * * * *

Lee Metcalf National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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 at 3:30 a.m. 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 will close the Waterfowl Hunting Area to waterfowl hunting on Mondays and Thursdays. 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.

* * * * *

16. Hunting Blind #8 has a minimum requirement of six decoys.

* * * * *

C. Big Game Hunting. * * *

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4. Tree Stands and Blinds: We allow each hunter the use of a maximum of two portable tree stands or blinds. Hunters must register each stand/blind with the refuge headquarters. We prohibit hunters leaving each stand/blind unattended for more than 72 hours.

* * * * *

Northeast Montana Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We prohibit the use of motorboats.

2. You must remove boats, decoys, portable blinds, other personal property, and any materials brought onto the area for blind construction at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

B. Upland Game Hunting. We allow upland game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (*see* § 32.2(k)).

2. We prohibit the use of horses for any purpose.

C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We allow hunters to leave portable tree stands and freestanding elevated platforms on Waterfowl Production Areas from August 25 through February 15.

2. You must label portable tree stands and freestanding elevated platforms with your name and address such that it is legible from the ground.

3. Condition B2 applies.

4. You must remove portable ground blinds and any other personal property at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. [Reserved]

Northwest Montana Wetland Management District

A. Migratory Game Bird Hunting. We allow migratory game bird hunting on Waterfowl Production Areas (WPAs) throughout the wetland district in accordance with State regulations (Flathead County WPAs) or Joint State/Tribal regulations (Lake County WPAs) subject to the following conditions:

1. We prohibit motorboats except on the Flathead and Smith Lake WPAs in Flathead County.

2. Hunters must operate motorboats at no-wake speeds on Flathead and Smith Lake WPAs in Flathead County.

3. Hunters must remove all boats, decoys, portable blinds, boat blinds and other personal property at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

4. Dogs must be on a leash from April 1 to August 31. Dogs must be under the owner's immediate control at all other times. We prohibit free-roaming pets year-round on any portion of the WPAs.

5. We prohibit overnight camping and/or open fires (*see* § 27.95(a) of this chapter).

6. Hunters must contruct blinds, other than portable blinds, of native materials only. Hunters must label all nonportable blinds with their name, address, and phone number. Construction and labeling of these blinds *does not* constitute exclusive use of the blind. Hunters must remove these blinds within 7 days of the close of the migratory game bird hunting season.

B. Upland Game Hunting. We allow upland game hunting on all WPAs throughout the wetland district in accordance with State regulations (Flathead County WPAs) or Joint State/Tribal regulations (Lake County WPAs) subject to the following conditions:

1. Hunters may possess only approved nontoxic shot (*see* § 32.2(k)).

2. We prohibit the use of horses for any purpose.

C. Big Game Hunting. We prohibit big game hunting on Lake County WPA per Joint State/Tribal regulations. We allow big game hunting on Flathead County WPAs in accordance with State regulations subject to the following conditions:

1. We allow portable tree stands and/or portable ground blinds; however, they must be removed daily. We prohibit construction and/or use of tree stands or portable ground blinds from dimensional lumber.

2. Conditions A5 and B2 apply.

3. We prohibit ATV and/or snowmobile use.

D. Sport Fishing. We allow sport fishing on all WPAs throughout the wetland district in accordance with State regulations (Flathead County WPAs) or Joint State/Tribal regulations (Lake County WPAs) subject to the following conditions:

1. Anglers must remove all motorboats, boat trailers, vehicles, fishing equipment, and other personal property from the WPAs at the end of each day (*see* §§ 27.93 and 27.94 of this chapter).

2. We prohibit the use of motorboats except on Flathead and Smith Lake WPAs in Flathead County.

3. Anglers must operate motorboats at no-wake speeds on Flathead and Smith Lake WPAs in Flathead County.

4. We strictly prohibit harassing or hazing of migratory game birds with a motorboat.

* * * * *

20. In § 32.48 New Hampshire by:

a. Revising the introductory text of paragraph A., revising paragraphs A.2., A.3., revising the introductory text of paragraph B., revising paragraphs B.2., B.3., B.5., B.6., revising the introductory text of paragraph C., revising paragraphs C.1., C.2., and adding paragraph C.6. of Lake Umbagog National Wildlife Refuge; and

b. Revising paragraphs A.2. and C.5. of Silvio O. Conte National Wildlife Refuge to read as follows:

§ 32.48 New Hampshire.

* * * * *

Lake Umbagog National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of duck, goose, merganser, coot, snipe, and woodcock in accordance with State regulations, seasons, and bag limits subject to the following conditions:

* * * * *

2. At various locations on the refuge, we will provide permanent refuge blinds, which are available for public use by reservation. Hunters may make reservations for particular blinds up to 1 year in advance, for a maximum of 7 days, running Monday through Sunday during the hunting season. Hunters may make reservations for additional weeks up to 7 days in advance, on a space-available basis. We allow no other permanent blinds. Hunters must remove temporary blinds, boats, and decoys from the refuge following each day's hunt (*see* §§ 27.93 and 27.94 of this chapter).

3. You may use trained dogs to assist in hunting and retrieval of harvested birds. Hunting with locating, pointing, and retrieving dogs on the refuge will be subject to the following regulations:

i. We prohibit dog training.

ii. We allow a maximum of two dogs per hunter.

iii. You must pick up all dogs the same day you release them (*see* § 26.21(b) of this chapter.

* * * * *

B. Upland Game Hunting. We allow hunting of coyote (*see* C. Big Game Hunting), fox, raccoon, woodchuck, squirrel, porcupine, skunk, snowshoe hare, ring-necked pheasant, and ruffed grouse in accordance with State regulations, seasons, and bag limits subject to the following conditions:

* * * * *

2. You may possess only approved nontoxic shot when hunting with a shotgun (*see* § 32.2(k)).

3. 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, and nock no arrows outside of legal hunting hours.

* * * * *

5. Hunters 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 (*e.g.,* orange camouflage).

6. We allow hunting of showshoe hare, ring-necked pheasant, and ruffed grouse with trained dogs during State hunting seasons. Hunting with locating, pointing, and retrieving dogs on the refuge will be subject to the following regulations:

i. We prohibit dog training.

ii. We allow a maximum of two dogs per hunter.

iii. 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, coyote, 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 each State's hunting regulations but no longer than from ½ hour before legal sunrise to ½ hour after legal sunset. We prohibit night hunting. Hunters must unload all firearms and nock no arrows outside of legal hunting hours.

2. We allow bear and coyote hunting with dogs during State hunting seasons. Hunting with trailing dogs on the refuge will be subject to the following conditions:

i. Hunters must equip all dogs used to hunt bear and coyote 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 dog training.

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).

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6. We prohibit the use of all-terrain vehicles (ATVs or OHRVs) on refuge land.

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Silvio O. Conte National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. You must wear in a conspicuous manner on the outermost layer of the head, chest, and back a minimum of 400 square inches (2,600 cm^2) of hunter-orange clothing or material, except when hunting waterfowl from a blind or boat or over waterfowl decoys.

* * * * *

C. Big Game Hunting. * * *

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5. Conditions A4 and A5 apply.

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21. Amend § 32.49 New Jersey by revising paragraph D. of Cape May National Wildlife Refuge to read as follows:

§ 32.49 New Jersey.

* * * * *

Cape May National Wildlife Refuge

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D. Sport Fishing. We allow sport fishing on designated areas of the refuge 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 fishing only along beach areas of the Two Mile Beach Unit.

3. The Atlantic Ocean beach is closed annually to all access, including fishing, between April 1 and September 30.

4. We prohibit commercial fishing, crabbing, and clamming on refuge lands.

5. We prohibit fishing or possession of conchs or shellfish on refuge lands.

6. We prohibit dogs on the Two Mile Beach Unit.

7. We prohibit unauthorized vehicles, including all-terrain vehicles (ATVs), on any portion of the Two Mile Beach Unit.

8. We prohibit sunbathing on refuge lands.

9. We prohibit access to swimming or surfing in the Atlantic Ocean.

* * * * *

22. Amend § 32.50 New Mexico by:

a. Revising paragraphs A.1., A.2., A.3., B.2., B.3., C.2., C.3., and D.6. of Bosque del Apache National Wildlife Refuge;

b. Revising the introductory text of paragraph A., revising paragraphs A.5., A.6., A.7., and A.8. of Las Vegas National Wildlife Refuge; and

c. Adding paragraph A.3. of Sevilleta National Wildlife Refuge to read as follows:

§ 32.50 New Mexico.

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Bosque del Apache National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. You must possess and carry a refuge permit for hunting of light goose. The permit is available through a lottery drawing. Applications must be postmarked by November 15 of each year. A $6.00 nonrefundable application fee must accompany each application.

2. We allow hunting of light goose on dates to be determined by refuge staff. We will announce hunt dates by September 1 of each year. Hunters must report to the refuge headquarters by 4:45 a.m. each hunt day. Legal hunting hours will run from ½ hour before legal sunrise and will not extend past 11 a.m. local time.

3. We allow the use of hunting dogs for animal retrieval. You must keep dogs on a leash when not hunting (see § 26.21(b) of this chapter).

* * * * *

B. Upland Game Hunting. * * *

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2. Conditions A3 through A8 apply.

3. We allow cottontail rabbit hunting between December 1 and the last day of February. We prohibit the use of hounds for cottontail rabbit hunting.

C. Big Game Hunting. * * *

* * * * *

2. Hunting on the east side of the Rio Grande is by foot, horseback, or bicycle only. Bicycles must stay on designated roads.

3. We allow oryx hunting from the east bank of the Rio Grande and to the east boundary of the refuge. 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 and conditions.

* * * * *

D. Sport Fishing. * * *

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6. We allow frogging for bullfrog on the refuge in areas that are open to fishing.

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Las Vegas National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of mourning dove and goose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

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5. We allow goose hunting on designated day(s) of the week as identified on the permit.

6. Shooting hours for geese are from ½ hour before legal sunrise to 1 p.m. local time.

7. We assign a bag limit for both light goose and Canada goose to two geese each.

8. For goose hunting you may only possess approved nontoxic shells (see § 32.2(k)) while in the field in quantities of six or less.

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Sevilleta National Wildlife Refuge

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A. Migratory Game Bird Hunting. * * *

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3. The refuge may designate special youth and/or persons with disabilities hunting days during the regular game bird season. This will apply to areas, species, days, and times that are currently part of the refuge's hunting program. For additional information concerning these changes, please contact the refuge staff. We will print

specific dates and information regarding these special days in the refuge's 2006–2007 hunt leaflet.

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23. Amend § 32.51 New York by revising paragraph A.14. of Montezuma National Wildlife Refuge to read as follows:

§ 32.51 New York.

* * * * *

Montezuma National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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14. You may only possess 25 or fewer approved nontoxic shells (see § 32.2(k)) while in the field.

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24. Amend § 32.52 North Carolina by:

a. Removing paragraph A.3., redesignating paragraphs A.4. through A.7. as paragraphs A.3. through A.6. of Currituck National Wildlife Refuge;

b. Amending the listing of MacKay Island National Wildlife Refuge to read Mackay Island National Wildlife Refuge;

c. Removing paragraphs A.2., A.5., and A.8., redesignating paragraphs A.3. as A.2., A.4. as A.3., A.6. as A.4., and A.7. as A.5, revising paragraph A.5., revising paragraph B.1., removing paragraphs B.2. and B.3., redesignating paragraph B.4. as B.2., revising paragraphs C.1., C.2., C.3., C.4., and C.10., removing paragraph D.4., and redesignating paragraph D.5. as D.4. of Pee Dee National Wildlife Refuge;

d. Revising paragraphs A.1., A.4., A.9., revising the introductory text of paragraph C., and revising paragraphs C.3., C.4., C.7., and C.8. of Pocosin Lakes National Wildlife Refuge to read as follows:

§ 32.52 North Carolina.

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Mackay Island National Wildlife Refuge

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Pee Dee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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5. We prohibit hunting on, from, or across any road open to public vehicle traffic. This includes the right-of-way which extends 30 feet (9 m) in either direction from the center of the road and all public parking areas.

* * * * *

B. Upland Game Hunting. * * *

1. Conditions A1 through A5 apply.

* * * * *

C. Big Game Hunting. * * *

1. Conditions A1 through A5 apply (with the following exception to condition A2: Each adult may supervise no more than one youth hunter).

2. We require each person participating in a quota deer hunt to possess a refuge Quota Deer Hunt Permit. The Quota Deer Hunt Permit is 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. Youth hunts are for hunters under age 16. We prohibit adults from possessing or discharging a firearm during the youth deer hunts.

* * * * *

10. You must check all deer taken on the refuge at the refuge check station on the date of take prior to removing the animal from the refuge. If we do not have the check station staffed by refuge personnel, you must use the self-check-in procedures.

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Pocosin Lakes National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We prohibit hunting on the Davenport and Deaver tracts (which include the area surrounding the Headquarters/Visitor Center and the Scuppernong River Interpretive Boardwalk), the Pungo Shop area, New Lake, refuge lands between Lake Phelps and Shore Drive, that portion of the Pinner Tract east of SR 1105, the portion of Allen Road between Shore Drive and the gate on the north end of Allen Road (including the area on both sides of this section of Allen Road for a distance of 100 yards (90 m)), the portion of Western Road between the intersection with Seagoing Road and the gate to the south, and the unnamed road at the southern boundary of the refuge land located west of Pettigrew State Park's Cypress Point Access Area. During November, December, January, and February, we prohibit all public entry on Pungo and New Lakes, Duck Pen Road, and the Pungo Lake, Riders Creek, and Dunbar Road banding sites.

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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.

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9. You may only possess approved nontoxic shot (see § 32.2(k)) while migratory game bird hunting on and west of Evans Road.

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C. Big Game Hunting. We allow hunting of deer, turkey, and feral hog on designated areas of the refuge in accordance with State regulations subject to the following conditions:

* * * * *

3. We only allow the use of shotguns, muzzleloaders, and bow and arrow for deer and feral hog hunting. We allow disabled hunters to use crossbows but only while possessing the required State permit. We allow feral hogs to be taken in any area, except the Pungo Unit, when the area is open to hunting deer. We allow feral hogs to be taken using bow and arrow (during the State bow and arrow and gun deer seasons), muzzleloaders (during the State muzzleloader and gun deer seasons), and firearms (during the State gun deer season). In addition, feral hogs may be taken on the Frying Pan Unit during all open firearm seasons.

4. You may only possess approved nontoxic shot (see § 32.2(k)) while hunting turkeys on the Pungo Unit.

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7. Prior to December 1, we allow deer hunting with bow and arrow on the Pungo Unit during all State deer seasons, except the muzzleloading season; 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 feral hogs in any area open to hunting these species with firearms.

* * * * *

25. Amend § 32.53 North Dakota by:

a. Revising paragraphs B.1. through B.3., revising paragraphs C.1. through C.4., and revising paragraph D. of Audubon National Wildlife Refuge;

b. Revising paragraph A.2. of Lake Alice National Wildlife Refuge; and

c. Revising paragraphs A., B., and C. of Lostwood National Wildlife Refuge to read as follows:

§ 32.53 North Dakota.

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Audubon National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. We open to upland game hunting annually on the day following the close of the regular deer gun season, and we close per the State season.

2. We prohibit hunting on or from refuge roads while operating a vehicle.

Hunters must park in designated parking areas or at the refuge boundary and walk in.

3. We allow game retrieval without a firearm up to 100 yards (90 m) inside the refuge boundary fence and closed areas of the refuge. Retrieval time may not exceed 10 minutes. You may use dogs to assist in retrieval.

* * * * *

C. Big Game Hunting. * * *

1. The refuge gun, muzzleloader, and bow deer hunting seasons open and close according to State regulations.

2. We close the refuge to the State special youth deer hunting season.

3. We prohibit hunting on or from refuge roads while operating a vehicle. Hunters must park in designated parking areas or at the refuge boundary and walk in. Hunters may use designated refuge roads to retrieve downed deer.

4. We only allow portable tree stands. You must remove all tree stands at the end of each day (see § 27.93 and 27.94 of this chapter).

* * * * *

D. Sport Fishing. We allow ice fishing on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We restrict vehicle use to designated ice access points and refuge roads (see § 27.31 of this chapter).

2. We allow vehicles and fish houses on the ice as conditions allow. We require anglers to remove fish houses, or parts thereof, from the refuge ice, water, and land by no later than March 15 of each year. We allow anglers to use portable houses after March 15, but anglers must remove them from the refuge at the end of each day (see §§ 27.93 and 27.94 of this chapter).

3. We prohibit leaving fish houses unattended on refuge uplands or in refuge parking areas.

4. We prohibit all shore and boat fishing on the refuge.

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Lake Alice National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. We allow motorized boats; however, motors must not exceed 10 hp.

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Lostwood National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, sharp-tailed grouse, and gray partridge on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting on the portion of the refuge south of Highway 50 during the State deer gun season.

2. We only allow hunting on the portion of the refuge north of Highway 50 beginning the day following the close of the State deer gun season through the end of the State season.

3. We allow falconry on the refuge only during the State upland game season subject to conditions B1 and B2.

4. You may possess only approved nontoxic shot while in the field (see § 32.2(k)).

5. We prohibit the use of horses during all hunting seasons.

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. The refuge gun, muzzleloader, and bow deer hunting seasons open and close according to State regulations.

2. We prohibit entry to the refuge before 12:00 p.m. (noon) on the first day of the archery, gun, or muzzleloader deer hunting season.

3. We will only allow preseason scouting in public use areas and hiking trails.

4. We allow only portable tree stands. You must remove all tree stands at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. Condition B5 applies.

* * * * *

26. Amend § 32.55 Oklahoma by:

a. Revising paragraphs B.1., B.2., B.6., and C.6. of Deep Fork National Wildlife Refuge;

b. Revising paragraph D.1. and removing paragraph D.2. of Little River National Wildlife Refuge;

c. Revising paragraph D.6. of Salt Plains National Wildlife Refuge;

d. Revising paragraphs A.1., A.2., A.6., A.9., removing paragraph A.10., revising paragraph B.1., and removing paragraph C.4. of Sequoyah National Wildlife Refuge;

e. Redesignating paragraphs D.3. through D.12. as D.4. through D.13. and adding a new paragraph D.3. of Tishomingo National Wildlife Refuge; and

f. Revising the introductory text of paragraph D. and adding paragraph D.6. of Wichita Mountains National Wildlife Refuge to read as follows:

§ 32.55 Oklahoma.

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Deep Fork National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. You must possess and carry a signed refuge permit for squirrel, rabbit, and raccoon. We require no fee.

2. We only allow shotguns, .22 caliber rimfire rifles, and .17 caliber rimfire rifles for rabbit and squirrel. We only allow special archery hunts by refuge Special Use Permit.

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6. We offer refuge-controlled turkey hunts. We require hunters to possess a permit and pay a fee for these hunts. You may call the refuge office or the State for information concerning these hunts.

* * * * *

C. Big Game Hunting. * * *

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6. We offer refuge-controlled deer hunts (archery, primitive weapon, youth primitive). We require hunters to possess a permit and pay a fee for these hunts. For information concerning the hunts, contact the refuge office or the State.

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Little River National Wildlife Refuge

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D. Sport Fishing. * * *

1. Condition A1 applies.

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Salt Plains National Wildlife Refuge

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D. Sport Fishing. * * *

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6. We only allow fishing on Bonham Pond:

i. By youths age 14 and under;

ii. By any person with a disability;

iii. Only from legal sunrise to legal sunset;

iv. With a limit of one pole per person; and

v. Catch and release only.

Sequoyah National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

1. We require an 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. We prohibit hunters from entering the land portion of the Sandtown Bottom Unit or any portion of Sally Jones Lake before 5 a.m. Hunters must leave the area by 1 hour after legal sunset. We prohibit hunting or shooting within 50 feet (15 m) of designated roads or parking areas. All hunters must park in designated parking areas.

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6. We allow boats. You must operate them under applicable State laws and comply with all licensing, marking, and

safety regulations from the State of origin.

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9. We restrict the use of airboats within the refuge boundary to the Arkansas River navigation channel and to designated hunting areas from September 1 to March 1.

B. Upland Game Hunting. * * *

1. Conditions A1, A2, and A7 through A9 apply.

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Tishomingo National Wildlife Refuge

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D. Sport Fishing. * * *

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3. We prohibit airboats, hovercraft, and personal watercraft on all refuge waters and waters of the Wildlife Management Unit.

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Wichita Mountains National Wildlife Refuge

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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:

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6. Anglers may use motorized boats on Elmer Thomas Lake; however, we enforce a no-wake rule on the lake.

27. Amend § 32.56 Oregon by:

a. Removing paragraph A.3. and redesignating paragraphs A.4. through A.9. as paragraphs A.3. through A.8; removing paragraphs B.2. and B.4. and redesignating paragraphs B.3., B.5., and B.6., as paragraphs B.2., B.3., and B.4. respectively; and removing paragraphs D.2. and D.4. and redesignating paragraphs D.3., D.5., and D.6., as paragraphs D.2., D.3., and D.4., respectively of Cold Springs National Wildlife Refuge;

b. Removing paragraphs A.1., and A.3. and redesignating paragraphs A.2., A.4., A.5., A.6., A.7., and A.8. as paragraphs A.1. through A.6., respectively; and revising paragraph B.1. of McKay Creek National Wildlife Refuge; and

c. Revising paragraph A.2. of Umatilla National Wildlife Refuge to read as follows:

§ 32.56 Oregon.

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McKay Creek National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. Condition A1 applies.

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Umatilla National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. On the McCormack Unit, you may only possess approved nontoxic shotshells (see § 32.2(k)) in quantities of 25 or fewer per day.

28. In § 32.57 Pennsylvania by revising paragraphs A.2. through A.5. and adding paragraphs A.6. and A.7., revising paragraphs B.2., C., and D.4. through D.7., and removing paragraphs D.8. and D.9. of Erie National Wildlife Refuge to read as follows:

§ 32.57 Pennsylvania.

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Erie National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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2. We require all persons to possess and carry a refuge hunt permit.

3. We require that hunters display in plain view a refuge hunt permit in the windshield area of their vehicle while parked on the refuge.

4. We only allow nonmotorized boats for waterfowl hunting.

5. We require that hunters remove all boats, blinds, and decoys from the refuge within 1 hour after legal sunset (see §§ 27.93 and 27.94 of this chapter).

6. 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).

7. We prohibit field possession of migratory game birds in areas of the refuge closed to migratory game bird hunting.

B. Upland Game Hunting. * * *

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2. Condition A3 applies.

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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. We require all persons to possess and carry a refuge hunt permit.

3. Conditions A3 and A5 apply.

4. 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.

5. We prohibit the use of watercraft for big game hunting.

D. Sport Fishing. * * *

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4. We allow ice fishing in Areas 5 and 7 only.

5. We prohibit the taking of minnow, turtle, or frog.

6. We prohibit the possession of live baitfish on the Seneca Unit.

7. We prohibit the taking or possession of shellfish on the refuge.

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29. Amend § 32.60 South Carolina by:

a. Revising the listing of ACE Basin National Wildlife Refuge to read Ernest F. Hollings ACE Basin National Wildlife Refuge, place the listing in the correct alphabetical order, and revising paragraphs C.3., C.9. and C.10. of Ernest F. Hollings ACE Basin National Wildlife Refuge;

b. Revising paragraph D. of Cape Romain National Wildlife Refuge;

c. Adding paragraphs A.9. and B.5., and revising paragraph C. of Carolina Sandhills National Wildlife Refuge;

d. Revising paragraph C.6. of Pinckney Island National Wildlife Refuge; and

e. Revising paragraphs A.6. and B.4. of Waccamaw National Wildlife Refuge to read as follows:

§ 32.60 South Carolina.

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Cape Romain National Wildlife Refuge

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D. Sport Fishing. We allow fishing, crabbing, shell fishing, shrimping, and the harvest of other marine species on designated areas of the refuge subject to State regulations and the following condition: Marsh Island, White Banks, and Bird Island are open from September 15 through February 15. We close them the rest of the year to protect nesting birds.

Carolina Sandhills National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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9. We prohibit the possession or use of more than 50 shotgun shells.

B. Upland Game Hunting. * * *

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5. All persons participating in refuge firearms hunts must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material above the waist as an outer garment that is visible from all sides while hunting and while en route to and from hunting areas. This does not apply to raccoon hunters.

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, A3 through A5, and A8 apply (with the following exception for condition A4: each adult may supervise no more than one youth hunter).

2. All deer, feral hogs, and turkeys taken on the refuge must be checked in on the date of take prior to removing the animal from the refuge.

3. During deer and turkey hunts, we prohibit hunters from entering the refuge earlier than 4 a.m. Deer hunters must leave the refuge no later than 2 hours after legal sunset. Turkey hunts will end each day at 1 p.m. Hunters must unload and encase or dismantle all firearms after 1 p.m.

4. All persons participating in refuge firearms deer hunts must wear at least 500 square inches (3,250 cm^2) of unbroken, fluorescent-orange material above the waist as an outer garment that is visible from all sides while hunting and while en route to and from hunting areas.

5. 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.

6. During 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.

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 or killing the animals or moving them toward other hunters.

8. We prohibit the use of dogs for any big game hunting.

9. We prohibit the use of plastic flagging.

10. Youth hunts are for hunters under age 16. We prohibit adults from possessing or discharging firearms during youth deer or turkey hunts.

11. 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 wheelchair dependent, need mechanical aids to walk, or have complete single- or double-leg amputations.

12. We prohibit turkey hunters from calling a turkey for another hunter unless both hunters have Refuge Quota Turkey Hunt Permits.

13. We prohibit turkey hunting in the area defined as east of Hwy 145, south of Rt. 9, and north of Hwy 1.

14. 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.

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Ernest F. Hollings ACE Basin National Wildlife Refuge

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C. Big Game Hunting. * * *

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3. Except for the special quota permit hunts, we allow only archery or muzzleloader hunting, and there is no quota on the number of hunters allowed to participate. During special quota permit hunts, we allow use of centerfire rifles or shotguns.

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9. You may take feral hogs during refuge deer hunts. There is no size or bag limit on hogs. 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.

10. You must hunt deer and feral hogs from an elevated deer stand. We prohibit shooting big game from a boat.

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Pinckney Island National Wildlife Refuge

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C. Big Game Hunting. * * *

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6. Each hunter may place one stand on the refuge during the week preceding the hunt. You must remove your stand (see §§ 27.93 and 27.94 of this chapter) at the end of the hunt.

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Waccamaw National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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6. We prohibit permanent blinds. You must remove portable blinds and decoys (see §§ 27.93 and 27.94 of this chapter) at the end of each day.

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B. Upland Game Hunting. * * *

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4. We prohibit squirrel and/or raccoon hunting from a boat or other water conveyance on the refuge.

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30. Amend § 32.61 South Dakota by:

a. Revising paragraph C. of Lake Andes Wetland Management District; and

b. Adding paragraph C.7. of Waubay National Wildlife Refuge to read as follows:

§ 32.61 South Dakota.

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Lake Andes Wetland Management District

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C. Big Game Hunting. We allow big game hunting on Waterfowl Production Areas throughout the District in accordance with State regulations subject to the following conditions:

1. We only allow the use of archery equipment for big game hunting on Atkins Waterfowl Production Area in Lincoln County.

2. We allow portable tree stands and freestanding elevated platforms to be left on Waterfowl Production Areas from the first Saturday after August 25 through February 15.

3. You must label portable tree stands and freestanding elevated platforms with your name and address or current hunting license number so it is legible from the ground.

4. You must remove portable ground blinds and other personal property at the end of each day (see §§ 27.93 and 27.94 of this chapter).

5. We prohibit the use of horses for any purpose.

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Waubay National Wildlife Refuge

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C. Big Game Hunting. * * *

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7. You must label portable tree stands and freestanding elevated platforms with your name and address or current hunting license number so it is legible from the ground.

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31. Amend § 32.62 Tennessee by:

a. Revising paragraphs A.2., A.3., B.2., C.2., and adding paragraph D.5. of Cross Creeks National Wildlife Refuge;

b. Revising paragraphs A.5., B.3., C.5., D.7., removing paragraphs D.8. and D.10., and redesignating paragraph D.9. as D.8. of Hatchie National Wildlife Refuge; and

c. Adding paragraph A.11. and revising paragraph B.5. of Tennessee National Wildlife Refuge to read as follows:

§ 32.62 Tennessee.

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Cross Creeks National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

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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 permit while hunting on the refuge.

3. We set and publish season dates and bag limits annually in the refuge hunting regulations available at the refuge office.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

2. Condition A2 applies.

* * * * *

C. Big Game Hunting. * * *

* * * * *

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. * * *

* * * * *

5. We limit boats to no-wake speed on all refuge impoundments and reservoirs.

Hatchie National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

5. Mourning dove, woodcock, and snipe seasons close during all deer archery and quota gun hunts.

* * * * *

B. Upland Game Hunting. * * *

* * * * *

3. We close all small game hunts during the refuge deer archery and quota gun hunts.

* * * * *

C. Big Game Hunting. * * *

* * * * *

5. We allow archery-only hunting on designated areas of the refuge (refer to the refuge brochure).

* * * * *

D. Sport Fishing. * * *

* * * * *

7. We open Oneal Lake for bank fishing during a restricted season and for authorized special events. Information on events and season dates is available at the refuge headquarters.

* * * * *

Tennessee National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

11. We prohibit hunters cutting vegetation and bringing exotic/invasive vegetation to the refuge.

B. Upland Game Hunting. * * *

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5. We allow hunters access to the refuge from 1½ hours before legal sunrise to 1½ hours after legal sunset, with the exception of raccoon hunting.

* * * * *

32. Amend § 32.63 Texas by:

a. Revising paragraphs A.2., A.4., A.10., A.16., and D. of Anahuac National Wildlife Refuge;

b. Revising paragraphs C.6. and C.11. and removing paragraph C.17. of Laguna Atascosa National Wildlife Refuge;

c. Revising paragraph A.2., redesignating paragraphs A.7. through A.16. as paragraphs A.8. through A.17. and adding a new paragraph A.7., revising paragraphs A.10, A.11., A.14., and D. of McFaddin National Wildlife Refuge;

d. Revising paragraphs A.2., A.8., A.11., and D. of Texas Point National Wildlife Refuge;

e. Revising paragraphs B.1., B.2., B.6., adding paragraph B.8, and revising paragraph C. of Trinity River National Wildlife Refuge to read as follows:

§ 32.63 Texas.

* * * * *

Anahuac National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. You must possess and carry a current signed refuge hunting permit while hunting on all hunt units of the refuge.

* * * * *

4. 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 accessing the East Unit by vehicle. We will allow a limited number of parties to access the East Unit by vehicle. All hunters entering the East Unit through the check station will designate a hunt area on a first-come-first-served basis (special duck hunt areas will be assigned through a random drawing). We will require hunters to remain in an assigned area for that day's hunt. We allow hunters to access designated areas of the East Unit by boat from Jackson Ditch, East Bay Bayou, or Onion Bayou. 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 the use of motorized boats on the East Unit, except on ponds accessed from Jackson Ditch via Onion Bayou. We prohibit motorized boats launching from the East Unit.

* * * * *

10. Hunters age 17 and under must be under the direct supervision of an adult age 18 or older.

* * * * *

16. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds (see §§ 27.93 and 27.94 of this chapter) from the refuge daily.

* * * * *

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, along the canal from the Oyster Bayou Boat Ramp to the southwest corner of Shoveler Pond, and along the banks of Shoveler Pond.

2. We only allow fishing and crabbing with pole and line, rod and reel, or handheld line. We prohibit the use any method not expressly allowed, including trotlines, setlines, jug lines, limb lines, bows and arrows, gigs, spears, or crab traps.

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 boats and other floatation devices on inland waters. You may launch motorized boats in East Bay at the East Bay Boat Ramp on Westline Road and at the Oyster Bayou Boat Ramp (boat canal). We prohibit the launching of airboats or personal watercraft on the refuge. You may only launch nonmotorized boats along East Bay Bayou and along the shoreline of East Galveston Bay.

5. We prohibit fishing from or mooring to water control structures.

* * * * *

Laguna Atascosa National Wildlife Refuge

* * * * *

C. Big Game Hunting. * * *

* * * * *

6. Each youth hunter, ages 12 through 17, must be accompanied by and remain within sight and normal voice contact of an adult age 21 or older. Hunters must be at least age 12.

* * * * *

11. We restrict vehicle access to service roads not closed by gates or signs. We prohibit the use of all-terrain vehicles (ATVs) or off-road vehicles (ORVs) (see § 27.31 of this chapter). You must only access hunt units by foot or bicycle.

* * * * *

McFaddin National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. You must possess and carry a current signed refuge hunting permit while hunting on all units of the refuge.

* * * * *

7. We allow hunting in the Star Lake/Clam Lake Hunt Unit daily during the special teal season and on Saturdays, Sundays, and Tuesdays of the regular waterfowl season. During the regular waterfowl season only, all hunters hunting the Star Lake/Clam Lake Hunt Units must register at the check station, including those accessing the unit from the beach along the Brine Line or Perkins Levee. Hunters will choose a designated hunt area on a first-come-first-served basis and will be required to remain in assigned areas for that day's hunt. All hunters accessing Star Lake and associated waters via boat must access through the refuge's Star Lake boat ramp.

* * * * *

10. 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 at designated crossings, or by boat from the Gulf Intracoastal Waterway via Mud Bayou.

11. Hunters age 17 or under must be under the direct supervision of an adult age 18 or older.

* * * * *

14. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds (see §§ 27.93 and 27.94 of this chapter) from the refuge daily.

* * * * *

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. We prohibit the use of any method not expressly allowed in inland waters, including trotlines, set lines, jug lines, limb lines, bows and arrows, gigs, spears, and crab traps.

2. We allow cast netting for bait for personal use along waterways in areas open to the public and along public roads.

3. We allow fishing and crabbing in 10-Mile Cut and Mud Bayou and in the following inland waters: Star Lake, Clam Lake, and Mud Lake. We also allow fishing and crabbing from the shoreline of the Gulf Intracoastal Waterway and along roadside ditches.

4. Conditions A5 and A6 apply.

5. We prohibit fishing from or mooring to water control structures.

* * * * *

Texas Point National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

2. You must possess and carry a current signed refuge hunting permit while hunting on all hunt units of the refuge.

* * * * *

8. Hunters age 17 or under must be under the direct supervision of an adult age 18 or older.

* * * * *

11. We prohibit pits and permanent blinds. We allow portable blinds or temporary natural vegetation blinds. You must remove all blinds (see §§ 27.93 and 27.94 of this chapter) from the refuge daily.

* * * * *

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. We prohibit the use of any method not expressly allowed in inland waters, including trotlines, set lines, jug lines, limb lines, bows and arrows, gigs, spears, and crab traps.

2. We only allow cast netting for bait by individuals along waterways in areas open to the public and along public roads.

3. Conditions A6 and A7 apply.

4. We prohibit fishing from or mooring to water control structures.

Trinity River National Wildlife Refuge

* * * * *

B. Upland Game Hunting. * * *

1. We require each participant to pay an application fee to obtain a permit. We will limit the number of permits issued for the designated hunt season. Consult the refuge brochure or call the refuge for hunt dates.

2. We allow hunting during a designated 23-day season.

* * * * *

6. Youth hunters ages 17 and under must be under the direct supervision of an adult age 18 or older. Hunters must be at least age 12.

* * * * *

8. Participants must possess and carry current authorized hunting permits at all times. Permits are nontransferable. Hunters may enter the refuge and park in an assigned parking area no earlier than 5 a.m. We allow hunting from ½ hour before legal sunrise to ½ hour after legal sunset. We require hunters to return a data log card.

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 allow hunting during two designated 9-day rifle/shotgun seasons. We require participants to pay an application fee to enter the hunt permit drawing. We issue a refuge permit to those individuals whose names are drawn.

2. We allow hunting during a designated 23-day archery season. We require participants to pay an application fee to obtain a designated number of permits. We issue a refuge permit to those individuals.

3. We allow muzzleloader hunting during the designated State season.

4. Conditions B4 and B6 through B8 apply.

5. We allow only temporary blinds. We prohibit hunting or blind erection along refuge roads.

6. We restrict the weapon type used depending on the unit hunted. We publish this information on the refuge permit (which you must possess and carry) and in the refuge hunt brochure.

* * * * *

33. Amend § 32.64 Utah by revising the introductory text of paragraph A. of Fish Springs National Wildlife Refuge to read as follows:

§ 32.64 Utah.

* * * * *

Fish Springs 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:

* * * * *

34. Amend § 32.66 Virginia by:

a. Revising paragraph C. of Eastern Shore of Virginia National Wildlife Refuge;

b. Revising paragraphs C.2., C.7., and adding paragraphs C.8. and C.9. of Great Dismal Swamp National Wildlife Refuge; and

c. Revising paragraph A. of Plum Tree Island National Wildlife Refuge to read as follows:

§ 32.66 Virginia.

* * * * *

Eastern Shore of Virginia National Wildlife Refuge

* * * * *

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. Hunting brochures containing permit application procedures, fees, 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.

2. You must possess and carry a refuge hunt permit while hunting.

3. You must be age 12 or older to hunt on the refuge. Hunters ages 12 through 17 must be accompanied by and directly supervised (within sight and normal voice contact) by an adult age 18 or older. The supervising adult must also be engaged in hunting and possess and carry a State hunting license and refuge permit.

4. You must sign in before entering the hunt zones and sign out upon leaving the zone.

5. We allow portable tree stands in accordance with §§ 27.93, 27.94, and 32.2(i) of this chapter. You must use safety straps while in tree stands and remove the stand at the end of the day.

6. You must check all harvested animals at the refuge's official check station.

7. We prohibit deer drives. 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.

8. We prohibit nocked arrows or loaded firearms outside of the designated hunting areas.

9. We only allow shotguns, 20 gauge or larger, loaded with buckshot during the firearm season.

10. During the firearm hunt, you must wear in a visible manner on the head, chest, and back a minimum of 400 square inches (2,600 cm2) of solid-colored-blaze-orange clothing or material.

11. 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.

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Great Dismal Swamp National Wildlife Refuge

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C. Big Game Hunting. * * *

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2. We allow shotguns, 20 gauge or larger, loaded with buckshot or rifled slugs, and bows and arrows. For the bear hunt, we allow only shotguns, 20 gauge or larger, with slugs.

* * * * *

7. We require hunters to have their guns, bows and arrows, and crossbows dismantled or cased when in a vehicle.

8. We prohibit hunters to shoot onto or across refuge roads, including roads closed to vehicles.

9. You must check in all harvested bears at the refuge official check station.

* * * * *

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 migratory game birds on the refuge. We only open the Cow Island area of the refuge to migratory game bird hunting. We close all other areas of the refuge to all public entry. Contact the refuge office for permit information by calling (804) 829–9029 weekdays.

2. We will determine hunting locations, dates, and times by lottery, and we will designate them on hunting permits.

3. We prohibit jump-shooting by foot or boat. All hunting must take place from a blind as determined by hunting permit.

4. Hunters must follow all conditions of their hunt permit.

5. We prohibit any activity that disturbs the bottom, including landing boats, anchoring, driving posts, etc., within the refuge boundary and within the U.S. Army Corps of Engineers designated Danger Zone around Plum Tree Island.

* * * * *

35. Amend § 32.67 Washington by:

a. Adding paragraph B.3. of Little Pend Oreille National Wildlife Refuge;

b. Revising paragraphs B.1. and B.3. and revising paragraph C.1. of McNary National Wildlife Refuge;

c. Revising paragraphs A.3. and A.4. of Toppenish National Wildlife Refuge; and

d. Removing paragraph A.4. and redesignating paragraphs A.5. through A.9. as paragraphs A.4. through A.8. respectively of Umatilla National Wildlife Refuge to read as follows:

§ 32.67 Washington.

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Little Pend Oreille National Wildlife Refuge

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B. Upland Game Hunting. * * *

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3. During the State spring turkey season, we prohibit hunting of all species except turkey.

* * * * *

McNary National Wildlife Refuge

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B. Upland Game Hunting. * * *

1. On the McNary Fee Hunt Unit, we only allow hunting of upland game birds on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day. We prohibit hunting before 12 p.m. (noon) on each hunt day.

* * * * *

3. We allow turkey hunting only on the Wallula unit.

* * * * *

C. Upland Game Hunting. * * *

1. On the Juniper Canyon and Wallula Units, we only allow shotgun and archery hunting.

* * * * *

Toppenish National Wildlife Refuge

A. Migratory Game Bird Hunting. * * *

* * * * *

3. We only allow dove hunting on the Cloe, Webb, Petty, Halvorson, Chambers, and Isiri Units.

4. On the Pumphouse and Robbins Road Units, you may only possess approved nontoxic shotshells (see § 32.2(k)) in quantities of 25 or less per day.

* * * * *

36. Amend § 32.69 Wisconsin by:

a. Revising the introductory text of paragraphs A., B., C., and D. and revising paragraph C.1. of Horicon National Wildlife Refuge; and

b. Revising the introductory text of paragraph A. and revising paragraph C. of Whittlesey Creek National Wildlife Refuge to read as follows:

§ 32.69 Wisconsin.

* * * * *

Horicon 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:

* * * * *

B. Upland Game Hunting. We allow hunting of ring-necked pheasant, gray partridge, squirrel, and cottontail rabbit on designated areas of the refuge in accordance with State regulations during the State seasons subject to the following conditions:

* * * * *

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 allow hunting during the State archery, muzzleloader, and State firearms seasons.

* * * * *

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 bank fishing.

* * * * *

Whittlesey Creek 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:

* * * * *

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 will allow archery deer hunting to take place on refuge lands owned by the Service that constitute tracts greater than 20 acres.

2. We prohibit hunting within a designated, signed area around the Coaster Classroom and Northern Great Lakes Visitor Center boardwalk.

3. We prohibit the construction or use of permanent blinds or platforms.

4. Hunters may use ground blinds or any elevated stands only if they do not damage live vegetation, including trees (see § 27.61).

5. Hunters may construct ground blinds entirely of dead vegetation from the refuge lands.

6. Hunters must remove all stands and blinds from the refuge at the end of each day's hunt (see §§ 27.93 and 27.94 of this chapter).

7. We allow motorized vehicles only on public roads and parking areas.

* * * * *

Dated: July 5, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–6318 Filed 7–17–06; 3:52 pm]

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Federal Register

Monday,
July 24, 2006

Part III

Federal Deposit Insurance Corporation

12 CFR Part 327

Deposit Insurance Assessments; Proposed Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD09

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Federal Deposit Insurance Reform Act of 2005 requires that the Federal Deposit Insurance Corporation (the FDIC) prescribe final regulations, after notice and opportunity for comment, to provide for deposit insurance assessments under section 7(b) of the Federal Deposit Insurance Act (the FDI Act). The FDIC is proposing to amend its regulations to create different risk differentiation frameworks for smaller and larger institutions that are well capitalized and well managed; establish a common risk differentiation framework for all other insured institutions; and establish a base assessment rate schedule.

DATES: Comments must be received on or before September 22, 2006.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow instructions for submitting comments on the Agency Web site.
- E-mail: *Comments@FDIC.gov*. Include the RIN number in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; and Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION:

I. Background

On February 8, 2006, the President signed the Federal Deposit Insurance Reform Act of 2005 into law; on February 15, 2006, he signed the Federal Deposit Insurance Reform Conforming Amendments Act of 2005 (collectively, the Reform Act).[1] The Reform Act enacts the bulk of the recommendations made by the FDIC in 2001. The Reform Act, among other things, gives the FDIC, through its rulemaking authority, the opportunity to better price deposit insurance for risk.[2]

A. The Risk-Differentiation Framework in Effect Today

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) required that the FDIC establish a risk-based assessment system. To implement this requirement, the FDIC adopted by regulation a system that places institutions into risk categories[3] based on two criteria: Capital levels and supervisory ratings. Three capital groups—well capitalized, adequately capitalized, and undercapitalized, which are numbered 1, 2 and 3, respectively—are based on leverage ratios and risk-based capital ratios for regulatory capital purposes. Three supervisory subgroups, termed A, B, and C, are based upon the FDIC's consideration of evaluations provided by the institution's primary federal regulator and other information the FDIC deems relevant.[4] Subgroup A consists of financially sound institutions with only a few minor weaknesses; subgroup B consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the insurance fund; and subgroup C consists of institutions that pose a substantial probability of loss to the insurance fund unless effective corrective action is taken. In practice, the subgroup evaluations are generally based on a institution's composite CAMELS rating, a rating assigned by the institution's supervisor at the end of a bank examination, with 1 being the best rating and 5 being the lowest.[5] Generally speaking, institutions with a CAMELS rating of 1 or 2 are put in supervisory subgroup A, those with a CAMELS rating of 3 are put in subgroup B, and those with a CAMELS rating of 4 or 5 are put in subgroup C. Thus, in the current assessment system, the highest-rated (least risky) institutions are assigned to category 1A and lowest-rated (riskiest) institutions to category 3C. The three capital groups and three supervisory subgroups form a nine-cell matrix for risk-based assessments:

Capital group	Supervisory subgroup		
	A	B	C
1. Well Capitalized	1A	1B	1C
2. Adequately Capitalized.	2A	2B	2C
3. Undercapitalized	3A	3B	3C

B. Reform Act Provisions

The Federal Deposit Insurance Act, as amended by the Reform Act, continues to require that the assessment system be risk-based and allows the FDIC to define risk broadly. It defines a risk-based system as one based on an institution's probability of incurring loss to the deposit insurance fund due to the composition and concentration of the institution's assets and liabilities, the amount of loss given failure, and revenue needs of the Deposit Insurance Fund (the fund).[6]

At the same time, the Reform Act also grants the FDIC's Board of Directors the discretion to price deposit insurance according to risk for all insured institutions regardless of the level of the fund reserve ratio.[7]

[1] Federal Deposit Insurance Reform Act of 2005, Public Law 109–171, 120 Stat. 9; Federal Deposit Insurance Conforming Amendments Act of 2005, Public Law 109–173, 119 Stat. 3601.

[2] Pursuant to the Reform Act, current assessment regulations remain in effect until the effective date of new regulations. Section 2109 of the Reform Act. The Reform Act requires the FDIC, within 270 days of enactment, to prescribe final regulations, after notice and opportunity for comment, providing for assessments under section 7(b) of the Federal Deposit Insurance Act. Section 2109(a)(5) of the Reform Act. Section 2109 also requires the FDIC to prescribe, within 270 days, rules on the designated reserve ratio, changes to deposit insurance coverage, the one-time assessment credit, and dividends. An interim final rule on deposit insurance coverage was published on March 23, 2006. 71 FR 14629. A notice of proposed rulemaking on the one-time assessment credit, a notice of proposed rulemaking on dividends, and a notice of proposed rulemaking on operational changes to part 327 were published on May 18, 2006. 71 FR 28809, 28804, and 28790. The FDIC is publishing an additional rulemaking on the designated reserve ratio simultaneously with this notice of proposed rulemaking.

[3] The FDIC's regulations refer to these risk categories as ''assessment risk classifications.''

[4] The term ''primary federal regulator'' is synonymous with the statutory term ''appropriate federal banking agency.'' 12 U.S.C. 1813(q).

[5] CAMELS is an acronym for component ratings assigned in a bank examination: Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk. A composite CAMELS rating combines these component ratings, which also range from 1 (best) to 5 (worst).

[6] 12 U.S.C. 1817(b)(1)(A) and (C). The Bank Insurance Fund and Savings Association Insurance Fund were merged into the newly created Deposit Insurance Fund on March 31, 2006.

[7] The Reform Act eliminates the prohibition against charging well-managed and well-capitalized institutions when the deposit insurance fund is at or above, and is expected to remain at or above, the designated reserve ratio (DRR). However, while the Reform Act allows the DRR to be set between 1.15

The Reform Act leaves in place the existing statutory provision allowing the FDIC to ''establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund.'' [8] Under the Reform Act, however, separate systems are subject to a new requirement that ''[n]o insured depository institution shall be barred from the lowest-risk category solely because of size.'' [9]

II. Overview of the Proposal

The Reform Act provides the FDIC with the authority to make substantive improvements to the risk-based assessment system. In this notice of proposed rulemaking, the FDIC proposes to improve risk differentiation and pricing by drawing upon established measures of risk and existing best practices of the industry and federal regulators for evaluating risk. The FDIC believes that the proposal will make the assessment system more sensitive to risk. The proposal should also make the risk-based assessment system fairer, by limiting the subsidization of riskier institutions by safer ones.

The FDIC's proposals are set out in detail in ensuing sections, but are briefly summarized here.

At present, an institution's assessment rate depends upon its risk category. Currently, there are nine of these risk categories. The FDIC proposes to consolidate the existing nine categories into four and name them Risk Categories I, II, III and IV. Risk Category I would replace the current 1A risk category.

Within Risk Category I, the FDIC proposes one method of risk differentiation for small institutions, and another for large institutions. Both methods share a common feature, namely, the use of CAMELS component ratings. However, each method combines these measures with different sources of information. For small institutions within Risk Category I, the FDIC proposes to combine CAMELS component ratings with current financial ratios to determine an institution's assessment rate. For large institutions within Risk Category I, the FDIC proposes to combine CAMELS component ratings with long-term debt issuer ratings, and, for some large institutions, financial ratios to assign institutions to initial assessment rate subcategories. These initial assignments, however, might be modified upon review of additional relevant information pertaining to an institution's risk.

The FDIC proposes to define a large institution as an institution that has $10 billion or more in assets. Also, the FDIC proposes to treat all new institutions (established within the last seven years) in Risk Category I the same, regardless of size, and assess them at the maximum rate applicable to Risk Category I institutions.

The FDIC proposes to adopt a base schedule of rates. The actual rates that the FDIC may put into effect next year and in subsequent years could vary from the base schedule. The proposed base schedule of rates is as follows:

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	2	4	7	25	40

* Rates for institutions that do not pay the minimum or maximum rate would vary between these rates.

The FDIC proposes that it continue to be allowed, as it is under the present system, to adjust rates uniformly up to a maximum of five basis points higher or lower than the base rates without the necessity of further notice-and-comment rulemaking, provided that any single adjustment from one quarter to the next could not move rates more than five basis points.

III. General Framework

The FDIC proposes to consolidate the number of assessment risk categories from nine to four. The four new categories would continue to be defined based upon supervisory and capital evaluations, both established measures of risk.

The existing nine categories are not all necessary. Some of the categories contain few, if any, institutions at any given time. Table 1 shows the total number of institutions in each of the nine categories of the existing risk matrix as of December 31, 2005:

TABLE 1.—NUMBER OF INSTITUTIONS BY ASSESSMENT CATEGORY AS OF DECEMBER 31, 2005

Capital group	Supervisory subgroup		
	A	B	C
1	8,358	373	50
2	54	7	1
3	0	0	2

Five of the nine categories contain among them a total of only 10 institutions. Table 2 shows the average percentage of BIF-member institutions that were (or, for the period before the risk-based system began, that would have been) in each of the nine categories of the existing risk matrix from 1985 to 2005: [10]

TABLE 2.—PERCENTAGE OF INSTITUTIONS BY ASSESSMENT CATEGORY, 1985–2005 *

[BIF-member institutions]

Capital group	Supervisory subgroup		
	A	B	C
1	83.72	6.08	0.91
2	1.46	3.17	1.30
3	0.05	0.21	2.55

* Approximately 0.56 percent of institutions could not be classified because CAMELS data are unavailable.

Several of the categories contain very small percentages of institutions. In fact, for any given year from 1985 to 2005, the number of BIF-member institutions rated 3A (or, for the period before the risk-based system began, that would have been rated 3A) never exceeded 10 and the number of BIF-member institutions rated 3B (or, for the period before the risk-based system began, that

percent and 1.5 percent, it also generally requires dividends of one-half of any amount in the fund in excess of the amount required to maintain the reserve ratio at 1.35 percent when the insurance fund reserve ratio exceeds 1.35 percent at the end of any year. The Board can suspend these dividends under certain circumstances. 12 U.S.C. 1817(e)(2).

[8] 12 U.S.C. 1817(b)(1)(D).

[9] Section 2104(a)(2) of the Reform Act (to be codified at 12 U.S.C. 1817(b)(2)(D)).

[10] Comparable data on SAIF-member (prior to August 1989, FSLIC-insured) institutions are not readily available back to 1985.

would have been rated 3B) never exceeded 81.

In addition, the failure rates for many of the categories are similar. Table 3 shows the average five-year failure rate for BIF-member institutions for each of the nine categories of the existing risk matrix for the five-year periods beginning in 1985 to 2000: [11]

TABLE 3.—HISTORICAL FIVE-YEAR FAILURE RATES BY ASSESSMENT CATEGORY, 1985–2000 *

[BIF-member institutions]

Capital group	Supervisory subgroup		
	A	B	C
1	0.77	2.67	6.78
2	2.03	5.51	14.43
3	2.30	7.10	28.84

* Excludes failures where fraud was determined to be a primary contributing factor.[12]

The failure rates for 2A, 1B and 2B range from 2.03 percent to 5.51 percent. The failure rates for 1C and 2C are higher: 6.78 percent and 14.43 percent, respectively. The failure rates for 3A and 3B are based upon a very small sample, since the number of institutions that have been in these categories is so small. The failure rate for 3C institutions is 28.84 percent, which is markedly different from any of the other categories.

The FDIC proposes consolidating the existing categories based primarily on similarity of failure rates. The proposal also would combine the sparsely populated 3A and 3B categories with the 1C and 2C categories.[13] The proposed consolidation would create four new Risk Categories as shown in Table 4:

TABLE 4.—PROPOSED NEW RISK CATEGORIES

Capital category	Supervisory subgroup		
	A	B	C
Well Capitalized	I		III
Adequately Capitalized		II	III
Undercapitalized		III	IV

The FDIC has analyzed failure rates for each of the proposed risk categories over the period 1985 to 2005. They are as follows:

TABLE 5.—HISTORICAL FIVE-YEAR FAILURE RATES BY PROPOSED NEW RISK CATEGORY, 1985–2000 *

[BIF-member institutions]

Risk category	Failure rate
I	0.77
II	3.52
III	11.05
IV	28.84

* Excludes failures where fraud was determined to be a primary contributing factor.

The proposed new categories appear to be well aligned with insurance risk, since the risk of failure increases with each successive category.

For clarity, the FDIC proposes to use the phrase ''Supervisory Group'' to replace ''Supervisory Subgroup.'' The FDIC also proposes calling the capital categories ''Well Capitalized,'' ''Adequately Capitalized'' and ''Undercapitalized,'' rather than Capital Groups 1, 2 and 3. However, the definitions of the Supervisory Groups and Capital Groups will not change in substance.

Risk Category I would contain all well-capitalized institutions in Supervisory Group A (generally those with CAMELS composite ratings of 1 or 2); *i.e.*, those institutions that would be placed in the current 1A category. New Risk Category II would contain all institutions in Supervisory Groups A and B (generally those with CAMELS composite ratings of 1, 2 or 3), except those in Risk Category I and undercapitalized institutions.[14] Category III would contain all undercapitalized institutions in Supervisory Groups A and B, and institutions in Supervisory Group C (generally those with CAMELS composite ratings of 4 or 5) that are not undercapitalized. Category IV would contain all undercapitalized institutions in Supervisory Group C; *i.e.*, those institutions that would be placed in the current 3C category.

As of December 31, 2005, the four new categories would have the numbers of institutions shown in Table 6:

TABLE 6.—NUMBER OF INSTITUTIONS BY PROPOSED NEW RISK CATEGORY AS OF DECEMBER 31, 2005

Risk category	Number of institutions
I	8,358
II	434
III	51
IV	2

The FDIC proposes that all institutions in any one risk category, other than Risk Category I, be charged the same assessment rate; there would be no further differentiation in assessment rates within each category. Over the past 11 years, only six to ten percent of institutions at any one time have been less than well capitalized or have exhibited supervisory weaknesses (that is, have been rated CAMELS 3, 4 or 5). CAMELS 3, 4 and 5-rated institutions are examined more frequently than other institutions; they must be examined at least annually and, in practice, are examined more frequently. Institutions are examined more frequently as their supervisory ratings deteriorate. As a result of these frequent, on-site examinations, supervisory evaluations (primarily CAMELS ratings) and capital levels provide a good measure of failure risk. In addition, there are few of these institutions, and the amount of differentiation that presently exists is unnecessary.

IV. Risk Differentiation Within Risk Category I

Risk Category I, at present, includes 95 percent of all insured institutions. The FDIC proposes to further differentiate for risk within this category. Within Risk Category I, the FDIC proposes one method for small institutions, and another for large institutions. Both methods share a common feature, namely, the use of CAMELS component ratings. However, each method combines these measures with different sources of information on risk.

For small institutions, the FDIC proposes to combine CAMELS component ratings with current

[11] The five-year failure rate is calculated by comparing the number of institutions that failed within five years to the number of institutions that were (or that would have been) in one of the 9 categories of the risk matrix at the beginning of the five-year period. The average failure rate is an average of rates using the years 1985 through 2000 as the initial years. The failure rates for the 3A and 3B risk categories are not particularly meaningful, since so few institutions have been in these categories.

[12] The validity of an institution's capital ratios depends wholly, and the validity of supervisory appraisals depends greatly, upon the accuracy of financial data supplied by the institution. Where undetected fraud is present, financial data is inaccurate, often highly so, and an institution is likely to be placed in the wrong risk category for deposit insurance purposes. For this reason, failures caused by fraud are excluded.

[13] While the five-year failure rate for 3A institutions is similar to that of 2A and 1B institutions, 3A institutions are undercapitalized and, therefore, pose greater risk.

[14] Under current regulations, bridge banks and institutions for which the FDIC has been appointed or serves as conservator are charged the assessment rate applicable to the 2A category. 12 CFR 327.4(c). The FDIC proposes, instead, to place these institutions in Risk Category I and to charge them the minimum rate applicable to that category.

financial ratios. These ratios can provide updated information on an institution's risk profile between bank examinations and allow greater differentiation in risk.[15] For many years, the FDIC and other federal regulators have used financial ratios in offsite monitoring systems to aid in analyzing the financial condition of institutions. The FDIC has used financial ratios in its offsite monitoring system, known as the Statistical Camels Offsite Rating system (SCOR), to identify changes in risk profiles between bank examinations.[16]

For large institutions, the FDIC proposes to combine CAMELS component ratings with long-term debt issuer ratings, and, for institutions with between $10 billion and $30 billion in assets, financial ratios, to develop an insurance score and an assessment rate. Assessment rates might be adjusted based on considerations of additional market, financial performance and condition, and stress considerations. This approach is consistent with best practices in the banking industry for rating and ranking direct credit and counterparty credit risk exposures to include consideration of all relevant risk information, the use of standardized risk assessment processes and methodologies, the incorporation of judgment, where necessary, and the use of quality controls to ensure consistency and reasonableness of the ratings and risk rankings.

The FDIC proposes to define a large institution as an institution that has $10 billion or more in assets and a small institution as an institution that has less than $10 billion in assets. Also, as described below in Section VIII, the FDIC proposes to treat all new institutions in Risk Category I the same, regardless of size, and assess them at the maximum rate applicable to Risk Category I institutions.

V. Risk Differentiation Among Smaller Institutions in Risk Category I

A. Proposal: Rely Upon Supervisory Ratings and Financial Ratios

1. Description of the Proposal

For smaller institutions, the FDIC proposes to link assessment rates to a combination of certain financial ratios and supervisory ratings based on a statistical analysis relating these measures to the probability that an institution will be downgraded to CAMELS 3, 4 or 5 within one year.[17] Few failures have occurred within the past few years, but, historically, the failure frequency of insured institutions is significantly higher for institutions with CAMELS composite ratings of 3 or worse, as Table 7 demonstrates. Thus, in general, the greater the risk that a CAMELS 1 or 2-rated institution will be downgraded to CAMELS 3, 4 or 5, the greater its risk of failure.

TABLE 7.—HISTORICAL FIVE-YEAR FAILURE RATES BY CAMELS RATINGS GROUPS, 1985–2000 *

[BIF-member institutions]

Composite CAMELS	Percentage of CAMELS group failing
1	0.39
2	1.01
3	3.84
4	14.63
5	46.92

* Excludes failures in which fraud was determined to be a primary contributing factor. CAMELS ratings as of each year-end are used for failure rate calculations.

The FDIC used the financial ratios in its offsite monitoring system, SCOR, as the starting point for the financial information it would use to differentiate risk and selected six financial ratios. These financial ratios measure an institution's capital adequacy, asset quality, earnings and liquidity (the C, A, E and L of CAMELS). The financial ratios are:

- Tier 1 Leverage Ratio;
- Loans past due 30–89 days/gross assets;
- Nonperforming loans/gross assets;
- Net loan charge-offs/gross assets;
- Net income before taxes/risk-weighted assets; and
- Volatile liabilities/gross assets.

The Tier 1 Leverage Ratio has the definition used for regulatory capital purposes. Appendix 1 defines each of the ratios and discusses the choice of ratios in detail.

Because supervisory ratings capture important elements of risk that financial ratios cannot, the FDIC included in its analysis an additional measure of risk based upon an institution's component CAMELS ratings. CAMELS component ratings are supervisory evaluations of various risks. The component ratings provide a more detailed view of supervisory evaluations than composite ratings by themselves and are therefore useful for differentiating risk among institutions. Including all component ratings accounts for risk management practices, as well as for supervisory assessments of capital adequacy, asset quality, earnings, liquidity and sensitivity to market risk, that the financial ratios by themselves may not fully capture.

The FDIC created a weighted average of an institution's CAMELS components by combining the components as follows:

CAMELS component	Weight (percent)
C	25
A	20
M	25
E	10
L	10
S	10

These weights reflect the view of the FDIC regarding the relative importance of each of the CAMELS components for differentiating risk among institutions in Risk Category I for deposit insurance purposes.[18] The FDIC and other bank supervisors do not use such a system to determine CAMELS composite ratings.

The FDIC determined how to combine the measures—the financial ratios and the weighted average CAMELS component rating—by statistically analyzing the relationship between the measures and the probability that an institution would be downgraded to CAMELS 3, 4 or 5 at its next examination.[19] The FDIC analyzed financial ratios and supervisory component ratings over the period 1984 to 2004 to cover both periods of stress and strength in the banking industry.[20] The FDIC then converted those probabilities of downgrade to specific assessment rates. This analysis and conversion produced the following multipliers for each risk measure:

Risk measures *	Pricing multiplier **
Tier 1 Leverage Ratio	(0.03)
Loans Past Due 30–89 Days/Gross Assets	0.37
Nonperforming Loans/Gross Assets	0.65

[15] For CAMELS 1 and 2-rated institutions, examinations generally occur on a 12 or 18-month cycle. 12 U.S.C. 1820(d).

[16] Charles Collier, Sean Forbush, Daniel A. Nuxoll and John O'Keefe, ''The SCOR System of Off-Site Monitoring: Its Objectives, Functioning, and Performance,'' FDIC Banking Review 15(3) (2003).

[17] This statistical analysis is described in more detail in Appendix 1.

[18] Different weights might apply if this measure were being used to evaluate risk at all institutions, including those outside Risk Category I.

[19] The ''S'' rating was first assigned in 1997. Because the statistical analysis relies on data from before 1997, the ''S'' rating was excluded from the analysis. Appendix 1 contains a detailed description of the statistical analysis.

[20] 2005 had to be excluded because the analysis is based upon supervisory downgrades within one year and 2006 downgrades have yet to be determined.

Risk measures *	Pricing multiplier **
Net Loan Charge-Offs/ Gross Assets	0.71
Net Income before Taxes/ Risk-Weighted Assets	(0.41)
Volatile Liabilities/Gross Assets	0.03
Weight Average CAMELS component rating	0.52

* Ratios are expressed as percentages.
** Multipliers are rounded to two significant decimal places.

To determine an institution's insurance assessment rate, the FDIC proposes multiplying each of these risk measures (that is, each institution's financial ratios and weighted average CAMELS component rating) by the corresponding pricing multipliers. The sum of these products would be added to (or subtracted from) a uniform amount (1.37 based on an analysis using financial ratios and supervisory component ratings from the period 1984 to 2004) to determine an institution's assessment rate.[21] The uniform amount would be derived from the statistical analysis and adjusted for assessment rates set by the FDIC.[22]

The FDIC proposes that the rates resulting from this approach be subject to a minimum and maximum. A maximum rate would ensure that no institution in Risk Category I, all of which are well-capitalized and generally have supervisory ratings of 1 or 2, pays as much as an institution in a higher risk category. A minimum rate recognizes that the possibility of a supervisory rating downgrade to CAMELS 3, 4 or 5 is low for a significant portion of institutions in Risk Category I.

This approach would allow incremental pricing for Risk Category I institutions whose rates are between the minimum and maximum rates. Therefore, small changes in an institution's financial ratios or CAMELS component ratings should produce only small changes in assessment rates.[23]

To compute the values of the uniform amount and pricing multipliers shown above, the FDIC chose cutoff values for the predicted probabilities of downgrade such that, as of December 31, 2005: (1) 45 percent of smaller institutions (other than new institutions) in Risk Category I would have been charged the minimum assessment rate; and (2) 5 percent of smaller institutions (other than new institutions) in Risk Category I would have been charged the maximum assessment rate.[24] The proposal to charge 45 percent of small Risk Category I institutions (excluding new institutions) the minimum rate reflects the FDIC's view that the current condition of the banking industry is generally favorable. The pricing multipliers and the uniform amount shown above and in Table 8 assume that the maximum annual assessment rate for institutions in Risk Category I would be 2 basis points higher than the minimum rate, as the FDIC proposes below.[25] Appendix 1 discusses the analysis in detail.

Table 8 gives assessment rates for three institutions with varying characteristics, assuming the pricing multipliers given above, and that annual assessment rates for institutions in Risk Category I range from a minimum of 2 basis points to a maximum of 4 basis points.[26]

TABLE 8.—ASSESSMENT RATES FOR THREE INSTITUTIONS *

	Pricing multiplier	Institution 1		Institution 2		Institution 3	
		Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate
A	B	C	D	E	F	G	H
Uniform Amount	1.37		1.37		1.37		1.37
Tier 1 Leverage Ratio (%)	(0.03)	9.6	(0.27)	8.6	(0.24)	8.4	(0.23)
Loans Past Due 30–89 Days/Gross Assets (%)	0.37	0.4	0.15	0.6	0.22	0.8	0.30
Nonperforming Loans/ Gross Assets (%)	0.65	0.2	0.13	0.4	0.26	1.2	0.78
Net Loan Charge-Offs/ Gross Assets (%)	0.71	0.1	0.10	0.1	0.06	0.3	0.21
Net Income before Taxes/Risk-Weighted Assets (%)	(0.41)	2.5	(1.02)	2.0	(0.79)	(0.5)	(0.21)
Volatile Liabilities/Gross Assets (%)	0.03	20.1	0.63	22.6	0.70	35.7	1.11
Weighted Average CAMELS Component Ratings	0.52	1.2	0.62	1.5	0.75	2.1	1.08
Sum of Contribution			1.71		2.33		4.41

[21] Appendix 1 provides the derivation of the pricing multipliers and the uniform amount to be added to compute an assessment rate. The rate derived would be an annual rate, but would be determined every quarter.

[22] The uniform amount would be the same for all smaller institutions in Risk Category I (other than insured branches of foreign banks and new institutions), but would change when the Board changed assessment rates or when the pricing multipliers were updated using new data.

[23] Incremental pricing raises questions about how accurately small differences in assessment rates between institutions reflect differences in the relative risks that they pose to the insurance fund. The alternative would be to charge a much larger group of institutions the same assessment rate, which could lead to sharper differences in rates for institutions poised between one set of rates and another. For this reason, the FDIC is proposing incremental pricing.

[24] The cutoff value for the minimum assessment rate is a predicted probability of downgrade of 3 percent. The cutoff value for the maximum assessment rate is 16 percent.

[25] The uniform amount also depends upon the actual level of the minimum assessment rate.

[26] These are the base rates for Risk Category I proposed in Section IX; under the proposal, as now, actual rates for any year could be as much as 5 basis points higher or lower without the necessity of notice-and-comment rulemaking.

TABLE 8.—ASSESSMENT RATES FOR THREE INSTITUTIONS *—Continued

	Pricing multiplier	Institution 1		Institution 2		Institution 3	
		Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate	Risk measure value	Contribution to assessment rate
A	B	C	D	E	F	G	H
Assessment Rate	.....	.....	2.00	.....	2.33	.....	4.00

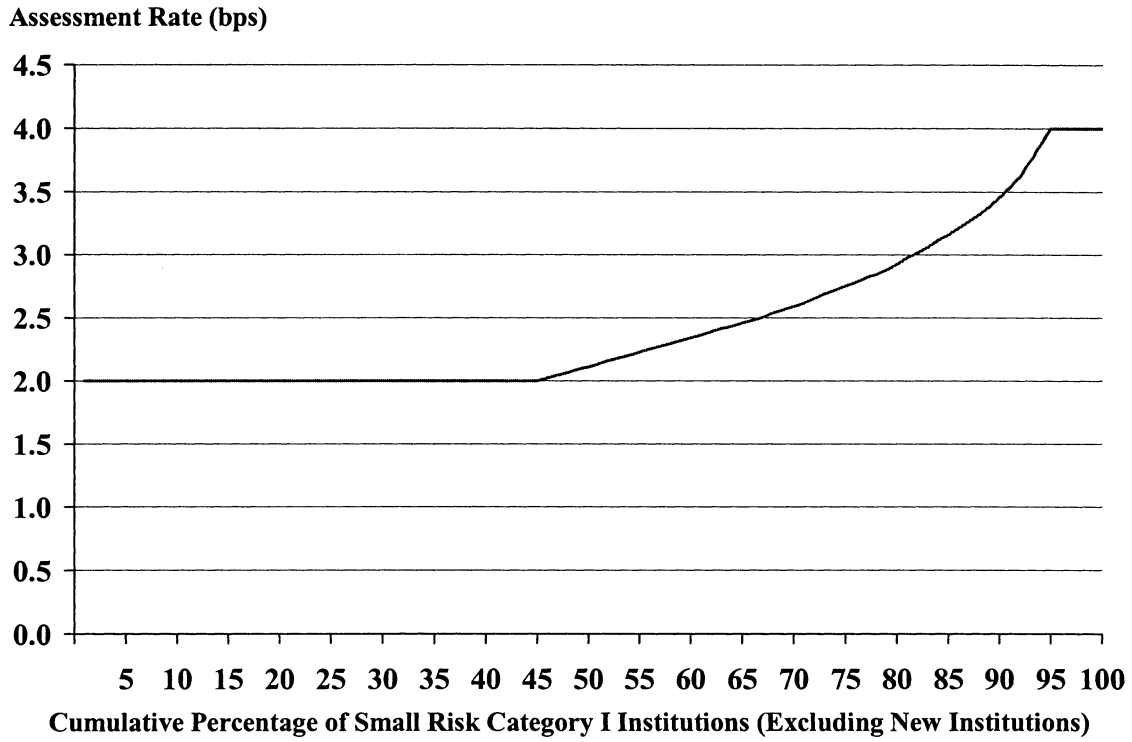
* Figures may not multiply or add to totals due to rounding.

The assessment rate for an institution in the table is calculated by multiplying the pricing multipliers (Column B) times the risk measure values (Column C, E or G) to derive each measure's contribution to the assessment rate. The sum of the products (Column D, F or H) plus the uniform amount (first item in Column D, F or H) yields the total assessment rate. For Institution 1 in the table, this sum actually equals 1.71, but the table reflects the assumed minimum assessment rate of 2 basis points. For Institution 3 in the table, the sum actually equals 4.41, but the table reflects the assumed maximum assessment rate of 4 basis points.

Chart 1 shows the cumulative distribution of assessment rates based on December 31, 2005 data, assuming that annual assessment rates for institutions in Risk Category I range from a minimum of 2 basis points to a maximum of 4 basis points. The chart excludes new institutions in Risk Category I.[27]

Chart 1

Cumulative Distribution of Assessment Rates Based on December 31, 2005 Data



A more detailed discussion of the analysis underlying this proposal is contained in Appendix 1.

For the final rule, the FDIC proposes to adopt updated cutoff values such that, based on data as of June 30, 2006: (1) 45 percent of smaller institutions (other than new institutions) in Risk Category I would have been charged the minimum assessment rate; and (2) 5 percent of smaller institutions (other than new institutions) in Risk Category I would have been charged the maximum assessment rate. These updated cutoff values could alter the

[27] As discussed elsewhere, the FDIC proposes charging new institutions in Risk Category I the maximum assessment rate for the category. Thus, when new institutions are included, the percentage of small insured institutions that are charged the minimum rate in Risk Category I is slightly under 40 percent and the percentage of institutions that are charged the maximum rate is slightly above 16 percent.

pricing multipliers and uniform amount. Using these same cutoff values in future periods could lead to different percentages of institutions being charged the minimum and maximum rates.

In addition, the FDIC proposes that it have the flexibility to update the pricing multipliers and the uniform amount annually, without notice-and-comment rulemaking. In particular, the FDIC intends to add data from each new year to its analysis and may, from time to time, drop some earlier years from its analysis. For example, some time during the next year the FDIC proposes to include data in the statistical analysis covering the period 1984 to 2005, rather than 1984 to 2004. Updating the pricing multipliers in this manner allows use of the most recent data, thereby improving the accuracy of the risk-differentiation method. Because the analysis will continue to use many earlier years' data as well, pricing multiplier changes from year to year should usually be relatively small.

On the other hand, as a result of the annual review and analysis, the FDIC may conclude that *additional* or *alternative* financial measures, ratios or other risk factors should be used to determine risk-based assessments or that a new method of differentiating for risk should be used. In any of these events, changes would be made through notice-and-comment rulemaking.

The FDIC proposes that the financial ratios for any given quarter be calculated from the report of condition filed by each institution as of the last day of the quarter.[28] In a separate notice of proposed rulemaking, the FDIC has proposed that, for deposit insurance assessment purposes, changes to an institution's supervisory rating be reflected when the change occurs.[29] Under this proposal, if an examination (or targeted examination) led to a change in an institution's CAMELS composite rating that would affect the institution's insurance risk category, the institution's risk category would change as of the date the examination or targeted examination began, if such a date existed.[30] If there were no examination start date, the institution's risk category would change as of the date the institution was notified of its rating change by its primary federal regulator (or state authority). Both cases assume that the FDIC, after taking into account other information that could affect the rating, agreed with the primary federal regulator's CAMELS rating.[31] The FDIC proposes that, for small institutions in Risk Category I, a similar rule apply for changes in CAMELS component ratings.[32]

2. Implications of the proposal

By combining both financial data and supervisory evaluations, this approach to risk differentiation provides a comprehensive and timely depiction of risk based on available data.[33] The pricing multipliers can be periodically updated to incorporate new financial and supervisory data. With the publication of pricing multipliers assigned to each risk measure, insured institutions could readily compute their deposit insurance assessments.

Tables 9 and 10 show the distribution of assessment rates by size (for institutions that have less than $10 billion in assets) and by CAMELS composite rating over the period 1997 to 2005, assuming the application of the proposal over this period and that annual assessment rates for institutions in Risk Category I ranged from a minimum of 2 basis points to a maximum of 4 basis points.[34] The tables show that this approach would not result in significant differences in assessment rates based on size and that most CAMELS composite 1-rated institutions would pay the minimum rate, while most composite 2-rated institutions would not.

TABLE 9.—DISTRIBUTION OF ASSESSMENT RATES BY SIZE, 1997–2005

	Asset size			
	<=$0.1B	$0.1–$0.5B	$0.5B–$1B	$1B–$10B
25th Percentile	2.0	2.0	2.0	2.0
Median	2.0	2.1	2.0	2.2
75th Percentile	2.8	2.7	2.6	2.8
95th Percentile	4.0	4.0	4.0	4.0

TABLE 10.—DISTRIBUTION OF ASSESSMENT RATES BY CAMELS COMPOSITE RATING, 1997–2005

	Composite CAMELS	
	1	2
25th Percentile	2.0	2.0
Median	2.0	2.5
75th Percentile	2.0	3.2
95th Percentile	3.0	4.0

[28] Reports of condition include Reports of Income and Condition and Thrift Financial Reports.

[29] 71 FR 28790, 28792 (May 18, 2006).

[30] Small institutions generally have an examination start date; very infrequently, however, a smaller bank's CAMELS rating can change without an examination, or there may be no examination start date.

[31] In the event of a disagreement, the FDIC would determine the date that the supervisory change occurred.

[32] An examination that begins before the proposed regulatory changes would be implemented (for example, before January 1, 2007) would be deemed to have begun on the first day of the first assessment period for which those changes are effective.

[33] As discussed in Appendix 1, historical data on costs from failures is consistent with the proposed method of risk differentiation.

[34] Although the pricing multiplier for the weighted average CAMELS component rating is derived from data that excluded the ''S'' component, the ''S'' component is included for purposes of determining the weighted average CAMELS component ratings used to produce these tables. Appendix 2 discusses the derivation of the data in Tables 9 and 10 in greater detail.

3. Possible Variations on the Proposal

Variations on the FDIC's proposal are also possible. *For example:*

- The ratio of net income before taxes to risk-weighted assets and the ratio of net loan charge-offs to gross assets could be excluded. While higher earnings are statistically associated with lower probabilities of downgrades, higher earnings also can be a sign of increased risk.[35] Using risk-weighted assets to adjust earnings, as proposed, may not sufficiently capture those higher earnings that reflect greater risk taking. A second possible reason to eliminate these two ratios is that they are determined using four quarters of data and require adjustments to reflect mergers. Eliminating them would leave only balance sheet ratios, which are easier to calculate.
- Time deposits greater than $100,000 could be excluded from the definition of volatile liabilities, as some have suggested that these deposits can have the same characteristics as core deposits.[36]
- Ratios might be averaged over some period to limit assessment rate changes.
- The weights assigned to each CAMELS component in determining the weighted average could be changed.
- A CAMELS composite rating could be used in place of a weighted average CAMELS component rating.[37]

Any changes in the financial ratios used or in the weighted average CAMELS component rating could result in changes to the pricing multipliers assigned to the risk measures actually used.[38] The FDIC seeks comment on whether any variation on its proposal would be preferable.

B. Alternative: Use Financial Ratios Alone To Differentiate for Risk

1. Description of the Alternative

An alternative to the FDIC's proposal would be to use financial ratios alone to determine a small Risk Category I institution's assessment rate. The pricing multiplier to be assigned to each financial ratio would again be determined by statistically analyzing the relationship between these ratios and the probability that an institution would be downgraded to CAMELS 3, 4 or 5 at its next examination.[39] Using financial ratios from the period 1984 to 2004 produced the following multipliers:[40]

Financial ratio *	Pricing multiplier * *
Tier 1 Leverage Ratio	(0.05)
Loans Past due 30–89 Days/Gross Assets	0.37
Nonperforming Loans/Gross Assets	0.74
Net Loan Charge-Offs/Gross Assets	0.88
Net Income before Taxes/Risk-Weighted Assets	(0.42)
Volatile Liabilities/Gross Assets	0.03

* Ratios are expressed as percentages.
* Multipliers are rounded to two significant decimal places.

Each ratio, as reported by an institution, would be multiplied by its pricing multiplier.[41] The sum of these products would again be added to or subtracted from a uniform amount (2.36 based on an analysis using financial ratios from the period 1984 to 2004) to determine an institution's assessment rate, subject to a minimum and maximum rate.[42]

To compute the values of the uniform amount and pricing multipliers shown above, the FDIC chose cutoff values for the predicted probabilities of downgrade such that, as of December 31, 2005: (1) 43 percent of smaller institutions (other than new institutions) in Risk Category I would have been charged the minimum assessment rate; and (2) 5 percent of smaller institutions (other than new institutions) in Risk Category I would have been charged the maximum assessment rate.[43] The pricing multipliers and uniform amount shown above assume that the maximum annual assessment rate for institutions in Risk Category I would be 2 basis points higher than the minimum rate, as the FDIC proposes below.[44, 45, 46]

If the alternative were adopted in a final rule, the FDIC would adopt updated cutoff values such that, based on data as of June 30, 2006: (1) 43 percent of smaller institutions (other than new institutions) in Risk Category I would have been charged the minimum assessment rate; and (2) 5 percent of smaller institutions (other

[35] If the ratio of net income before taxes to risk-weighted assets were not included as a risk measure, the ratio of liquid assets to gross assets might be added as a risk measure. This additional risk measure becomes statistically significant in explaining downgrades when the ratio of net income before taxes to risk-weighted assets is excluded, although its pricing multiplier would be small.

[36] However, time deposits greater than $100,000 are more likely than smaller deposits to be withdrawn as the financial condition of the institution deteriorates (either to be replaced by insured deposits or paid off with the proceeds from high-quality assets), thus increasing the risk exposure of the insurance fund. Removing time deposits greater than $100,000 from the definition of volatile liabilities would make volatile liabilities insignificant in explaining potential downgrades; therefore, volatile liabilities would no longer be used as a ratio.

[37] Doing so would mean that far fewer small Risk Category I CAMELS 2-rated institutions would pay the same assessment rates as (or lower assessment rates than) small Risk Category I CAMELS 1-rated institutions.

[38] New pricing multipliers for the risk measures under these variations would be determined in the same manner as the pricing multipliers in the proposal. (The derivation of pricing multipliers is described in Appendix 1.) The uniform amount to be added to the sum of the products of each institution's risk measures and pricing multipliers (used to determine the institution's assessment) could also change.

[39] The pricing multipliers for the ratios in the alternative would be determined in a manner similar to that used to derive the pricing multipliers in the proposal. The derivation of pricing multipliers is described in Appendix 1.

[40] These pricing multipliers differ from those in the proposal because excluding the weighted average CAMELS component rating changes the estimated relationships between financial ratios and the probability of downgrade.

[41] The financial ratios for any given quarter would be calculated from the report of condition filed by each institution as of the last day of the quarter.

[42] Appendix 1 provides the derivation of the pricing multipliers and the uniform amount to be added to compute an assessment rate. The rate derived would be an annual rate, but would be determined every quarter.

[43] The cutoff value for the minimum assessment rate would be a predicted probability of downgrade of 3 percent. The cutoff value for the maximum assessment rate would be 17 percent. The percentage of institutions that would have been charged the minimum assessment rate (43 percent) is slightly less than the percentage of institutions that would have been charged the minimum assessment rate under the proposal (45 percent) to ensure that the total assessment revenue collected under the proposal and under the alternative would be the same.

[44] The uniform amount also depends upon the actual level of the minimum assessment rate.

[45] Appendix 1 discusses the methodology underlying the proposed method and the alternative.

[46] As discussed elsewhere, the FDIC proposes charging new institutions in Risk Category I the maximum assessment rate for the category. Thus, when new institutions are included, the percentage of small insured institutions that are charged the minimum rate is about 38 percent and the percentage of institutions that are charged the maximum rate is slightly above 16 percent.

than new institutions) in Risk Category I would have been charged the maximum assessment rate. These updated cutoff values could alter the pricing multipliers and uniform amount. Using these same cutoff values in future years could lead to different percentages of institutions being charged the minimum and maximum rates.

Also, as under the proposal, the FDIC would propose to update the pricing multipliers assigned to the risk measures being used annually, without the necessity of notice-and-comment rulemaking. Again, however, if the FDIC's annual review and analysis conclude that additional or alternative financial measures, ratios or other risk measures should be used to determine risk-based assessments, changes would be made through notice-and-comment rulemaking.

2. Comparison With the Proposal

While this approach to risk differentiation would not include supervisory evaluations, it would otherwise provide a comprehensive and timely depiction of risk based on available data.[47] As under the proposal, pricing multipliers can be periodically updated to incorporate new financial data and with the publication of pricing multipliers assigned to each risk measure, insured institutions can readily compute their deposit insurance assessments.

Because this approach would also allow incremental pricing for Risk Category I institutions whose rates are between the minimum and maximum rates, small changes in an institution's financial ratios should produce only small changes in assessment rates.

Table 11 shows the percentage of institutions whose assessment rates would change by various amounts under the alternative method compared to the proposed method. The assessment rate for over 90 percent of institutions would change by one-quarter of a basis point or less.

TABLE 11.—COMPARISON OF ASSESSMENT RATES UNDER THE ALTERNATIVE AND THE PROPOSED METHOD USING YEAR-END 2005 DATA

	Higher under the alternative by			No Change	Lower under the alternative by		
	>0.5 bp	0.25–0.5 bp	0–0.25 bp		0–0.25 bp;	0.25–0.5 bp	>0.5 bp
Percent of Institutions ..	0.04	3.91	21.54	45.00	27.34	2.13	0.04

Tables 12 and 13 show the distribution of assessment rates by size and by CAMELS composite rating over the period 1997 to 2005, again assuming that annual assessment rates for institutions in Risk Category I ranged from a minimum of 2 basis points to a maximum of 4 basis points.[48] Table 12 shows that, like the proposal, using financial ratios alone to differentiate for risk and price would not result in significant differences in assessment rates based on size. Table 13 shows that, like the proposal, most CAMELS composite 1-rated institutions would pay the minimum rate, while most composite 2-rated institutions would not. However, there is a higher likelihood that a CAMELS composite 2-rated institution would pay less than a CAMELS composite 1-rated institution than under the proposal.

TABLE 12.—DISTRIBUTION OF ASSESSMENT RATES BY SIZE, 1997–2005

	Asset size			
	<=$0.1B	$0.1–$0.5B	$0.5B–$1B	$1B–$10B
25th Percentile	2.0	2.0	2.0	2.0
Median	2.1	2.1	2.1	2.2
75th Percentile	2.8	2.7	2.6	2.8
95th Percentile	4.0	4.0	4.0	4.0

TABLE 13.—DISTRIBUTION OF ASSESSMENT RATES BY CAMELS COMPOSITE RATING, 1997–2005

	CAMELS	
	1	2
25th Percentile	2.0	2.0
Median	2.0	2.5
75th Percentile	2.2	3.2
95th Percentile	3.2	4.0

3. Possible Variations

As with the FDIC's proposal, variations on the alternative method are also possible, such as excluding the ratio of net income before taxes to risk-weighted assets and the ratio of loan charge-offs to gross assets. Again, any changes in the financial ratios used could result in changes to the pricing multipliers to be used.[49]

[47] As discussed in Appendix 1, the accuracy of the proposed method and the alternative in predicting downgrades is very similar.

[48] Appendix 2 discusses the derivation of the data in Tables 12 and 13 in greater detail.

[49] New pricing multipliers for the risk measures under these variations would be determined in the same manner as the pricing multipliers in the alternative. (Derivation of pricing multipliers is described in Appendix 1.) The uniform amount and pricing multipliers (used to determine an institution's assessment) could also change.

To incorporate supervisory perspectives that are not captured by financial ratios, the alternative method could also be combined with CAMELS component ratings, but in a manner different from the proposal. Instead of combining a weighted average CAMELS component rating with financial ratios through a statistical analysis, part of the assessment rate could be determined using solely financial ratios, as in the alternative, and the remainder using the weighted average CAMELS component rating. For example, the FDIC could determine a rate using financial ratios only and a rate using the weighted-average CAMELS component rating only and average the two rates to determine the institution's actual assessment rate.[50] [51] This variation would more closely resemble the large Risk Category I institution risk differentiation method described in Section VI. If adopted, it would allow greater integration of the approaches.

Another variation could supplement the alternative by incorporating CAMELS component ratings in a more limited manner. For example, a small Risk Category I institution that had an ''M'' component rating of 3 or higher (or any CAMELS component of 3 or higher) might be charged the maximum assessment rate.

VI. Risk Differentiation Among Larger Institutions in Risk Category I

A. Proposal: Rely on Supervisory Ratings, Long-Term Debt Issuer Ratings, and for Some Institutions, Financial Ratios

1. The Large Institution Risk Differentiation Proposal

The FDIC proposes to differentiate risk among large institutions using a combination of supervisory ratings, long-term debt issuer ratings, financial ratios for some institutions, and additional risk information. This approach shares two elements in common with the small institution approach: CAMELS component ratings, and financial ratios. The additional elements in the large institution approach are the explicit use of debt rating information and the consideration of additional risk information that is typically available for larger institutions. The debt rating information element would be gradually phased in, and the financial ratio element would be gradually phased out, as an institution's assets increased from $10 billion to $30 billion.

The FDIC proposes to assign each large Risk Category I institution to one of six assessment rate subcategories. This assignment would be determined in two steps. In the first step, an insurance score would be derived. Cutoff insurance scores would initially be set for the minimum and maximum assessment rate subcategories so that similar proportions of the number of large and small institutions (excluding new institutions) are charged the minimum and maximum rates within Risk Category I. At the same time, cutoff insurance scores would be set for the four intermediate assessment rate subcategories. Thereafter, an institution's insurance score would determine its initial assessment rate subcategory assignment. In the second step, the FDIC would determine whether to adjust the initial assessment rating subcategory assignment based on considerations of additional information.

The FDIC proposes to derive an insurance score from a combination of supervisory and debt rating agency information, and an estimated probability of downgrade to a CAMELS composite 3, 4 or 5 as derived in the alternative method of risk differentiation for small Risk Category I institutions described in Section V(B)(1) (referred to hereafter as the financial ratio factor). The financial ratio factor would be gradually phased out as institution assets increased and would be fully phased out for institutions with $30 billion or more in assets. Correspondingly, information from debt rating agencies would increase in importance as institution size increased from $10 billion to $30 billion. For institutions with $30 billion or more in assets, the proposed insurance score would be derived solely from supervisory ratings and debt rating information.

The insurance scores would be used to assign institutions to an initial assessment rate subcategory. Although these initial subcategory assignments should in most cases provide a reasonable rank ordering of risk among large Risk Category I institutions, the FDIC would consider additional information to determine when adjustments to an institution's assessment rate subcategory are appropriate. Consideration of this additional information will allow the FDIC to develop more reasonable and consistent rank orderings of risk as indicated by institutions' Risk Category I assessment rate subcategory assignments. Any modification would be limited to changing an institution's initial assessment rate subcategory assignment to the next higher or lower assessment rate. The risk factors that would be considered to determine if assessment rate subcategory adjustments were necessary are detailed further below.

The proposed approach is consistent with best practices in the banking industry for rating and ranking large direct credit and counterparty credit risk exposures. These practices include considering all relevant risk information, using standardized risk assessment processes and methodologies, incorporating judgment, where necessary, and using quality controls to ensure consistency and reasonableness of the ratings and risk rankings.

International groups, such as the Bank for International Settlements' Basel Committee on Banking Supervision, support these standards as applied to rating systems for large exposures:

> Credit scoring models and other mechanical rating procedures generally use only a subset of available information. Although mechanical rating procedures may sometimes avoid some of the idiosyncratic errors made by rating systems in which judgment plays a large role, mechanical use of limited information also is a source of rating errors. Credit scoring models and other mechanical procedures are permissible as the primary or partial basis of rating assignments, and may play a role in the estimation of loss characteristics. Sufficient judgment and oversight is necessary to ensure that all relevant and material information, including that which is outside the scope of the model, is also taken into consideration, and that the model is used appropriately.[52]

The insurance score would be a weighted average of three elements: (1) A weighted average CAMELS component rating with a value between 1.0 and 3.0; (2) long-term debt issuer ratings converted to a numerical value between 1.0 and 3.0; and (3) for institutions with between $10 billion and $30 billion in assets, the financial ratio factor converted to a value between 1.0 and a 3.0. The result would be an insurance score with values ranging from 1.0 to 3.0. The weights applied to the supervisory rating element of the proposed approach would be constant across all size categories. For institutions with $10 billion to $30 billion in assets, the weights assigned to the long-term debt issuer rating and financial ratio factor would vary. Each

[50] To determine the half of the rate attributable to the weighted average CAMELS component rating, the FDIC would charge a portion of institutions a minimum rate and a portion a maximum rate. The FDIC would assess all other institutions at rates that increase as weighted-average CAMELS component ratings increase.

[51] To produce the same revenue as the proposal and the alternative described above, the percentage of institutions subject to the minimum and maximum rates would have to be adjusted.

[52] *International Convergence of Capital Measurement and Capital Standards,* June 2004, paragraph 417.

element of the proposed approach is discussed in detail below.

2. Supervisory Ratings

As noted in the small Risk Category I institution risk differentiation proposal, CAMELS component ratings provide both a more detailed description of risk and finer differentiations of risk than do composite ratings alone. For large Risk Category I institutions, the FDIC proposes to use these component ratings to derive a weighted average CAMELS component rating. This weighted average CAMELS component rating would be determined by multiplying the component rating value by an associated weight and summing the six products. The weights applied to individual CAMELS component ratings would be the same as under the small Risk Category I institution proposal:

CAMELS component	Weight (percent)
C	25
A	20
M	25
E	10
L	10
S	10

As noted above, these weights reflect the view of the FDIC regarding the relative importance of each CAMELS component for differentiating risk among Risk Category I institutions for insurance purposes.

The weights proposed above would be appropriate for most large Risk Category I institutions. However, alternative weights might be appropriate in certain instances. For example, one possible alternative would vary these weights depending upon an institution's primary business type. To illustrate, some institutions that are engaged in securities processing activities retain relatively little credit risk compared to other institutions. Risks in these institutions relate more to operational practices and controls. For these institutions, it might be appropriate to increase the weight for the ''M'' (Management) component (which includes operational risk considerations) relative to the ''A'' (Asset quality) component. The following table provides an example of CAMELS component weights that could be used for selected institution types.

Institution type *	C	A	M	E	L	S
Diversified Regional Institutions	25	20	25	10	10	10
Processing Institutions and Trust Companies	20	15	35	10	10	10
Residential Mortgage Lenders	20	20	25	10	10	15
Large Diversified Institutions	20	15	25	10	15	15
Non-diversified Regional Institutions	25	25	25	10	10	5

* Under this alternative, large institutions might be grouped into institution types using the institution type grouping definitions shown in Appendix 3 to this document. This grouping includes institutions with operating characteristics or lending concentrations indicative of processing institutions and trust companies, residential mortgage lenders, non-diversified regional institutions, large diversified institutions, or diversified regional institutions.

Another possible weighting approach would be for the FDIC to vary component weights based on the relative importance of each significant business activity in which an institution is engaged. In such a system, each institution's unique combination of business activities (such as securities processing, fiduciary activities, consumer lending, real estate lending, wholesale lending) could lead to unique CAMELS component rating weights for each institution. The FDIC is seeking comment whether alternative CAMELS component weights should be considered.

3. Debt Rating Agency Information

The proposed approach would be based upon the long-term debt issuer ratings of insured institutions assigned by major rating agencies.[53] Debt issuer ratings of insured institutions' holding companies would not be used. While there are minor differences in definitions among rating agencies, a long-term debt issuer rating generally represents an opinion of the ability of an institution to meet its long-term financial obligations without respect to the characteristics of a firm's underlying obligations (such as the covenants of the obligation or whether the obligation is collateralized or guaranteed). There are several advantages to using these long-term debt issuer ratings: (1) They differentiate risk among large insured institutions by assigning an institution to one of a number of risk classifications;[54] (2) they are available for all but a small number of large insured institutions;[55] and (3) they supplement supervisory ratings. Moreover, because long-term debt issuer ratings can be viewed as an opinion of the likelihood of default, they serve as a useful proxy for an institution's relative funding costs. There is an argument for aligning the risk rankings used for insurance pricing purposes with the relative prices institutions pay on their non-deposit funding sources.

To obtain a numerical representation of these ratings, the FDIC proposes to convert long-term debt issuer ratings to values between 1 and 3 in accordance with the conversion table shown in Appendix B. In this conversion table, the relative change in converted values increases for lower rating grades. This pattern is consistent with historical bond default studies that show non-linear increases in default risk for lower-graded debt issues.[56]

The proposed process for differentiating risk in large institutions would only use current agency long-term debt issuer ratings, those that have been confirmed or newly assigned within the last 12 months. When only one current long-term debt issuer rating exists, that rating would be converted directly into a debt issuer score in accordance with Appendix B. Where two or more current long-term debt issuer ratings exist, the numerical conversion would be calculated as the average of the converted value of each current long-term debt issuer rating.

4. The Financial Ratio Factor

The proposal would use the financial ratio factor as previously defined in cases where a large institution has assets of $10 billion to $30 billion.[57] Considering aspects of both the small

[53] The major U.S. rating agencies are Moody's, Standard & Poor's, and Fitch.

[54] Including rating modifiers, there are 10 potential issuer ratings possible in the rating agaencies; investment-grade rating scales.

[55] Most other market measures (equity indicators and most debt indicators) are not directly applicable to the insured entity because they are based on the equity and debt funding structure of the holding company.

[56] See, for example, Standard & Poor's Annual Global Corporate Default Study for 2005.

[57] The financial ratios used to derive the financial ratio factor are the tier 1 leverage ratio, loans past due 30–89 days to gross assets, nonperforming loans to gross assets, net loan charge-offs to gross assets, net income before taxes to risk-weighted assets, and volatility liabilities to gross assets.

and large institution risk differentiation approaches for institutions of this size reduces the potential for abrupt assessment rate changes when an institution grows above or shrinks below $10 billion in assets.

The following process would be used to convert the financial ratio factor into the same 1.0 to 3.0 scale as the other two insurance score elements: (1) Institutions with a financial ratio factor equal to or less than the minimum assessment rate cutoff value for small Risk Category I institutions under the alternative financial ratio-only risk differentiation approach would be assigned a value of 1.0; (2) institutions with a financial ratio factor equal to or greater than the maximum assessment rate cutoff value for small Risk Category I institutions under the alternative financial ratio-only risk differentiation approach would be assigned a value of 3.0; and (3) for all other institutions, the financial ratio factor would be converted by: (a) Calculating the difference between the institution's financial ratio factor and the minimum assessment rate cutoff value determined in (1) above; (b) dividing the result by the difference between the maximum and minimum assessment rate cutoff values determined in (1) and (2) above; (c) multiplying this ratio by the difference between the maximum and minimum insurance score values (*i.e.*, 3 minus 1); and (d) adding the minimum insurance score (*i.e.*, 1) to the result.[58]

As noted in the discussion of the alternative risk differentiation method for small Risk Category I institutions, the cutoff values applied in the process above will be updated based on data as of June 30, 2006 by finding the cutoff values that would charge: (1) 43 percent of smaller institutions (other than new institutions) in Risk Category I the minimum assessment rate; and (2) 5 percent of smaller institutions (other than new institutions) in Risk Category I the maximum assessment rate.

5. Weights Applied to the Large Risk Category I Insurance Score Elements

Weights would be applied to each of the above elements—the weighted average CAMELS component rating, long-term debt issuer ratings that have been converted to a numerical value, and the financial ratio factor—to derive an insurance score. The weight applied to the weighted average CAMELS component rating would be 50 percent for all size categories. The weight applied to long-term debt issuer ratings would be 50 percent for all institutions with $30 billion or more in assets. For institutions with $10 billion to $30 billion in assets, the weight applied to long-term debt issuer ratings would increase (and correspondingly, the weight applied to the financial ratio factor would decrease), as the institution's size increased.[59] Scaling the long-term debt issuer rating weights recognizes that, the larger the institution, the greater the relative importance of long-term debt issuer ratings to both its non-insured funding costs and its ability to engage in certain types of business, such as credit derivatives or other types of derivatives. While the financial ratio factor weight would decline as an institution assets increase, the financial ratios used to derive this factor could be among the considerations used to potentially adjust the ultimate risk assessment subcategory assignment as described further below. Table 14 shows the proposed weights for the various size categories of large Risk Category I institutions.

TABLE 14.—WEIGHTS UNDER THE PROPOSED APPROACH

Asset size category *	Weights applied to the:		
	Weighted average CAMELS component rating (percent)	Converted long-term debt issuer ratings (percent)	Financial ratio factor (percent)
>= $30 billion	50	50	0
>= $25 billion,< $30 billion	50	40	10
>= $20 billion,< $25 billion	50	30	20
>= $15 billion,< $20 billion	50	20	30
>= $10 billion, <$15 billion	50	10	40
No long-term debt issuer rating	50	0	50

* Applicable when a current (within last 12 months) long-term debt issuer rating is available for the insured institution. If no current rating is available, the last row of the table applies.

6. Insurance Score

After applying weights to the weighted average CAMELS component rating, the numerical representation of the long-term debt issuer rating, and financial ratio factor as converted to a 1.0 to 3.0 scale, the proposed approach would produce a number between 1.0 and 3.0. (Non-integer values are possible.) This number would serve as the basis for initially assigning an institution to an assessment rate subcategory for that assessment period. The relationship between this insurance score and the insurance assessment rate subcategories is described below.

7. Example of an Insurance Score Calculation

For illustrative purposes, consider an institution with the following characteristics:

- CAMELS component ratings as of the assessment date are ''222121.''
- The institution has a current long-term debt issuer rating of ''A – '' by both Standard and Poor's and Fitch and an ''A3'' rating by Moody's.
- The institution's assets as of the assessment date are $18 billion.

Given these circumstances, the institution's insurance score would be calculated as illustrated in Table 15.

[58] This conversion process is described in detail in Appendix B.

[59] For any large institution that did not have a long-term debt issuer rating, the weighted average CAMELS component rating and financial ratio factor would be weighted 50 percent each. Of the 117 institutions with over $10 billion in assets as of year-end 2005, 17 did not have any current long-term debt issuer ratings. Most of these 17 institutions are insured thrifts and all but two had less than $30 billion in year-end 2005 assets.

TABLE 15.—ILLUSTRATIVE INSURANCE SCORE CALCULATION

Insurance score elements	Ratings	Weights (percent)	Input value	Element weight (percent)	Score contribution
Supervisory Ratings:					
Capital Adequacy	2.0	25	0.50		
Asset Quality	2.0	20	0.40		
Management	2.0	25	0.50		
Earnings	1.0	10	0.10		
Liquidity	2.0	10	0.20		
Sensitivity to Market Risk	1.0	10	0.10		
Weighted average CAMELS			1.80	50	0.90
Market Information:					
Long-term debt issuer rating			1.50	20	0.30
Financial Ratio Factor:					
(Estimated probability of downgrade equals 8.36%)			1.77	30	0.53
Insurance Score					1.73

• The weighted average CAMELS component rating portion of the insurance score is calculated as follows: The CAMELS component ratings are as assigned through the supervisory process. Multiplying the component ratings by their associated weights produces values of 0.50, 0.40, 0.50, 0.10, 0.20, and 0.10, respectively. The sum of these values, the weighted average CAMELS component rating, equals 1.80. The overall weight applied to the weighted average CAMELS component rating is 50 percent. Multiplying the weighted average CAMELS component rating by 50 percent equals 0.90, which is the contribution of the supervisory rating element to the insurance score.

• The long-term debt issuer rating portion of the insurance score is calculated as follows: The average of three current long-term debt issuer ratings converted to numerical values according Appendix B is 1.50. With $18 billion in assets, the institution's long-term debt issuer rating weight is 20 percent, per Table 14. The product of its converted long-term debt issuer rating and weight is 0.30.

• The financial ratio factor of the insurance score is calculated as noted above: (a) The difference between the institution's estimated probability of downgrade of .0836 percent and the minimum assessment rate cutoff value of .03 percent equals .0536; (b) this result is divided by the difference between the maximum and minimum assessment rate cutoff values of .17 and .03 and equals .3829; (c) this ratio is multiplied by the difference between the maximum and minimum insurance score values of (3 minus 1) and equals .7657; and (d) this result is added to the minimum insurance score of 1 to obtain the converted value of 1.77 (rounded). The weight for the financial ratio factor, per Table 14, is 30 percent. The product of the converted financial ratio factor and its associated weight is 0.53 (rounded).

• The combined insurance score is calculated as follows: The sum of the individual elements—the weighted average CAMELS component rating, the long-term debt issuer ratings, and the financial ratio factor (0.90 + 0.30 + 0.53)—produces an insurance score of 1.73 (rounded). The relationship between the insurance score and an institution's assessment rate is described below.

B. Proposal: Use the Insurance Score, Along With Consideration of Other Relevant Risk Information, To Assign an Institution to an Assessment Rate Subcategory

1. Establishing Risk Category I Assessment Rate Subcategories for Large Institutions

As indicated earlier, the FDIC proposes using insurance scores to set cutoff scores for the minimum and maximum assessment rate subcategories. These cutoff scores would be set at levels that initially produce similar proportions of the number of large and small institutions (excluding new institutions) being charged the minimum and maximum rates within Risk Category I. The FDIC would set cutoff scores based on the distribution of insurance scores (for large institutions) and assessment rates (for small institutions) for the first quarter of 2007.[60] Using year-end 2005 information, the FDIC's best estimate is that a cutoff insurance score of 1.45 or lower would result in roughly 46 percent of large institutions (excluding new institutions) being charged the minimum assessment rate. Similarly, designating a cutoff score of greater than 2.05 would result in roughly 5 percent of large institutions (excluding new institutions) being charged the maximum assessment rate.

For large Risk Category I institutions whose insurance scores fall between the cutoff scores for the minimum and maximum assessment rates, the FDIC proposes to develop four additional assessment rate subcategories, bringing the total number of subcategories (including the minimum and maximum subcategories) to six. The cutoff score ranges for each of the four intermediate subcategories would be equal. Assuming cutoff scores for the minimum and maximum assessment rates of 1.45 and 2.05, respectively, cutoff scores for the intermediate subcategories would be 1.60, 1.75 and 1.90.

The FDIC proposes to set the base assessment rates for the four intermediate subcategories of Risk Category I (those being charged between the minimum and maximum base assessment rates) based on assessment rates applicable to small Risk Category I institutions (excluding insured branches of foreign banks and new institutions). To determine these rates, the FDIC would divide the institutions in small Risk Category I that are charged assessments between the minimum and maximum rates as of June 30, 2006 into four groups. Each of the four groups would contain the same proportion of institutions as the corresponding intermediate subcategory of large institutions as of June 30, 2006. Using year-end 2005 information as an estimate, the proportion of large institutions within these intermediate

[60] Thereafter, the proportions of large institutions that are charged the minimum and maximum assessment rates could differ from the proportions of small institutions that are charged the minimum and maximum assessment rates.

subcategories (in increasing assessment rate order) would be 38 percent, 30 percent, 18 percent, and 14 percent, respectively.

The FDIC would apply the average assessment rate from a small institution group to the corresponding large institution intermediate subcategory. Again using year-end 2005 information and assuming a minimum assessment rate of 2 basis points and a maximum assessment rate of 4 basis points, Table 16 provides an estimate of insurance score cutoff points and associated assessment rates for each subcategory.

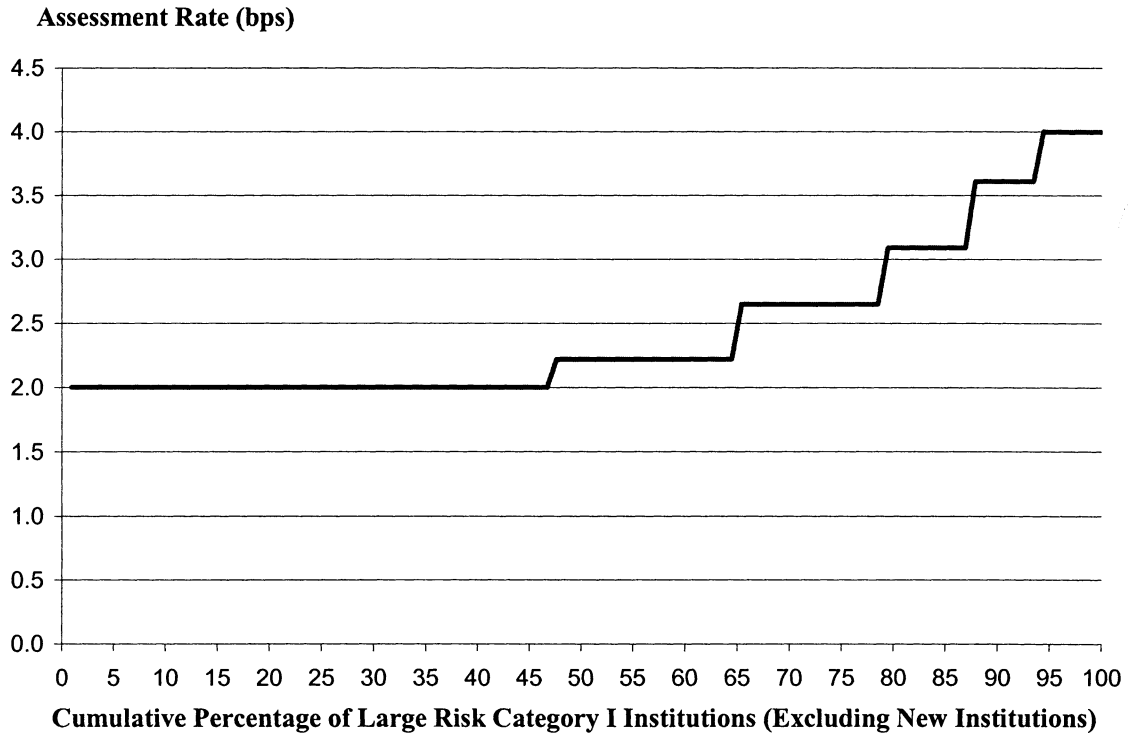
TABLE 16.—ASSESSMENT RATE EXAMPLE USING ASSESSMENT RATE SUBCATEGORIES

Insurance score	Assessment rate
<=1.45	2 basis points (bp) (minimum rate).
>1.45 but <=1.60	2.22 bp (average of the first 38 percent of small institution assessment rates in the incremental range).
>1.60 but <=1.75	2.65 bp (average of the next 30 percent of small institution assessment rates in the incremental range).
>1.75 but <=1.90	3.09 bp (average of the next 18 percent of small institution assessment rates in the incremental range).
>1.90 but <=2.05	3.61 bp (average of the next 14 percent of small institution assessment rates in the incremental range).
>2.05	4 bp (maximum rate).

Chart 2 illustrates an estimate of the cumulative distribution of assessment rates for large Risk Category I institutions as of year-end 2005 using the proposed subcategory approach assuming that annual assessment rates for these institutions range from 2 basis points to 4 basis points.

Chart 2

Estimated Cumulative Distribution of Large Institution Assessment Rates Using a Subcategory Pricing Approach Based on December 31, 2005 Information



The proposed subcategory approach has the advantage of allowing the use of a ''watch list'' whereby institutions could be notified in advance when changes in an insurance score input, or consideration of other risk information, would result in a change in the institution's assessment rate subcategory assignment. Such advance notice would allow an institution to take action to improve its risk profile, in the case of a potential lowering of a subcategory assignment, before its assessment rate increases. The FDIC seeks comment on the appropriateness of this possible ''watch list'' feature of the proposal.

2. Adjustments to an Institution's Initial Assessment Rate Subcategory Assignment

Consistent with best practices in the banking industry for rating and ranking large direct credit and counterparty credit risk exposures, the FDIC proposes to consider additional information and analyses to determine whether to adjust an institution's initial assessment rate subcategory assignment. Having the ability to make such adjustments, combined with quality controls to ensure the adjustments are justified and well supported, should promote greater consistency in subcategory assignments in terms of the relative levels of risk represented within each assessment rate subcategory. Any adjustment to an institution's initial assessment rate subcategory assignment (as determined by its insurance score) would be limited to the next higher or next lower assessment rate subcategory.

There are three broad categories of information that the FDIC proposes to consider in determining whether to make adjustments to an institution's initial assessment rate subcategory assignment. The types of information included in these categories, as well as the way the FDIC proposes to use this information, are discussed below. Appendix D contains a more detailed listing of the types of additional risk information that would be used to determine whether or not to adjust the initial assessment rate subcategory assignment as determined by an institution's insurance score.

Other Market Information: In addition to long-term debt issuer ratings, the FDIC proposes to consider other market information, such as subordinated debt prices, spreads observed on credit default swaps related to an institution's non-deposit obligations, equity price volatility observed on an institution's parent company stock, and debt rating agency ''watch list'' notices. These additional market indicators would be especially beneficial in assessing whether the insurance score accurately reflected the relative level of risk posed by an institution. For example, instances where an institution has been placed on a rating agency ''watch'' list with negative or positive implications, or instances when an institution's subordinated debt spreads are different from institutions with similar long-term debt issuer ratings, may provide evidence that the institution has more or less risk than other institutions in the same initial assessment rate subcategory.

Financial Performance and Condition Measures: Regulatory financial reports contain a significant amount of information about the performance trends and condition of insured institutions. Most large institutions also file periodic reports with the Securities and Exchange Commission, which contain additional details and disclosures concerning operations and performance trends. The FDIC proposes to use performance indicators from these reports (*e.g.*, capital levels, profitability measures, asset quality measures, liquidity and funding measures, interest rate risk measures, and market risk measures), as well as other financial performance and condition information and analyses developed by or obtained through the institution's primary federal regulator, to determine whether these measures were generally in line with or different from other institutions assigned to the same assessment rate subcategory.[61]

Stress Considerations: Under the proposal, the FDIC would also consider two additional kinds of information: how a large institution would perform when faced with adverse financial or economic conditions (ability to withstand stress), and the potential resolution costs implicit in the institution's business activities, asset composition, and funding structure (loss severity considerations). To evaluate an institution's ability to withstand stress, the FDIC would rely on information from internal stress-test models, information pertaining to the internal risk and performance characteristics of an institution's credit portfolios and other business lines, general balance sheet and financial performance measures, and other analyses developed by the institution that pertain to its projected performance during periods of economic or financial stress.

The following considerations illustrate how information pertaining to the ability to withstand stress would be evaluated: (1) To what extent does the institution identify stress conditions that it may be vulnerable to, given its credit exposures and banking activities? (2) does the institution consider reasonably plausible stress scenarios beyond those normally expected? (3) does the institution have the technical capability to measure its vulnerability to varying degrees of financial stress? (4) what level of protection is provided by the institution's current capital, earnings, and liquidity positions against varying degrees of unanticipated stress conditions? If, based on these considerations, an institution's capital, earnings, and liquidity positions can be shown to be sufficient to withstand a considerable degree of financial stress, it would be viewed as less risky than an institution that can be shown to have only an adequate level of protection against moderate levels of financial stress. Such evaluations would help determine if there were meaningful differences in an institution's ability to withstand financial stress relative to other institutions in that assessment rate subcategory.

In the case of the loss severity considerations, the FDIC proposes to evaluate the nature of an institution's primary business activities, the expected costs that these activities would impose on the FDIC in the event the institution failed, the marketability and potential value of the institution's assets, and the implications of an institution's funding structure and priority of claims on potential insurance fund losses in the event of a failure. To analyze these factors, the FDIC would rely on the institution's description of its business lines, general balance sheet and funding information, and other analyses developed by or in consultation with the institution's primary federal regulator. Again, the level of risk indicated by such analyses would be compared to those of other institutions in the same assessment rate subcategory.

3. Assessment Rating Assignment Evaluation and Review Processes

In conjunction with its evaluation of assessment rate subcategory assignments, the FDIC would establish a variety of controls to ensure consistent and well supported insurance pricing decisions. These controls would include the following:

- Adjustments to the assessment rate subcategory assignment would be fully supported and documented. The justification for the adjustment would be internally reviewed to ensure that the ultimate assessment rate subcategory assignment was consistent with the risk characteristics generally represented within that subcategory assignment.
- The overall distribution of large institution assessment rate subcategory assignments would be subject to an additional review that ensured the risk rankings suggested by these assignments were logical.
- The FDIC would consult with institutions' primary federal regulators before finalizing assessment rate subcategory assignments.

[61] The FDIC recognizes that institutions engaged in different types of banking activities may have different ranges of financial performance and condition measures. Therefore, any ''peer comparisons'' used to inform assessment rate subcategory adjustment decisions would involve institutions engaged in similar types of banking activities.

• As discussed above, if a ''watch list'' feature were included in the proposal, the FDIC would provide prior notice before changing an institution's assessment rate subcategory assignment.

4. Timing of Evaluations

As discussed earlier, in a separate notice of proposed rulemaking, the FDIC has proposed that, for deposit insurance purposes, changes to an institution's supervisory rating be reflected when the change occurs.[62] Under that proposal, if an examination (or targeted examination) led to a change in an institution's CAMELS composite rating that would affect the institution's insurance risk category, the institution's risk category would change as of the date the examination or targeted examination began, if such a date existed. Otherwise, it would change as of the date the institution was notified of its rating change by its primary federal regulator (or state authority).[63]

The FDIC proposes that this rule apply to a large institution when a supervisory rating change results in the institution being placed in a different Risk Category. However, if, during a quarter, a supervisory rating change occurs that results in an large institution moving from Risk Category I to Risk Category II, III or IV, the institution's assessment rate for the portion of the quarter that it was in Risk Category I would be based upon its insurance score for the prior quarter; no new insurance score would be developed for the quarter in which the institution moved to Risk Category II, III or IV.

When a large institution is moved to Risk Category I during a quarter as the result of a supervisory rating change, the FDIC proposes to assign an insurance score, associated subcategory (subject to adjustment as describe above) and assessment rate for the portion of the quarter that the institution was in Risk Category I as it would for other large institutions in Risk Category I, except that the assessment rate would only apply to the portion of the quarter that the institution was in Risk Category I.

When an institution remains in Risk Category I during a quarter, but a CAMELS component or a long-term debt issuer rating changes during the quarter that would affect its initial assignment to a subcategory, the FDIC proposes to assign separate insurance scores, associated subcategories (subject to adjustments as describe above) and associated assessment rates for the portion of the quarter before and after the change. A long-term debt issuer rating change would be effective as of the date the change was announced. If an examination (or targeted examination) led to the change in an institution's CAMELS component rating, the FDIC proposes that the change would be effective as of the date the examination or targeted examination began, if such a date existed. Otherwise, the change would be effective as of the date the institution was notified of its rating change by its primary federal regulator (or state authority).[64]

However, the FDIC is also considering a different rule for large institutions that remain in Risk Category I during a quarter, but whose CAMELS components or long-term debt issuer ratings change during the quarter. Because the FDIC will review each large institution at least quarterly for deposit insurance purposes, it will usually be aware of changes in an institution's risk profile before they are reflected in changed CAMELS component ratings or long-term debt issuer ratings. Thus, the FDIC is considering an alternate rule whereby, when a large institution remains in Risk Category I during a quarter, the FDIC would assign an insurance score, associated subcategory (subject to adjustment as describe above) and assessment rate for the entire quarter using the supervisory ratings and agency ratings in place as of the end of the quarter. However, the FDIC proposes to also take into account information received after the end of the quarter if the information reflects upon an institution's condition as of the end of the quarter.

VII. Definitions of Large and Small Institutions and Exceptions

A. Proposal: Determine Whether an Institution Is Large or Small Based Upon Its Assets

As discussed above, for risk differentiation purposes, the FDIC proposes to define a Risk Category I institution as small if it has less than $10 billion in assets and large if it has $10 billion or more in assets. The selection of the $10 billion asset size threshold stems from various considerations. First, institutions in this size category tend to have more information available relating to risk. Many of these institutions have developed and adopted sophisticated risk measurement models and systems. In addition, approximately 85 percent of institutions that have over $10 billion in assets have a long-term debt issuer rating by one of the three major U.S. rating agencies. Second, some types of complex activities engaged in by these larger institutions (*e.g.*, securitization, derivatives, and trading) can be better evaluated by considering risk measurement and management information that is not considered under the proposed and alternative methods for small institutions.

Initially, the FDIC proposes to determine whether an institution is small or large based upon its assets as of December 31, 2006. Thereafter, a small Risk Category I institution would be reclassified as a large institution when it reported assets of $10 billion or more for four consecutive quarters. This reclassification would become effective for subsequent quarters until it reported assets under $10 billion for four consecutive quarters. Similarly, a large Risk Category I institution would be reclassified as a small institution when it reported assets of less than $10 billion for four consecutive quarters. This reclassification would become effective for subsequent quarters until it reported assets over $10 billion for four consecutive quarters.

B. Proposal: Allow Some Small Institutions To Request Treatment as a Large Institution

In addition, the FDIC proposes that any Risk Category I institution that has between $5 billion and $10 billion in assets could request treatment under the large institution risk differentiation approach.[65] Granting such a request would depend on whether the FDIC determines that it has sufficient information to evaluate the institution's risk adequately using the large Risk Category I risk differentiation method. Once a request had been granted, an institution could again request treatment under a different approach after three years, subject to the FDIC's approval.[66] The element weightings for institutions with between $5 and $10 billion in assets that request and are granted permission to be treated under

[62] 71 FR 28790, 28792.

[63] In either case, the FDIC, after taking into account other information that could affect the rating, would have to agree with the rating change. Otherwise, for purposes of deposit insurance risk classification, the rating change would change as of the date that the FDIC determined that the change occurred.

[64] In either case, the FDIC, after taking into account other information that could affect the rating, would have to agree with the rating change. Otherwise, for purposes of deposit insurance risk classification, the rating change would change as of the date that the FDIC determined that the change occurred.

[65] As of year-end 2005, there were 74 insured institutions with between $5 and $10 billion in assets.

[66] If an institution whose request to ''opt-in'' were granted and its assets subsequently fell below the $5 billion threshold, the FDIC proposes that it would determine within one year whether to use the small or large institution risk differentiation approach.

the large institution risk differentiation approach would be the same as those shown in Table 14 for institutions with between $10 billion and $15 billion in assets.

C. Proposal: For Risk Differentiation and Pricing Purposes, Treat Small Affiliates of Larger Institutions Separately

In total, large institutions have approximately 200 affiliates that have less than $10 billion in assets. The FDIC has considered various options for these smaller affiliates of large Risk Category I institutions, including whether to consider the large affiliate's insurance assessment rate when assigning a rate to the smaller affiliate, given statutory cross-guarantees,[67] and whether to use the small or large institution approach to differentiate risk in these small affiliates.

For a number of reasons, the FDIC proposes to treat these small affiliates separately, without regard to the insurance assessment rate assigned to the larger affiliate, and to use the small institution methodology for purposes of differentiating risk. First, the risk profiles of these institutions may be very different than the risk profiles of their larger affiliates. Second, the value of a cross-guarantee in the future is uncertain because the financial condition of affiliated institutions may, under certain circumstances, weigh against the FDIC's invoking cross-guarantees. Finally, less information is generally available for these smaller affiliates and some information, such as market information, may not be relevant.

D. Proposal: Differentiate Risk in Insured Foreign Branches Using Weighted Supervisory Ratings

1. Overview

The FDIC proposes to use the supervisory ratings of insured branches of foreign banks (referred to hereafter as insured branches) in Risk Category I to determine their deposit insurance assessment rates.[68] These branches do not report the information needed to use the small institution pricing models.[69] Hence, the FDIC must rely primarily on supervisory information to determine the relative risk of insured branches of foreign banks. Similar to the large institution risk differentiation approach, the supervisory ratings of insured branches would be weighted to determine an insurance score. This insurance score would determine the insured branch's initial assessment rate subcategory assignment using the same minimum, maximum, and intermediate subcategory insurance score cutoff values detailed in the large institution differentiation proposal. Adjustments to these initial assessment rate subcategory assignments could be made based on consideration of additional risk information such as those shown in Appendix D (where applicable).

2. Current Treatment of Insured Branches

The International Banking Act of 1978 (the IBA)[70] amended the FDI Act and allowed U.S. branches of foreign banks to apply for deposit insurance. The Federal Deposit Insurance Corporation Improvement Act (FDICIA)[71] amended the IBA and prohibited retail deposit taking by U.S. branches of foreign banks. A foreign bank seeking to engage in retail deposit-taking activities in the U.S. is now required to establish an insured subsidiary bank. A grandfather provision in the IBA (as amended by FDICIA) permits insured branches in existence on the date of FDICIA's enactment to continue to accept insured deposits of less than $100,000.[72] Of the branches grandfathered in 1991, only 13 remained as of year-end 2005.

The existing risk-based deposit insurance assessment system assigns insured branches an assessment risk classification in a manner similar to that used for all other insured depository institutions. Like other insured depository institutions, each insured branch is assigned an assessment risk classification. However, unlike other insured depository institutions, whose assessment risk classification is based, in part, on risk-based capital ratios, an insured branch's Capital category is determined by its asset pledge and asset maintenance ratios prescribed by Part 347 of the FDIC's Rules and Regulations. Like other insured depository institutions, insured branches are grouped into an appropriate supervisory subgroup based on the FDIC's consideration of supervisory evaluations provided by the institution's primary federal regulator. These supervisory evaluations result in the assignment of supervisory ratings referred to as ROCA ratings.[73]

3. Proposed Treatment of Insured Branches of Foreign Banks

Insured branches that would fall in the revised Risk Category II through IV based on their asset pledge and asset maintenance ratios and supervisory ratings would be treated in the same manner as other insured institutions in these risk categories. For insured branches that fall within Risk Category I, the FDIC proposes an approach similar to that applied for large Risk Category I institutions.

As noted above, these insured branches (all of which currently have less than $10 billion in assets) do not report the information needed to use the proposed small Risk Category I institution risk differentiation and pricing method. Moreover, because insured branches operate as extensions of a foreign bank's global banking operations, they pose unique risks. These branches operate without capital of their own, as distinct from capital of their non-U.S. parent, their business strategies are typically directed by the foreign bank parent, they rely extensively on the foreign bank parent for liquidity and funding, and they often have considerable country and transfer risk exposures not typically found in other insured institutions of similar size. Insured branches also present potentially challenging concerns in the event of failure. Consequently, the FDIC proposes to use ROCA component ratings for purposes of differentiating risk among Risk Category I insured branches, combined with considerations of other relevant risk information.

The ROCA rating system for insured branches of foreign banks is analogous to the UFIRS used for commercial banks. Like the UFIRS, the ROCA components convey information about the supervisory assessments of an insured branch's condition in certain key risk areas. The ROCA rating system takes into consideration certain risk management, operational, compliance, and asset quality risk factors that are common to all branches.

The FDIC proposes to use ROCA component ratings as the basis for determining an insurance score for insured branches. This insurance score would be the weighted average of the ROCA component ratings. The weights applied to individual ROCA component ratings would be 35 percent, 25 percent, 25 percent, and 15 percent, respectively. These weights reflect the view of the FDIC regarding the relative importance

[67] 12 U.S.C. 1815(e).

[68] As of year-end 2005, there were 13 insured branches.

[69] For example, insured branches of foreign banks do not report earnings and report only limited balance sheet information in their regulatory financial submissions (FFIEC form 002).

[70] Public Law 95–369, 92 Stat. 607 (1978).

[71] Public Law 102–242, 105 Stat. 2236 (1991).

[72] 12 U.S.C. 3104.

[73] ROCA stands for Risk Management, Operational Controls, Compliance, and Asset Quality. Like CAMELS components, ROCA component ratings range from 1 (best rating) to a ''5'' rating (worst rating). Risk Category 1 insured branches of foreign banks would generally have a ROCA composite rating of 1 or 2 and component ratings ranging from 1 to 3.

of each ROCA component for differentiating risk among foreign branches in Risk Category I for insurance purposes.

The insurance score would determine the insured branch's initial assignment to one of six assessment rate subcategories, as these categories are defined in the large institution risk differentiation proposal. As noted in that section, the cutoff values for the minimum, maximum, and interim assessment rate subcategories will be determined based on the distribution of insurance scores (for large institutions) and assessment rates (for small institutions) for the first quarter of 2007. Similar to the large institution risk differentiation proposal, the FDIC would be allowed to adjust an insured branch's initial assessment rate subcategory assignment to the subcategory being charged the next higher or lower assessment rate after consideration of additional risk information. The types of additional information the FDIC would consider in making these determinations are shown in Appendix D (where applicable to an insured branch).

VIII. New Institutions in Risk Category I

The FDIC proposes to exclude an institution in Risk Category I that is less than seven years old from evaluation under either the smaller or larger institution method of risk differentiation. On average, new institutions have a higher failure rate than established institutions. Financial information for newer institutions also tends to be harder to interpret and less meaningful. A new institution undergoes rapid changes in the scale and scope of operations, often causing its financial ratios to be fairly volatile. In addition, a new institution's loan portfolio is often unseasoned, and therefore it is difficult to assess credit risk based solely on current financial ratios.[74]

The FDIC proposes charging all new institutions in Risk Category I the same rate, which would be the highest rate charged any other institution in this Risk Category. For this purpose, the FDIC proposes defining a new institution as one that is not an established institution. With two possible exceptions, an established institution would be one that has been chartered as a bank or thrift for at least seven years as of the last day of any quarter for which it is being assessed.

Where an established institution merges into a new institution, the resulting institution would continue to be new. Where an established institution consolidates with a new institution, the resulting institution would be new. However, under either of these circumstances, the FDIC proposes to allow the resulting institution to request that the FDIC determine that the institution is an established institution. The FDIC proposes to make this determination based upon the following factors:

1. Whether the acquired, established institution was larger than the acquiring, new institution, and, if so, how much larger;
2. Whether management of the acquired, established institution continued as management of the resulting institution;
3. Whether the business lines of the resulting institution were the same as the business lines of the acquired, established institution;
4. To what extent the assets and liabilities of the resulting institution were the assets and liabilities of the acquired, established institution; and
5. Any other factors bearing on whether the resulting institution remained substantially an established institution.

Where a new institution merges into an established institution or where an established institution acquires a substantial portion of a new institution's assets or liabilities, and the merger or acquisition agreement is entered into after the date that this notice of proposed rulemaking is adopted, the FDIC proposes to conduct a review to determine whether the resulting or acquiring institution remains an established institution. The FDIC proposes to use the factors described above (necessary changes having been made) to make this determination.

However, where a new institution merges into an established institution or where an established institution acquires a substantial portion of a new institution's assets or liabilities, and the merger or acquisition agreement was entered into before the date that this notice of proposed rulemaking is adopted, the FDIC proposes a grandfather rule under which the resulting or acquiring institution would be deemed to be an established institution.

IX. Assessment Rates Proposal: Adopt a Base Schedule of Rates From Which Actual Rates May Be Adjusted Depending Upon the Revenue Needs of the Fund

A. Statutory Factors

In setting assessment rates, the FDIC's Board of Directors is required by statute to consider the following factors:

(i) The estimated operating expenses of the Deposit Insurance Fund.

(ii) The estimated case resolution expenses and income of the Deposit Insurance Fund.

(iii) The projected effects of the payment of assessments on the capital and earnings of insured depository institutions.

(iv) The risk factors and other factors taken into account pursuant to [12 U.S.C Section 1817(b)(1)] under the risk-based assessment system, including the requirement under [12 U.S.C Section 1817(b)(1)(A)] to maintain a risk-based system.

(v) Any other factors the Board of Directors may determine to be appropriate.[75]

B. Description of the proposal

The FDIC proposes to adopt the following base schedule of rates:

[74] Empirical studies show that new institutions exhibit a ''life cycle'' pattern and it takes close to a decade after its establishment for a new institution to mature. Despite low profitability and rapid growth, institutions that are three years or newer have, on average, a very low probability of failure lower than established institutions, perhaps owing to large capital cushions and close supervisory attention. However, after three years, new institutions'' failure probability, on average, surpasses that of established institutions. New institutions typically grow more rapidly than established institutions and tend to engage in more high-risk lending activities funded by large deposits. Studies based on data from the 1980s showed that asset quality deteriorated rapidly for many new institutions as a result, and failure probability (conditional upon survival in prior years) reached a peak by the ninth year. Many financial ratios of new institutions generally begin to resemble those of established institutions by about the seventh or eighth year of their operation. See Chiwon Yom, ''Recently Chartered Banks'' Vulnerability to Real Estate Crisis,'' FDIC Banking Review 17 (2005): 115 and Robert DeYoung, ''For How Long Are Newly Chartered Banks Financially Fragile?'' Federal Reserve Bank of Chicago Working Paper Series 2000–09.

[75] Section 2104 of the Reform Act (to be codified at 12 U.S.C. 1817(b)(2)(B)). The risk factors referred to in factor (iv) include:

(i) The probability that the Deposit Insurance Fund will incur a loss with respect to the institution, taking into consideration the risks attributable to—

(I) Different categories and concentrations of assets;

(II) Different categories and concentrations of liabilities, both insured and uninsured, contingent and noncontingent; and

(III) Any other factors the Corporation determines are relevant to assessing such probability;

(ii) The likely amount of any such loss; and

(iii) The revenue needs of the Deposit Insurance Fund.

12 U.S.C. 1817(b)(1)(C).

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	2	4	7	25	40

* Rates for institutions that do not pay the minimum or maximum rate will vary between these rates.

All institutions in any one risk category, other than Risk Category I, would be charged the same assessment rate. For all institutions in Risk Category I (other than new institutions), the FDIC proposes base annual assessment rates between 2 and 4 basis points.

Under the present assessment system, the Board has adopted a base assessment schedule where it can uniformly adjust rates up to a maximum of five basis points higher or lower than the base rate schedule without the necessity of further notice-and-comment rulemaking, provided that any single adjustment cannot move rates more than five basis points.[76] The FDIC proposes to continue to allow the Board to adjust rates uniformly up to a maximum of five basis points higher or lower than the base rates without the necessity of further notice-and-comment rulemaking, provided that any single adjustment from one quarter to the next cannot move rates more than five basis points.[77]

Absent any action by the Board, the FDIC proposes that the base rates would be the actual rates once a final rule becomes effective.

As discussed earlier, the FDIC proposes charging all new institutions in Risk Category I, regardless of size, the maximum rate for that quarter.

C. Analysis of Statutory Factors

1. Estimated Operating Expenses, Case Resolution Expenses and Income and Insured Deposit Growth

The base schedule of rates, combined with the ability to adjust the rates up or down within prescribed limits, provides the Board with flexibility to set rates that the FDIC believes are likely under most circumstances to keep the reserve ratio between 1.15 percent, the lower bound of the range for the designated reserve ratio, and 1.35 percent, the reserve ratio at which the FDIC must generally begin paying dividends from the fund. However, if insured deposits continue to grow at a fast pace, as they have for the past several quarters, the reserve ratio is likely to fall from its level of 1.23 percent as of March 31, 2006, all else being equal.[78] Most institutions will also have one-time assessment credits that they can use to offset their assessments during 2007, which will reduce assessment income significantly compared to what would be collected if credits were not available.

Thus, absent a significant slowdown in insured deposit growth and depending on the Board's decision as to how long it is willing to tolerate lower reserve ratios, there is a possibility that the Board may adopt rates for 2007 that are higher than the base schedule.[79] For example, suppose that:

1. At the same time or shortly after the Board adopts the proposed base rate schedule, the Board also adopts an actual rate schedule for 2007 that sets rates uniformly 5 basis points above the base rate schedule without the need for notice-and-comment rulemaking.

2. As credits are drawn down, the Board reduces rates for 2008 and 2009 so that they are uniformly 2 basis points higher than the base rate schedule.

3. In 2010 and 2011, the Board reduces rates to the base rate schedule.

Table 17 illustrates how these rates could affect the insurance fund reserve ratio. The projections indicate that, as assessment credits are drawn down, these assessment rates would cause the reserve ratio to rise in 2008 and again in 2009 from a low point reached either in 2006 or 2007. Whether (and how high) the reserve ratio would continue to rise would depend upon the rate of insured deposit growth.

TABLE 17.—PROJECTED RESERVE RATIOS UNDER A HYPOTHETICAL ASSESSMENT RATE SCHEDULE *

Period	Rates	Insured deposit growth rate				
		4%	5%	6%	7%	8%
2007	Base Schedule + 5 bps	1.22	1.21	1.19	1.18	1.17
2008	Base Schedule + 2 bps	1.26	1.24	1.22	1.20	1.18
2009	Base Schedule + 2 bps	1.32	1.29	1.26	1.23	1.20
2010	Base Schedule	1.35	1.31	1.26	1.22	1.19
2011	Base Schedule	1.37	1.33	1.27	1.22	1.17

* Assumes modest insurance losses and flat operating expenses. The projected reserve ratio at year-end 2006 is 1.20 percent.

This example assumes that the Board adopts rates that do not require further notice-and-comment rulemaking. On the other hand, through additional notice-and-comment rulemaking, the Board could choose to adopt actual rates for 2007 where the lowest rate was higher than 7 basis points (on an annualized basis) or where rates were not uniformly adjusted from the base schedule. The Board may also change assessment rates during the course of 2007.

[76] In addition, no assessment rate may be negative. 12 CFR 327.9.

[77] And provided, again, that no assessment rate may be negative.

[78] Insured deposits rose almost 8.5 percent over the four quarters ending March 31, 2006.

[79] In a separate notice of proposed rulemaking, the FDIC has proposed assessing quarterly and in arrears. Under this proposal, the FDIC's Board would be required to set rates no later than 30 days before providing invoices and provide invoices no later than 15 days before assessments were due. Assessments would be due March 30, June 30, September 30 and December 30. Thus, the Board would have to set rates for the first quarter of 2007 by May 16, 2007. Of course, the Board would etain the flexibility to set rates earlier, for example, when it adopts a final rule later this year. 71 FR 28790, 28791. Rates, once set, would remain in effect until the FDIC's Board changed them, since one of the FDIC's primary goals in seeking deposit insurance reforms was to distribute assessments more evenly over time; that is, to keep assessment rates steady to the extent possible and to avoid sharp swings in assessment rates.

2. Effects on Capital and Earnings and Factors Under the Risk-Based Assessment System

Appendix 4 contains an analysis of the projected effects of the payment of assessments on the capital and earnings of insured depository institutions. In sum, the base schedule of rates or even a rate schedule that is uniformly 5 basis points higher than the base schedule is not expected to impair the capital or earnings of insured institutions materially.

The proposed base rate for Risk Category IV is substantially lower than the historical analysis discussed in Appendix 1 would suggest is needed to recover costs from failures. The lower rate is intended to decrease the chance of assessments being so large that they cause these institutions to fail.

X. Request for Comment

The FDIC seeks comment on every aspect of this proposed rulemaking. In particular, the FDIC seeks comment on:

• With respect to the general assessment framework:

1. Whether the existing 2B category, which has a five-year failure rate of 5.51 percent, should be:

a. Consolidated with the existing 1B and 2A categories, which have five-year failure rates of 2.67 percent and 2.03 percent, respectively, into new Risk Category II (as proposed);

b. Placed in its own separate new Risk Category; or

c. Placed into new Risk Category III, rather than Risk Category II; and

2. Whether the existing 3A category, which has a five-year failure rate of 2.3 percent, should be:

a. Consolidated with the existing 3B, 1C and 2C categories, which have five-year failure rates of 7.10 percent, 6.78 percent and 14.43 percent, respectively, into new Risk Category III (as proposed); or

b. Consolidated with the existing 1B, 2B and 2A categories, which have five-year failure rates of 2.67 percent, 5.51 percent and 2.03 percent, respectively, into new Risk Category II.

• With respect to risk differentiation among smaller institutions in Risk Category I:

3. Whether the FDIC's proposal or the alternative would be preferable or whether there are other approaches that would be more appropriate for differentiating risk among small Risk Category I institutions.

4. Whether any variation on its proposal or on the alternative would be preferable, such as:

a. Using a different statistical approach or model;

b. Excluding any of the proposed risk measures, in particular the ratio of net income before taxes to risk-weighted assets and the ratio of net loan charge-offs to gross assets;

c. Adding the ratio of liquid assets to gross assets as a risk measure if the ratio of net income before taxes to risk-weighted assets is excluded; [80]

d. Excluding time deposits greater than $100,000 from the definition of volatile liabilities, and, therefore, excluding volatile liabilities as a risk measure; [81]

e. Including Federal Home Loan Bank advances in the definition of volatile liabilities or, alternatively, charging higher assessment rates to institutions that have significant amounts of secured liabilities;

f. Averaging ratios over some period;

g. Changing the pricing multipliers proposed for the measures judgmentally;

h. Changing the weights proposed for the CAMELS component ratings used to calculate the weighted average CAMELS component rating, for example, weighting each component equally;

i. Using CAMELS composite ratings instead of weighted average CAMELS component ratings; and

j. Determining a portion of an institution's assessment rate using financial ratios and a portion using a weighted average CAMELS component rating, but combine financial ratios with CAMELS component ratings in a manner different from the proposal in order to have an approach that is more integrated with the large institution method.

5. Whether the FDIC should evaluate institutions with unusual business profiles or risk characteristics in a different manner, and, if so, which institutions should be so evaluated and on what basis.

6. Whether the FDIC should use additional relevant information to determine whether adjustments to assessment rates are appropriate.

• With respect to risk differentiation among large institutions and insured branches of foreign banks in Risk Category I:

7. Whether there are other approaches that would be more appropriate for differentiating risk among large Risk Category I institutions.

8. Whether the weights proposed for the CAMELS component ratings used to calculate the weighted average CAMELS are appropriate or whether alternative weights should be used, such as:

a. Weighting each CAMELS component equally;

b. Varying CAMELS component weightings by the primary business type of an institution;

c. Determining CAMELS component weightings for various business activities and then determining the relative importance of these activities within each institution (this process would result in potentially unique CAMELS weights for each large institution).

9. Whether it is appropriate to use long-term debt issuer ratings to differentiate risk among large Risk Category I institutions.

10. Whether the proposed numerical conversions of long-term debt issuer ratings are reasonable.

11. Whether using the estimated probability of downgrade to a CAMELS composite 3, 4 or 5 as derived in the alternative method of risk differentiation for small Risk Category I institutions is appropriate for institutions with between $10 billion and $30 billion in assets.

12. Whether other risk factors or risk measurement approaches should be considered in developing deposit insurance pricing alternatives.

13. Whether the proposed weights for the weighted average CAMELS component rating, long-term debt issuer ratings, and the financial ratio factor used to determine an insurance score are appropriate for all size categories or should be modified.

14. Whether the proposal to assign institutions initially to one of six assessment rate subcategories based on an insurance score, and use other relevant information to determine whether adjustments to these initial assignments are needed, is reasonable.

15. Whether an alternative to assessment rate subcategories is appropriate, such as tying assessment rates directly to the insurance score, and to what extent adjustments to the insurance score would be appropriate.

16. Whether the proposed number of six assessment rate subcategories (including minimum and maximum assessment rate subcategories) is appropriate, and if more or less subcategories are appropriate, to what extent should the FDIC have the ability to adjust assessment rate subcategory assignments (as determined by the insurance score) based on consideration of additional information.

[80] If the ratio of net income before taxes to risk-weighted assets were not included as a risk measure, the ratio of liquid assets to gross assets becomes significant in explaining downgrades, although its pricing multiplier would be small.

[81] As discussed above, removing time deposits greater than $100,000 from the definition of volatile liabilities would make volatile liabiliies insigniicant in explaining potential downgrades.

17. Whether the proposed approach for converting insurance scores to assessment rate subcategories is reasonable. Considerations include: the appropriateness of defining insurance score cutoff points for the minimum and maximum assessment rates to ensure that initially similar proportions of small and large institutions are charged the minimum and maximum assessment rates; and the appropriateness of using increments of the insurance score between the minimum and maximum assessment rate cutoff scores to determine cutoff points for the four intermediate assessment rate subcategories.

18. Whether it would be appropriate to implement a ''watch list'' feature to provide advanced notice to large Risk Category I institutions when there is a pending change in an institution's assessment rate subcategory assignment.

19. Whether the proposal to develop and assign separate assessment rates for Risk Category I institutions whose subcategory assignments change during a quarter is appropriate, or whether in these circumstances assessment rates for the entire quarter should be based on quarter-end supervisory and agency ratings.

• With respect to the definitions of small and large Risk Category I institutions:

20. Whether the proposed definition of a large institution as one with at least $10 billion in assets is appropriate.

21. Whether the FDIC's proposed method for determining whether an institution has changed its size class is appropriate.

22. Whether the proposal to use the small institution approach to differentiate risk for small institutions that are affiliates of large institutions, independently of the insurance score or assessment rate of the large affiliate, is appropriate.

23. Whether institutions with between $5 and $10 billion in assets should be allowed to request to be subject to the risk differentiation approach applied to large institutions.

24. Whether it is appropriate for the FDIC to determine when institutions under $10 billion should be treated under the large institution risk differentiation approach for Risk Category I institutions. Any such determination would be made infrequently and would entail considerations of the types of business activities engaged in by the institution, the materiality of these activities, and whether the financial ratios used in the small institution proposed risk differentiation approach are sufficient to accurately reflect the risk within these activities.

25. Whether the proposed approach for differentiating risk in insured branches of foreign banks is appropriate.

• With respect to the definitions of a new institution and an established institution:

26. Whether less than seven years old is the appropriate age to consider an institution new.

27. Whether, when an established institution merges into or consolidates with a new institution:

a. The resulting institution should be considered new;

b. The resulting institution should be allowed to request that the FDIC determine that it is established; and

c. The factors that the FDIC proposes to use to determine whether the resulting institution in such a merger or consolidation should be considered established are the appropriate factors.

28. Whether, when a new institution merges into an established institution or when an established institution acquires a substantial portion of a new institution's assets or liabilities, and:

a. The merger or acquisition agreement is entered into after the date that this notice of proposed rulemaking is adopted, the FDIC should conduct a review to determine whether the resulting or acquiring institution remains an established institution; and

b. The merger or acquisition agreement is entered into before the date that this notice of proposed rulemaking is adopted, the resulting or acquiring institution should be deemed to be an established institution.

• With respect to assessment rates:

29. Whether the FDIC should adopt a permanent base schedule of rates and, if so, whether the proposed rates are appropriate.

30. Whether the difference between the proposed minimum and maximum assessment rates for institutions in Risk Category I should be wider (e.g., 3 basis points) or narrower (e.g., 1 basis point) than proposed in the base schedule.

31. Whether the FDIC should retain the authority to make changes within prescribed limits to assessment rates, as proposed, without the necessity of additional notice-and-comment rulemaking.

32. Whether all new institutions in Risk Category I should be charged the maximum rate.

XI. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

• Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?

• Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

• Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?

• What else could the FDIC do to make the regulation easier to understand?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment. See 5 U.S.C. 603, 604, 605. Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of ''rule'' for purposes of the RFA. 5 U.S.C. 601. The proposed rule governs assessments and sets the rates imposed on insured depository institutions for deposit insurance. Consequently, no regulatory flexibility analysis is required.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the proposed rule.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency

Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations

For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Pub. L. 109–171, 120 Stat. 9–21, and Sec. 3, Pub. L. 109–173, 119 Stat. 3605.

2. Revise section 327.9 of subpart A to read as follows:

§ 327.9 Assessment risk categories and rate schedules; adjustments procedures.

(a) *Risk Categories.* Each insured depository institution shall be assigned to one of the following four Risk Categories based upon the institution's capital evaluation and supervisory evaluation as defined in this section.

(1) *Risk Category I.* All institutions in Supervisory Group A that are Well Capitalized;

(2) *Risk Category II.* All institutions in Supervisory Group A that are Adequately Capitalized, and all institutions in Supervisory Group B that are either Well Capitalized or Adequately Capitalized;

(3) *Risk Category III.* All institutions in Supervisory Groups A and B that are Undercapitalized, and all institutions in Supervisory Group C that are Well Capitalized or Adequately Capitalized; and

(4) *Risk Category IV.* All institutions in Supervisory Group C that are Undercapitalized.

(b) *Capital evaluations.* Institutions will receive one of the following three capital evaluations on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(1) *Well Capitalized.* (i) Except as provided in paragraph (b)(1)(ii) of this section, Well Capitalized institutions satisfy each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Well Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section.

(2) *Adequately Capitalized.* (i) Except as provided in paragraph (b)(2)(ii) of this section, Adequately Capitalized institutions do not satisfy the standards of Well Capitalized under this paragraph but satisfy each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Adequately Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section; and

(C) Does not meet the definition of a Well Capitalized insured branch of a foreign bank.

(3) *Undercapitalized.* This group consists of institutions that do not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (b)(1) and (b)(2) of this section.

(c) *Supervisory evaluations.* Each institution will be assigned to one of three Supervisory Groups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary federal regulator. The supervisory evaluations include the results of examination findings by the primary federal regulator, as well as other information that the primary federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, if appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the Deposit Insurance Fund. The three Supervisory Groups are:

(1) *Supervisory Group "A."* This Supervisory Group consists of financially sound institutions with only a few minor weaknesses;

(2) *Supervisory Group "B."* This Supervisory Group consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the Deposit Insurance Fund; and

(3) *Supervisory Group "C."* This Supervisory Group consists of institutions that pose a substantial probability of loss to the Deposit Insurance Fund unless effective corrective action is taken.

(d) *Base Assessment Schedule.* The base annual assessment rate for an insured depository institution shall be the rate prescribed in the following schedule:

TABLE 1 TO PARAGRAPH (D)

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	2	4	7	25	40

* Rates for institutions that do not pay the minimum or maximum rate will vary between these rates.

(1) *Risk Category I Base Schedule.* The base annual assessment rates for all institutions in Risk Category I shall range from 2 to 4 basis points.

(2) *Small Institutions.* An insured depository institution in Risk Category I with assets of less than $10 billion as of December 31, 2006 (other than an insured branch of a foreign bank or a new bank as defined in paragraph (d)(7) of this section) shall be classified as a small institution. Except as provided in paragraphs (4), (5) and (6) of this section, a small institution in Risk Category I shall have its assessment rate determined using the Small Institution Pricing Method described in paragraph (d)(2)(i) of this section.

(i) *Small Institution Pricing Method.* Each of six ratios and a weighted average of CAMELS component ratings will be multiplied by a corresponding pricing multiplier. The sum of these products will be added to a uniform amount. The resulting sum will equal an institution's assessment rate; provided, however, that no institution's assessment rate will be less than the minimum rate in effect for that quarter nor greater than the maximum rate in effect for that quarter. The six ratios are: (1) Tier 1 Leverage Ratio; (2) Loans past due 30–89 days/gross assets; (3) Nonperforming loans/gross assets; (4) Net loan charge-offs/gross assets; (5) Net income before taxes/risk-weighted assets; and (6) Volatile liabilities/gross assets. The ratios are defined in Table A.1 of Appendix A to this subpart. The weighted average of CAMELS component ratings is created by multiplying each component by the following percentages and adding the products: Capital adequacy—25%, Asset quality—20%, Management—25%, Earnings—10%, Liquidity—10%, and Sensitivity to market risk—10%. Appendix A to this subpart describes the derivation of the pricing multipliers and uniform amount and explains how they will be periodically updated.

(ii) *Publication of uniform amount and pricing multipliers.* The FDIC will publish notice annually in the **Federal Register** of the uniform amount and the pricing multipliers.

(iii) *Changes to supervisory ratings.* If, during a quarter, a supervisory rating change occurs that results in a small institution moving from Risk Category I to Risk Category II, III or IV, the institution's base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the small institution pricing method. For the portion of the quarter that the institution was not in Risk Category I, the institution's base assessment rate shall be determined under the base assessment schedule for the appropriate Risk Category. If, during a quarter, a supervisory rating change occurs that results in a small institution moving from Risk Category II, III or IV to Risk Category I, the institution's base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the small institution pricing method. For the portion of the quarter that the institution was not in Risk Category I, the institution's base assessment rate shall be determined under the base assessment schedule for the appropriate Risk Category. Subject to paragraph (d)(2)(iv) of this section, if, during a quarter, an institution's CAMELS component ratings change in such a way that it would change the assessment rate, the assessment rate for the period before that change shall be determined under the small institution pricing method using the CAMELS component ratings in effect during that period. Beginning on the date of the CAMELS component ratings change, the assessment rate for the remainder of the quarter shall be determined under the small institution pricing method using the CAMELS component ratings in effect after the change.

(iv) *Effective date for changes to CAMELS component ratings.* Any change to a CAMELS component rating that results in a change to the institution's base assessment rate shall take effect as follows.

(A) If an examination (or targeted examination) leads to the change in an institution's CAMELS component rating, the change will be effective as of the date the examination or targeted examination begins, if such a date exists.

(B) If an examination (or targeted examination) leads to the change in CAMELS component rating and no examination (or targeted examination) start date exists, the change will be effective as of the date the change to the institution's CAMELS component rating is transmitted to the institution.

(C) Otherwise, the change will be effective as of the date that the FDIC determines that the change to the institution's CAMELS component rating occurred.

(3) *Large Institution Pricing Method.* An insured depository institution with assets of $10 billion or more as of December 31, 2006 (other than an insured branch of a foreign bank or a new bank as defined in paragraph (d)(7) of this section) shall be classified as a large institution. Large insured depository institutions in Risk Category I (subject to paragraph (d)(3) through (d)(6) of this section) and insured branches of foreign banks in Risk Category I regardless of asset size shall have their assessment rates determined using the FDIC's Large Institution Pricing Method. Except for insured branches of foreign banks, an institution's assessment rate shall be determined by its insurance score, as defined in paragraph (d)(3)(i) or (ii) of this section based on the size of the institution, subject to rate adjustment under paragraph (d)(3)(ix) of this section. The assessment rate applicable to an insured branch of a foreign bank shall be determined by its insurance score as defined in paragraph (d)(3)(iii) of this section.

(i) *Insurance score for institutions with at least $10 billion and less than $30 billion in assets.* For institutions that have assets of at least $10 billion and less than $30 billion and that are not insured branches of foreign banks, the insurance score shall be a weighted average, based on the weights specified in paragraph (d)(3)(vii) of this section, of a weighted average CAMELS component rating, as determined under paragraph (d)(3)(iv) of this section, a long-term debt issuer rating converted to a numerical value, determined pursuant to paragraph (d)(3)(v) of this section, and the institution's financial ratio factor converted to a numerical value, determined pursuant to paragraph (d)(3)(vi) of this section.

(ii) *Insurance score for institutions with at least $30 billion in assets.* For institutions that have assets of at least $30 billion and that are not insured branches of foreign banks, the insurance score shall be a weighted average, based on the weights specified in paragraph (d)(3)(vii) of this section, of a weighted average CAMELS component rating, as determined under paragraph (d)(3)(iv) of this section, and a long-term debt issuer rating converted to a numerical value, determined pursuant to paragraph (d)(3)(iv) of this section.

(iii) *Insurance score for insured branches of foreign banks.* For insured branches of foreign banks, the insurance score shall be the weighted average ROCA component rating, as determined under paragraph (d)(3)(iv) of this section.

(iv) *Weighted average CAMELS component rating.* For institutions that are not insured branches of foreign banks, a weighted average CAMELS component rating shall be determined. The weighted average CAMELS component rating shall equal the sum of the products that result from multiplying CAMELS component ratings by the following percentages: Capital adequacy—25%, Asset quality—20%, Management—25%, Earnings—

10%, Liquidity—10%, and Sensitivity to market risk—10%. For insured branches of foreign banks, an institution's ROCA components shall be used in place of CAMELS components. The weighted average ROCA component rating shall equal the sum of the products that result from multiplying ROCA component ratings by the following percentages: Risk Management—35%, Operational Controls—25%, Compliance—25%, and Asset Quality—15%.

(v) *Long-term debt issuer rating converted to a numerical value.* Agency long-term debt issuer ratings shall be converted into numerical values between 1 and 3. The ratings must have been confirmed or newly assigned within 12 months before the end of the quarter for which an assessment rate is being determined. If no ratings for an institution have been confirmed or assigned within that 12-month period, that institution will be treated as if it had no long-term debt issuer rating. The table for converting long-term debt issuer ratings to values between 1 and 3 is shown in Appendix B to this subpart.

(vi) *Financial Ratio Factor for Certain Large Institutions.* The financial ratio factor means the sum of six ratios that have each been multiplied by a coefficient, and a constant amount, converted to a value between 1 and 3. The six ratios are: Tier 1 Leverage Ratio; Loans past due 30–89 days/gross assets; Nonperforming loans/gross assets; Net loan charge-offs/gross assets; Net income before taxes/risk-weighted assets; and Volatile liabilities/gross assets. The ratios are defined in Table C.1 of Appendix C to this subpart. Appendix C to this subpart describes the derivation of the coefficients and the constant amount, explains how they will be periodically updated and provides a formula for converting the financial ratio factor to a value between 1 and 3. The FDIC will publish notice annually in the **Federal Register** of the coefficients and constant amount.

(vii) *Weights.* (A) For large institutions that have assets of less than $30 billion as of the end of a quarter, the following weights will be applied to the weighted average CAMELS component rating, the long-term debt issuer ratings converted to a numerical value, and the financial ratio factor converted to a numerical value to derive the insurance score under paragraph (d)(3)(i) of this section:

TABLE 1 TO PARAGRAPH (d)(3)(vii)

Asset size category*	Weights applied to the:		
	Weighted average CAMELS component rating (percent)	Converted long-term debt issuer ratings (percent)	Financial ratio factor (percent)
> = $25 billion, < $30 billion	50	40	10
> = $20 billion, < $25 billion	50	30	20
> = $15 billion, < $20 billion	50	20	30
<$15 billion	50	10	40
No long-term debt issuer rating	50	0	50

*Applicable when a current (within last 12 months) long-term debt issuer rating is available for the insured institution. If no current rating is available, the last row of the table applies.

(B) For institutions that have assets of at least $30 billion in assets as of the end of a quarter, that are not insured branches of foreign banks, the following weights will be applied to the weighted average CAMELS component rating and the long-term debt issuer ratings converted to a numerical value to derive the insurance score under paragraph (d)(3)(ii) of this section.

TABLE 2 TO PARAGRAPH (d)(3)(vii)

Asset size category*	Weights applied to the:		
	Weighted average CAMELS component rating (percent)	Converted long-term debt issuer ratings (percent)	Financial ratio factor (percent)
> = $30 billion	50	50	0
No long-term debt issuer rating	50	0	50

*Applicable when a current (within last 12 months) long-term debt issuer rating is available for the insured institution. If no current rating is available, the last row of the table applies.

(viii) *Conversion to Assessment Rate Subcategory.* Risk Category I for large institutions is subdivided into six assessment rate subcategories. The FDIC will determine a cutoff insurance score (the minimum cutoff score) such that, if an institution has that score or a lower score, it will initially be assigned to the subcategory being assessed at the minimum rate. Similarly, the FDIC will determine a cutoff insurance score (the maximum cutoff score) such that, if an institution has a score higher than the maximum cutoff score, it will initially be assigned to the subcategory being assessed at the maximum rate. These cutoff scores will be determined such that, for the first quarter of 2007, excluding new institutions, as defined in paragraph (d)(7) of this section, approximately the same proportion of the number of large institutions in Risk Category I will initially be assigned to the subcategory being assessed at the minimum rate as the proportion of the number of small institutions being charged the minimum rates within Risk

Category I (as determined pursuant to Appendix A to this subpart) and approximately the same proportion of the number of large institutions in Risk Category I will initially be assigned to the subcategory being assessed at the maximum rate as the proportion of the number of small institutions being charged the maximum rate within Risk Category I (as determined pursuant to Appendix A to this subpart). The insurance score ranges for each of the four intermediate subcategories (designated 1, 2, 3 and 4, for each subcategory with successively higher insurance scores) shall be equal.

(ix) *Adjustments to initial assignment of assessment risk subcategory.* In determining the assessment risk subcategory of a large institution or an insured branch of a foreign bank, the FDIC may consider other relevant information in addition to the factors used to derive the insurance score under paragraph (d)(3)(i) through (iii) of this section. Relevant information includes other market information, financial performance and condition information, and stress considerations, as described in Appendix D to this subpart. The FDIC may adjust an institution's initial assignment to an assessment risk subcategory based on its insurance score to the subcategory with the next lower or higher assessment rate, based on a determination that the information used to derive the insurance score combined with the additional information considered under this paragraph (d)(3)(ix) of this section demonstrate that the institution's overall risk profile differs from other institutions initially assigned to the same assessment rate subcategory.

(x) *Base Schedule of Rates for intermediate Risk Category I subcategories.* Base assessment rates for each of the four intermediate subcategories of Risk Category I shall be determined using data as of June 30, 2006, in the following manner.

(A) The number of large institutions (excluding new institutions and insured branches of foreign banks) in each of the four intermediate subcategories labeled 1, 2, 3 and 4 will be divided by the total number of all large institutions (excluding new institutions and insured branches of foreign banks) in the four intermediate subcategories to produce individual percentages to correspond to each subcategory.

(B) Small institutions in Risk Category I (excluding new institutions and insured branches of foreign banks) that are charged base assessment rates between the minimum and maximum base assessments rates will be grouped into four groups. Each group will contain institutions being charged increasingly higher base assessment rates and will be numbered 1, 2, 3 and 4. Each group will contain a percentage of small institutions in Risk Category I (excluding new institutions and insured branches of foreign banks) of those charged between the minimum and maximum assessment rates equal to the corresponding percentage from the intermediate subcategory, as determined in paragraph (3)(x)(A) of this section.

(C) The base assessment rate applicable to each intermediate subcategory of large Risk Category I institutions under paragraph (d)(3)(viii) of this section will equal the average base assessment rate applicable to the corresponding group of small Risk Category I institutions defined in paragraph (d)(3)(x)(B) of this section.

(xi) *Implementation of Supervisory Rating Change.* If, during a quarter, a supervisory rating change occurs that results in a large institution or an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall be based upon its subcategory for the prior quarter; no new insurance score will be developed for the quarter in which the institution moved to Risk Category II, III or IV. If, during a quarter, a supervisory rating change occurs that results in a large institution or an insured branch of a foreign bank moving from Risk Category II, III or IV to Risk Category I, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall equal the rate applicable to its subcategory as determined under paragraph (d)(3) of this section. If, during a quarter, a large institution remains in Risk Category I, but a CAMELS component or a long-term debt issuer rating changes that would affect the institution's initial assignment to a subcategory, separate assessment rates for the portion of the quarter before and after the change shall be determined under paragraph (d)(3) of this section. A long-term debt issuer rating change will be effective as of the date the change was announced.

(xii) *Effective date for changes to CAMELS component ratings.* Any change to a CAMELS component rating that results in a change to the institution's assessment rate shall take effect:

(A) If an examination (or targeted examination) leads to the change in an institution's CAMELS component rating, the change will be effective as of the date the examination or targeted examination begins, if such a date exists.

(B) If an examination (or targeted examination) leads to the change in CAMELS component rating and no examination (or targeted examination) start date exists, the change will be effective as of the date the change to the institution's CAMELS component rating is transmitted to the institution.

(C) Otherwise, the change will be effective as of the date that the FDIC determines that the change to the institution's CAMELS component rating occurred.

(xiii) *Review.* All assignments to assessment rate subcategories will be subject to review under § 327.4(c) of this part.

(4) *Changes in Institution Size.* If, after December 31, 2006, a Risk Category I institution classified as small under this section reports assets of $10 billion or more in its reports of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning the following quarter. If, after December 31, 2006, a Risk Category I institution classified as large under this section reports assets of less than $10 billion in its reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter.

(5) *Request for Large Institution Treatment.* Any institution in Risk Category I with assets of between $5 billion and $10 billion may request that the FDIC determine its assessment using the FDIC's Large Institution Pricing Method. The FDIC will approve such a request only if it determines that a sufficient amount of risk information from supervisory, market, and financial reporting sources exists to adequately evaluate the institution's risk using the requested method. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than $5 billion in its report of condition, the FDIC will determine within one year of the date of the report whether to use the small or large institution pricing method based upon the criteria in this paragraph of this section.

(6) *Time Limit on Request for Large Institution Treatment.* An institution whose request for Large Institution Treatment is granted by the FDIC shall not be eligible to request a different method for determining its assessment for a period of three years from the first quarter in which its approved request becomes effective.

(7) *New and Established Institutions.* (i) A new institution is a bank or thrift

that has not been chartered for at least seven years as of the last day of any quarter for which it is being assessed. All new institutions shall be assessed the Risk Category I maximum rate for that quarter.

(ii) An established institution is a bank or thrift that has been chartered for at least seven years as of the last day of any quarter for which it is being assessed.

(iii) When an established institution merges into or consolidates with a new institution, the resulting institution is a new institution. The FDIC may determine, upon request by the resulting institution to the Director of the Division of Insurance and Research, that the institution should be treated as an established institution for deposit insurance assessment purposes, based on analysis of the following:

(A) Whether the acquired, established institution was larger than the acquiring, new institution, and, if so, how much larger;

(B) Whether management of the acquired, established institution continued as management of the resulting institution;

(C) Whether the business lines of the resulting institution were the same as the business lines of the acquired, established institution;

(D) To what extent the assets and liabilities of the resulting institution were the assets and liabilities of the acquired, established institution; and

(E) Any other factors the FDIC considers relevant in determining whether the resulting institution remains substantially an established institution.

(iv) If a new institution merges into an established institution or an established institution acquires a substantial portion of a new institution's assets or liabilities, and the merger or acquisition agreement is entered into after the effective date of this rule, the FDIC will conduct the analysis set out in paragraph (d)(7)(iii) of this section to determine whether the resulting or acquiring institution remains an established institution.

(v) If a new institution merges into an established institution or an established institution acquires a substantial portion of a new institution's assets or liabilities, and the merger or acquisition agreement was entered into before the effective date of this rule, the resulting or acquiring institution shall be deemed to be an established institution for purposes of this section.

(vi) A new institution that has $10 billion or more in assets as of the end of the quarter prior to the quarter in which it becomes an established institution shall be considered a large institution for the quarter in which it becomes an established institution and thereafter, provided that it remains in Risk Category I and subject to paragraphs (d)(4) through (6) of this section. A new institution that has less than $10 billion in assets as of the end of the quarter prior to the quarter in which it becomes an established institution shall be considered a small institution for the quarter in which it becomes an established institution and thereafter, provided that it remains in Risk Category I and subject to paragraphs (d)(4) through (6) of this section.

(8) *Assessment rates for Bridge Banks and Conservatorships.* Institutions that are bridge banks under 12 U.S.C. 1821(n) and institutions for which the Corporation has been appointed or serves as conservator shall, in all cases, be assessed at the Risk Category I minimum rate.

(e) *Rate adjustments and procedures*—(1) *Adjustments.* The Board may increase or decrease the assessment schedules of this section up to a maximum increase of 5 basis points or a fraction thereof or a maximum decrease of 5 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary. Any such adjustment shall apply uniformly to each rate in the base assessment schedule. In no case may such adjustments result in an assessment rate that is mathematically less than zero or in a rate schedule that, at any time, is more than 5 basis points above or below the base assessment schedule for the Deposit Insurance Fund, nor may any one such adjustment constitute an increase or decrease of more than 5 basis points.

(2) *Amount of revenue.* In setting assessment rates, the Board shall take into consideration the following:

(i) Estimated operating expenses of the Deposit Insurance Fund;

(ii) Case resolution expenditures and income of the Deposit Insurance Fund;

(iii) The projected effects of assessments on the capital and earnings of the institutions paying assessments to the Deposit Insurance Fund;

(iv) The risk factors and other factors taken into account pursuant to 12 U.S.C. 1817(b)(1); and

(v) Any other factors the Board may deem appropriate.

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph will be adopted by rulemaking. Nevertheless, because the Corporation may set assessment rates as necessary to manage the reserve ratio, and because the Corporation must do so in the face of constantly changing conditions, and because the purpose of the adjustment procedure is to permit the Corporation to act expeditiously and frequently to manage the reserve ratio in an environment of constant change, but within set parameters not exceeding 5 basis points, without the delays associated with full notice-and-comment rulemaking, the Corporation has determined that it is ordinarily impracticable, unnecessary and not in the public interest to follow the procedure for notice and public comment in such a rulemaking, and that accordingly notice and public procedure thereon are not required as provided in 5 U.S.C. 553(b). For the same reasons, the Corporation has determined that the requirement of a 30-day delayed effective date is not required under 5 U.S.C. 553(d). Any adjustment adopted by the Board pursuant to a rulemaking specified in this paragraph will be reflected in an adjusted assessment schedule set forth in paragraph (d) of this section, as appropriate.

(4) *Announcement.* The Board shall announce the assessment schedule and the amount and basis for any adjustment thereto not later than 30 days before the quarterly certified statement invoice date specified in § 327.3(b) of this part for the first assessment period for which the adjustment shall be effective.

§ 327.10 [Removed]

3. Remove § 327.10 of Subpart A.

4. Add Appendices A through D to subpart A to read as follows:

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Appendix A to Subpart A
Small Institution Pricing Method

I. Introduction

Part 327.9(b)(i) provides that the assessment rate in a given quarter for a small institution in Risk Category I will be calculated under the Small Institution Pricing Method as follows: Each of six financial ratios and a weighted average of CAMELS component ratings will be multiplied by a corresponding pricing multiplier. The sum of these products will be added to a uniform amount. The resulting sum will equal an institution's assessment rate; provided, however, that no institution's assessment rate will be less than the minimum rate in effect for that quarter nor greater than the maximum rate in effect for that quarter. The uniform amounts and pricing multipliers will be updated annually.

The uniform amount and pricing multipliers are derived from:

- A model (the small institution model) that estimates the probability that a small Risk Category I institution will be downgraded to a composite CAMELS rating of 3 or worse within one year;
- Minimum and maximum downgrade probability cutoff values that will determine which institutions will be charged the minimum and maximum assessment rates in Risk Category I;
- The minimum assessment rate in effect for Risk Category I for the quarter, and
- A maximum assessment rate in effect for Risk Category I for the quarter that is two basis points higher than the minimum rate.

II. The small institution model

The small institution model is defined in equation 1a below.

Equation 1a

$$\begin{aligned} Downgrade(0,1)_{i,t} = {} & \beta_0 + \beta_1(Tier\ 1\ leverage\ ratio_{it}) \\ & + \beta_2(Loans\ past\ due\ 30\ to\ 89\ days\ ratio_{it}) \\ & + \beta_3(Nonperforming\ loan\ ratio_{it}) \\ & + \beta_4(Net\ loan\ charge\text{-}off\ ratio_{it}) \\ & + \beta_5(Net\ income\ before\ taxes\ ratio_{it}) \\ & + \beta_6(Volatile\ liabilities\ ratio_{it}) \\ & + \beta_7(Weighted\ average\ of\ the\ C, A, M, E\ and\ L\ component\ ratings_{it}) \end{aligned}$$

where $Downgrade(0,1)_{i,t}$ (the dependent variable—the event being explained) is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination for an institution i between 3 and 12 months after time t. Time t is the end of a year within the multi-year period over which the model was estimated (as

explained below). The dependent variable takes a value of 1 if a downgrade occurs and 0 if it does not.

The explanatory variables (regressors) in the model are six financial ratios and a weighted average of the "C," "A," "M," "E" and "L" component ratings. The six financial ratios included in the model are:

- Tier 1 leverage ratio
- Loans past due 30-89 days/Gross assets
- Nonperforming loans/Gross assets
- Net loan charge-offs/Gross assets
- Net income before taxes/Risk-weighted assets
- Volatile liabilities/Gross assets

The financial ratios and the weighted average of the "C," "A," "M," "E" and "L" component ratings (collectively, the regressors) are defined in Table A.1. The component rating for sensitivity to market risk (the "S" rating) is not available for years prior to 1997. As a result, and as described in Table A.1, the small institution model is estimated using a weighted average of five component ratings excluding the "S" component.

Table A.1

Definitions of Regressors

Regressor	Description
Tier 1 Leverage Ratio (%)	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action
Loans Past Due 30-89 Days/Gross Assets (%)	Total loans and lease financing receivables past due 30 through 89 days and still accruing interest divided by gross assets (gross assets equal total assets plus allowance for loan and lease financing receivable losses and allocated transfer risk).
Nonperforming Loans/Gross Assets (%)	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest, total nonaccrual loans and lease financing receivables, and other real estate owned divided by gross assets.
Net Loan Charge-Offs/Gross Assets (%)	Total charged-off loans and lease financing receivables debited to the allowance for loan and lease losses less total recoveries credited to the allowance to loan and lease losses for the most recent twelve months divided by gross assets.
Net Income before Taxes/Risk-Weighted Assets (%)	Income before income taxes and extraordinary items and other adjustments for the most recent twelve months divided by risk-weighted assets.
Volatile Liabilities/Gross Assets (%)	Sum of foreign office deposits, federal funds purchased and securities sold under agreements to repurchase, and time deposits $100,000 or more held in domestic offices divided by gross assets.
Weighted Average of C, A, M, E and L Component Ratings	The weighted sum of the "C," "A," "M," "E" and "L" CAMELS components, with weights of 28 percent each for the "C" and "M" components, 22 percent for the "A" component, and 11 percent each for the "E" and "L" components. (For the regression, the "S" component is omitted.)

The financial ratio regressors used to estimate the downgrade probabilities are obtained from quarterly Call Reports. The weighted average of the "C," "A," "M," "E"

and "L" component ratings regressor is based on component ratings obtained from the most recent bank examination conducted within 24 months before the Call Report date.

The small institution model uses ordinary least squares (OLS) regression to estimate downgrade probabilities. The model is estimated with data from a multi-year period (as explained below) for all institutions in Risk Category I, except for institutions established within seven years before the Call Report date.

The OLS regression estimates coefficients, β_j, for a given regressor j and a constant amount, β_0, as specified in equation 1a. As shown in equation 1b below, these coefficients are multiplied by values of risk measures at time T, which is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed. The sum of the products is then added to the constant amount to produce an estimated probability, $d_{i,T}$, that an institution will be downgraded to 3 or worse within 3 to 12 months from time T. The risk measures are financial ratios defined in Table A.1 and a weighted sum of six CAMELS component ratings, with weights of 25 percent each for the "C" and "M" components, 20 percent for the "A" component, and 10 percent each for the "E," "L," and "S" components.

Equation 1b

$$
\begin{aligned}
d_{iT} = {} & \beta_0 + \beta_1(\textit{Tier 1 leverage ratio}_{iT}) \\
& + \beta_2(\textit{Loans past due 30 to 89 days ratio}_{iT}) \\
& + \beta_3(\textit{Nonperforming loan ratio}_{iT}) \\
& + \beta_4(\textit{Net loan charge - off ratio}_{iT}) \\
& + \beta_5(\textit{Net income before taxes ratio}_{iT}) \\
& + \beta_6(\textit{Volatile liabilities ratio}_{iT}) \\
& + \beta_7(\textit{Weighted average of CAMELS component ratings}_{iT})
\end{aligned}
$$

III. Minimum and maximum downgrade probability cutoff values

The pricing multipliers are also determined by minimum and maximum downgrade probability cutoff values, which will be computed as follows:

- The minimum downgrade probability cutoff value will be the maximum downgrade probability among the forty-five percent of all small insured institutions (excluding new institutions) in Risk Category I with the lowest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2006.
- The maximum downgrade probability cutoff value will be the minimum downgrade probability among the five percent of all small insured institutions (excluding new institutions) in Risk Category I with the highest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2006.

IV. Derivation of uniform amount and pricing multipliers

The uniform amount and pricing multipliers used to compute the annual assessment rate in basis points, P_{iT}, for any such institution *i* at a given time *T* will be determined from the small institution model, the minimum and maximum downgrade probability cutoff values, and minimum and maximum assessment rates in Risk Category I as follows:

Equation 2

$$P_{iT} = \alpha_0 + \alpha_1 * d_{iT}, \text{ subject to } P_{\min} \le P_{iT} \le P_{\min} + 2$$

where α_0 and α_1 are a constant term and a scale factor used to convert d_{iT} (the estimated downgrade probability for institution *i* at a given time *T* from the small institution model) to an assessment rate, respectively, $P_{\min}$ is the minimum assessment rate in effect for Risk Category I for the quarter, expressed as an annual rate in basis points, and the number 2 in the restriction to equation 2 is expressed in basis points. (P_{iT} is expressed as an annual rate, but the actual rate applied in any quarter will be $\frac{P_{iT}}{4}$.)

Solving equation 2 for minimum and maximum assessment rates simultaneously, ($P_{\min} = \alpha_0 + \alpha_1 * c_{\min}$ and $P_{\min} + 2 = \alpha_0 + \alpha_1 * c_{\max}$), where $c_{\min}$ is the minimum downgrade probability cutoff value and $c_{\max}$ is the maximum downgrade probability cutoff value, results in values for the constant amount, α_0, and the scale factor, α_1:

Equation 3

$$\alpha_0 = P_{\min} - \frac{2c_{\min}}{c_{\max} - c_{\min}} \quad \text{and}$$

Equation 4

$$\alpha_1 = \frac{2}{c_{\max} - c_{\min}}$$

Substituting equations 1b, 3 and 4 into equation 2 produces an annual assessment rate for institution *i* at time *T*, P_{iT}, in terms of the uniform amount, the pricing multipliers and the ratios and weighted average CAMELS component rating referred to in 12 CFR 327.9(d)(2)(i):

Equation 5

$$P_{iT} = \left[P_{\min} + \frac{2(\beta_0 - c_{\min})}{c_{\max} - c_{\min}} \right] + \frac{2}{c_{\max} - c_{\min}} \beta_1 (\textit{Tier 1 Leverage Ratio}_T) +$$
$$\frac{2}{c_{\max} - c_{\min}} \beta_2 (\textit{Loans past due 30 to 89 days ratio}_T) +$$
$$\frac{2}{c_{\max} - c_{\min}} \beta_3 (\textit{Nonperforming loan ratio}_T) + \frac{2}{c_{\max} - c_{\min}} \beta_4 (\textit{Net loan charge-off ratio}_T) +$$
$$\frac{2}{c_{\max} - c_{\min}} \beta_5 (\textit{Net income before taxes ratio}_T) + \frac{2}{c_{\max} - c_{\min}} \beta_6 (\textit{Volatile liabilities ratio}_T) +$$
$$\frac{2}{c_{\max} - c_{\min}} \beta_7 (\textit{Weighted average CAMELS component rating}_T)$$

again subject to $P_{\min} \le P_{iT} \le P_{\min} + 2$

where $P_{\min} + \frac{2(\beta_0 - c_{\min})}{c_{\max} - c_{\min}}$ equals the uniform amount, $\frac{2}{c_{\max} - c_{\min}} \beta_j$ is a pricing multiplier for the associated risk measure *j*, and *T* is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed.

V. Updating the small institution model, uniform amount, and pricing multipliers

The initial small institution model is estimated using year-end financial ratios and the weighted average of the "C," "A," "M," "E" and "L" component ratings over the 1984 to 2004 period and downgrade data from the 1985 to 2005 period. The FDIC will annually re-estimate the small institution model with updated data and publish a new formula for determining assessment rates—equation 5—based on updated uniform amounts and pricing multipliers. The period covered by the analysis will be lengthened by one year each year; however, from time to time, the FDIC may drop some earlier years from its analysis.

If assessment rates are changed uniformly, the uniform amount, $P_{\min} + \frac{2(\beta_0 - c_{\min})}{c_{\max} - c_{\min}}$, will increase or decrease by the amount of the change, even without re-estimating the small institution model using updated data.

Appendix B to Subpart A
Numerical Conversion of Long-term debt issuer ratings

Current Long-Term Debt Issuer Rating	Converted Value
Standard & Poor's	
AA or better	1.00
AA-	1.05
A+	1.15
A	1.30
A-	1.50
BBB+	1.80
BBB	2.20
BBB-	2.70
BB+ or worse	3.00
Moody's	
Aa2 or better	1.00
Aa3	1.05
A1	1.15
A2	1.30
A3	1.50
Baa1	1.80
Baa2	2.20
Baa3	2.70
Ba1 or worse	3.00
Fitch's	
AA or better	1.00
AA-	1.05
A+	1.15
A	1.30
A-	1.50
BBB+	1.80
BBB	2.20
BBB-	2.70
BB+ or worse	3.00

*A current rating is defined as one that has been assigned or reviewed in the last 12 months. Stale ratings are not considered.

Appendix C to Subpart A
Financial Ratio Factor

I. Overview of the financial ratio factor

Proposed section 327.9(d)(3)(i) provides that the financial ratio factor will be incorporated into the insurance score each quarter for large institutions in Risk Category I with less than $30 billion in assets. The financial ratio factor will be calculated based on the alternative small institution model (the Alternative) that estimates the probability that a small Risk Category I institution will be downgraded to a composite CAMELS rating of 3 or worse within one year using six financial ratios. The estimated downgrade probability would be converted to the financial ratio factor as follows: The difference between the estimated downgrade probability of a given institution and the minimum assessment rate cutoff value for small institutions in Risk Category I as calculated under the Alternative is divided by the difference between the maximum and minimum assessment rate cutoff values for small institutions as calculated under the Alternative. This amount is then multiplied by two (the difference between the maximum and minimum possible financial ratio factor values) and added to one (the minimum possible financial ratio factor value). The resulting sum will equal an institution's financial ratio factor; provided, however, that no institution's factor will be less than one nor greater than three.

II. Calculation of financial ratio factor

The Alternative is defined in equation 1a below.

Equation 1a

$$\begin{aligned} Downgrade(0,1)_{i,t} = {} & \beta_0 + \beta_1(Tier\ 1\ leverage\ ratio_{it}) \\ & + \beta_2(Loans\ past\ due\ 30\ to\ 89\ days\ ratio_{it}) \\ & + \beta_3(Nonperforming\ loan\ ratio_{it}) \\ & + \beta_4(Net\ loan\ charge\text{-}off\ ratio_{it}) \\ & + \beta_5(Net\ income\ before\ taxes\ ratio_{it}) \\ & + \beta_6(Volatile\ liabilities\ ratio_{it}) \end{aligned}$$

where $Downgrade(0,1)_{i,1}$ (the dependent variable—the event being explained) is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination for an institution *i* between 3 and 12 months after time *t*. Time *t* is the end of a year within the multi-year period over which the model was estimated (as explained below). The dependent variable takes a value of 1 if a downgrade occurs and 0 if it does not.

The explanatory variables (regressors) in the model are six financial ratios that are:

- Tier 1 leverage ratio

- Loans past due 30-89 days/Gross assets
- Nonperforming loans/Gross assets
- Net loan charge-offs/Gross assets
- Net income before taxes/Risk-weighted assets
- Volatile liabilities/Gross assets

The financial ratio regressors used to estimate the downgrade probabilities are obtained from quarterly reports of condition. The financial ratios are defined in Table C.1.

Table C.1
Definitions of Financial Ratios

Financial Ratios	Description
Tier 1 Leverage Ratio (%)	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action
Loans Past Due 30-89 Days/Gross Assets (%)	Total loans and lease financing receivables past due 30 through 89 days and still accruing interest divided by gross assets (gross assets equal total assets plus allowance for loan and lease financing receivable losses and allocated transfer risk).
Nonperforming Loans/Gross Assets (%)	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest, total nonaccrual loans and lease financing receivables, and other real estate owned divided by gross assets.
Net Loan Charge-Offs/Gross Assets (%)	Total charged-off loans and lease financing receivables debited to the allowance for loan and lease losses less total recoveries credited to the allowance to loan and lease losses for the most recent twelve months divided by gross assets.
Net Income before Taxes/Risk-Weighted Assets (%)	Income before income taxes and extraordinary items and other adjustments for the most recent twelve months divided by risk-weighted assets.
Volatile Liabilities/Gross Assets (%)	Sum of foreign office deposits, federal funds purchased and securities sold under agreements to repurchase, and time deposits $100,000 or more held in domestic offices divided by gross assets.

The Alternative uses ordinary least squares (OLS) regression to estimate downgrade probabilities. The model is estimated using data from a multi-year period (as explained below) for all institutions in Risk Category I, except for institutions established within seven years before the Call Report date.

The OLS regression estimates coefficients, β_j, for a given regressor j and a constant amount, β_0, as specified in equation 1a. As shown in equation 1b below, these coefficients are multiplied by values of risk measures at time T, which is the date of the report of condition corresponding to the end of the quarter for which the assessment rate

is computed. The sum of the products is then added to the constant amount to produce an estimated probability, $d_{i,T}$, that an institution will be downgraded to 3 or worse within 3 to 12 months from time *T*.

Equation 1b

$$\begin{aligned} d_{iT} = {} & \beta_0 + \beta_1(\textit{Tier 1 leverage ratio}_{iT}) \\ & + \beta_2(\textit{Loans past due 30 to 89 days ratio}_{iT}) \\ & + \beta_3(\textit{Nonperforming loan ratio}_{iT}) \\ & + \beta_4(\textit{Net loan charge-off ratio}_{iT}) \\ & + \beta_5(\textit{Net income before taxes ratio}_{iT}) \\ & + \beta_6(\textit{Volatile liabilities ratio}_{iT}) \\ & + \beta_7(\textit{Weighted average of the C, A, M, E and L component ratings}_{iT}) \end{aligned}$$

A. Minimum and maximum downgrade probability cutoff values

The financial ratio factor will depend on minimum and maximum downgrade probability cutoff values for small institutions in Risk Category I, which will be computed as follows:

- The minimum downgrade probability cutoff value will be the maximum downgrade probability among the forty-three percent of all small insured institutions (excluding new institutions) in Risk Category I with the lowest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2006.
- The maximum downgrade probability cutoff value will be the minimum downgrade probability among the five percent of all small insured institutions (excluding new institutions) in Risk Category I with the highest estimated downgrade probabilities, computed using values of the risk measures as of June 30, 2006.

B. Derivation of financial ratio factor

The financial ratio factor for any institution *i* at a given time *T* will be determined from the Alternative, the minimum and maximum downgrade probability cutoff values, and minimum and maximum financial ratio factors as follows:

Equation 2

$$S_{iT} = \alpha_0 + \alpha_1 * d_{iT}, \text{ subject to } 1 \le S_{iT} \le 3$$

where α_0 and α_1 are, respectively, a constant term and a scale factor used to convert d_{iT} (the estimated downgrade probability for institution *i* at a given time *T* from the Alternative computed using equation (1b)) to a financial ratio factor.

Solving equation (2) for minimum and maximum financial ratio factors simultaneously, ($1 = \alpha_0 + \alpha_1 * c_{\min}$ and $3 = \alpha_0 + \alpha_1 * c_{\max}$), where $c_{\min}$ is the minimum downgrade probability cutoff value and $c_{\max}$ is the maximum downgrade probability cutoff value, results in values for the constant amount, α_0, and the scale factor, α_1:

Equation 3

$$\alpha_0 = 1 - \frac{2C_{\min}}{c_{\max} - c_{\min}} \quad \text{and}$$

Equation 4

$$\alpha_1 = \frac{2}{c_{\max} - c_{\min}}$$

Substituting equations 3 and 4 into equation 2 and rearranging the equation produces a financial ratio factor for institution *i* at time *T*, S_{iT}, in terms of downgrade probability and minimum and maximum cutoff values, as well as the minimum and maximum financial ratio factors referred to in 12 CFR 327.9(d)(3)(vi):

Equation 5

$$S_{iT} = 1 + 2 * \left(\frac{d_{iT} - c_{\min}}{c_{\max} - c_{\min}} \right) \text{ again subject to } 1 \le S_{iT} \le 3$$

C. Updating the Alternative model

The initial Alternative model will be estimated using year-end financial ratios over the 1984 to 2004 period and downgrade data from the 1985 to 2005 period. The FDIC will annually re-estimate the Alternative model with updated data and publish a new formula for determining the financial ratio factor based on the updated model. The period covered by the analysis will be lengthened by one year each year; however, from time to time, the FDIC may drop some earlier years from its analysis.

Appendix D to Subpart A
Additional Risk Considerations
For Large Risk Category I Institutions

Information Source	Examples of Associated Risk Indicators or Information
Market Information	• Subordinated debt spreads • Credit default swap spreads • Parent's equity price volatility • Market-based measures of default probabilities • Rating agency watch lists • Market analyst reports
Financial Performance and Condition Information	Capital Measures (Level and Trend) • Regulatory capital ratios • Capital composition • Dividend payout ratios • Internal capital growth rates relative to asset growth Profitability Measures (Level and Trend) • Return on assets and return on risk-adjusted assets • Net interest margins, funding costs and volumes, earning asset yields and volumes • Noninterest revenue sources • Operating expenses • Loan loss provisions relative to problem loans • Historical volatility of various earnings sources Asset Quality Measures (Level and Trend) • Loan and securities portfolio composition and volume of higher risk lending activities (e.g., sub-prime lending) • Loan performance measures (past due, nonaccrual, classified and criticized, and renegotiated loans) and portfolio characteristics such as internal loan rating and credit score distributions, internal estimates of default, internal estimates of loss given default, and internal estimates of exposures in the event of default • Loan loss reserve trends • Loan growth and underwriting trends • Off-balance sheet credit exposure measures (unfunded loan commitments, securitization activities, counterparty derivatives exposures) and hedging activities Liquidity and Funding Measures (Level and Trend) • Composition of deposit and non-deposit funding sources • Liquid resources relative to short-term obligations, undisbursed credit lines, and contingent liabilities Interest Rate Risk and Market Risk (Level and Trend) • Maturity and repricing information on assets and liabilities, interest rate risk analyses • Trading book composition and Value-at-Risk information

Information Source	Examples of Associated Risk Indicators or Information
Stress Considerations	Ability to Withstand Stress Conditions • Internal analyses of portfolio composition and risk concentrations, and vulnerabilities to changing economic and financial conditions • Stress scenario development and analyses • Results of stress tests or scenario analyses that show the degree of vulnerability to adverse economic, industry, market, and liquidity events. Examples include: i. an evaluation of credit portfolio performance under varying stress scenarios ii. an evaluation of non-credit business performance under varying stress scenarios iii. an analysis of the ability of earnings and capital to absorb losses stemming from unanticipated adverse events • Contingency or emergency funding strategies and analyses • Capital adequacy assessments Loss Severity Indicators • Nature of and breadth of an institution's primary business lines and the degree of variability in valuations for firms with similar business lines or similar portfolios • Ability to identify and describe discreet business units within the banking legal entity • Funding structure considerations relating to the order of claims in the event of liquidation (including the extent of subordinated claims and priority claims). • Extent of insured institutions assets held in foreign units • Degree of reliance on affiliates and outsourcing for material mission-critical services, such as management information systems or loan servicing, and products

By order of the Board of Directors.

Dated at Washington, DC, this 11th day of July, 2006.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

BILLING CODE 6714–01–P

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 1
Proposed Method for Determining Insurance Assessments For Small, Well-Capitalized, Well-Managed Institutions

This appendix provides a technical description of the proposed method for determining insurance assessments for small institutions in Risk Category I. The appendix provides background information, reviews the data and methodology used to estimate the model underlying the proposed method, discusses estimation results, explains the derivation of assessment rates, discusses alternative specifications considered, and evaluates the robustness of the results.

I. Background

The most conceptually straightforward approach to setting deposit insurance assessment rates is to charge an institution an amount equal to the expected loss that the FDIC faces from providing deposit insurance to that institution.[82,83] For the FDIC, the expected loss associated with an insured institution is a product of two factors—its probability of failure (PF) and the loss given failure (LGF).[84] LGF itself is the product of

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[82] See FDIC, *Options Paper* (2001) for further discussion on expected loss pricing.

[83] A private insurer might, under certain circumstances, also include a capital charge. Because losses to the Deposit Insurance Fund are volatile over time and may be greater than expected in a given period, the question may arise whether the FDIC should also charge an unexpected loss premium. A charge for unexpected losses may be particularly necessary where the occurrence of an insured event could exhaust existing capital, raising the question whether the FDIC should impose higher rates where the unexpected failure of a large institution could deplete the fund. However, an argument can be made that higher rates for this risk would effectively bar large institutions from the lowest-risk category. The Reform Act explicitly prohibits such a bar: "No insured depository institution shall be barred from the lowest-risk category solely because of size." In addition, as a government agency, the FDIC is in a unique position to access additional capital over which it can spread unexpected losses. The FDIC can assess the banking industry after the fact, borrow up to $30 billion from the U.S. Treasury, borrow on a secured basis from the Federal Financing Bank and the Federal Home Loan Banks, and borrow from the banking industry itself.

If the threatened failure of an institution poses a systemic risk, the general statutory requirement that the FDIC use the least-costly method of resolution may not apply. Thus, an institution that might pose a systemic risk may pose a higher loss given failure than other institutions. Nevertheless, the FDIC does not propose to routinely impose a higher charge on institutions that have the potential to pose a systemic risk. The law provides that losses resulting from a systemic risk determination (i.e., the amount in excess of the least-costly method) be recovered by charging an assessment on each institution's average liabilities, specifically:

> [T]he amount of each insured depository institution's average total assets during the assessment period, minus the sum of the amount of the institution's average total tangible equity and the amount of the institution's average total subordinated debt.

12 U.S.C. 1823(c)(4)(G)(ii) and 1824.

[84] In theory, the FDIC would want expected assessment revenue collected from the institution to equal the expected loss over the lifetime of the institution. In practice, the FDIC would, if it could, want assessment revenue collected from the institution over some period (e.g., three years) to equal the expected loss from the institution during that period.

two factors—the amount of insured deposits at risk (exposure) and the amount of loss as a percentage of exposure (severity).[85] Given sufficient historical information on insured institution failures, probability of failure and loss given failure can be used to predict expected losses from each insured institution for a specified time interval, and insurance assessment rates can be derived that will recover expected losses from individual institutions.

In practice, estimates of expected loss are sensitive to assumptions regarding the probability of failure, exposure and severity, and it is not always clear which assumptions are most appropriate.[86] In addition, setting an assessment based on expected losses is made more difficult by the very low frequency of failures in recent years. Expected losses would be based on PF and LGF estimates from an earlier period (the late 1980s and early 1990s) that had greater failure frequencies. Regulatory and economic conditions relevant to the banking industry have undergone significant changes in the past decade, making failure data from the earlier period less relevant to the current environment. Thus, the FDIC is proposing an alternative to expected loss pricing to set deposit insurance assessment rates.

For insured institutions in Risk Category I that have assets of less than $10 billion, the FDIC proposes a risk measurement method similar to the FDIC's early warning system for small insured institutions, the Statistical CAMELS Off-site Rating (SCOR) system.[87,88,89] The FDIC uses the SCOR system to detect adverse changes in institutions' safety and soundness between on-site examinations and focuses on composite CAMELS 1 and 2-rated institutions, which are examined every 12 to 18 months.[90]

Like SCOR, the proposed risk measurement method for small Risk Category I institutions predicts the likelihood of deterioration in composite CAMELS ratings. Historically, the failure frequency of insured institutions has risen monotonically as CAMELS ratings have worsened. Thus, the proposed method serves as a reasonable proxy for a relative measure of failure probability among smaller institutions in Risk Category I.

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[85] Severity is a function of the recovery value of assets, administrative expenses and liability structure.

[86] Rosalind L. Bennett, "Evaluating the Adequacy of the Deposit Insurance Fund: A Credit-Risk Modeling Approach," FDIC *Working Paper Series* 2001-02.

[87] Charles Collier, Sean Forbush, Daniel A. Nuxoll, and John O'Keefe, "The SCOR System of Off-Site Monitoring: Its Objectives, Functioning, and Performance," *FDIC Banking Review* 15(3) (2003), 17-32.

[88] SCOR predicts CAMELS ratings three to six months after the Call Report date. Call Reports are available approximately 30 to 40 days after the financial reporting date ("as of" date) and are updated quarterly.

[89] The Federal Reserve has also developed an off-site early warning system that uses financial measures to predict CAMELS ratings.

[90] Examination frequency ranges from well under 12 months for institutions deemed supervisory concerns or problem institutions (CAMELS ratings of 3, 4 or 5) to 18 months for CAMELS 1 or 2-rated institutions with assets under $250 million that are well managed, not subject to a formal enforcement proceeding or order by the FDIC, OCC, or Federal Reserve System and not acquired by another entity or person during the preceding 12-month period. 12 U.S.C. 1820 (d). (See http://www.fdic.gov/regulations/safety/manual/section1-1.html).

II. Methodology

The premise underlying the proposed risk measurement method for small Risk Category I institutions is the same as the premise underlying SCOR: an institution's overall safety and soundness, as represented by its composite CAMELS rating, is related to its prior-period financial condition, as measured by financial ratios.[91] The proposal uses a model (the "small institution model") that estimates, based on financial ratios and a weighted average of the "C," "A," "M," "E" and "L" component ratings (the regressors, or explanatory variables), the probability that a small Risk Category I institution will be downgraded to a composite CAMELS rating of 3 or worse within one year.

The dependent variable (the event being explained) in the small institution model is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination between 3 and 12 months after the date of a quarterly report of condition (Call Report) filed with an institution's primary federal regulator.[92] The financial ratio regressors used to estimate the downgrade probability are obtained from these quarterly Call Reports.[93] With two exceptions, these financial ratios are expressed as percentages of gross assets (net assets plus the loan loss reserves). The ratio of net income before taxes is measured as a percentage of risk-weighted assets, rather than of gross assets; the Tier 1 leverage ratio is defined in accordance with regulatory capital requirements. The weighted average of the "C," "A," "M," "E" and "L" component ratings regressor is based on component ratings obtained from examinations that were conducted within 24 months before the Call Report date. Component ratings from older examinations are excluded because they are not likely to accurately reflect the condition of an institution as of the date for which the financial ratios are computed.

As discussed in Section III, the small institution model was estimated using a panel dataset that consists of year-end financial ratios and supervisory component ratings from 1984 through 2004 and downgrade data from 1985 through 2005. The component rating for sensitivity to market risk ("S" rating) is not available for years prior to 1997. Therefore, the coefficient for the weighted average of the "C," "A," "M," "E" and "L" component ratings is estimated using a weighted average of five component ratings excluding the "S" component, as described in Table 1.1. However, a weighted average of all six component ratings, with weights of 25 percent each for the "C" and "M" components, 20 percent for the "A" component and 10 percent each for the "E," "L" and "S" components, is used to compute the assessment rate for each institution.[94] Table 1.1 describes these regressors in detail.

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[91] Smaller institutions do not use traded debt and equity instruments for funding, largely due to the high fixed costs associated with issuing marketable debt and equity, as well as costly demands for financial disclosure. Consequently, the FDIC does not rely on market measures to predict CAMELS ratings.

[92] The report of condition includes Reports of Conditions and Income for banks and Thrift Financial Reports for thrifts, both filed on a quarterly basis.

[93] Net income and net loan charge-offs used in the regression are annual values, adjusted for mergers and acquisitions that occurred over the prior year.

[94] The weighted average of five CAMEL component ratings excluding the "S" rating is very similar to the weighted average based on all six components over the 1997 to 2005 period, with a Pearson correlation between two measures in excess of 0.98.

Table 1.1

Description of Explanatory Variables

Regressor	Description
Tier 1 Leverage Ratio (%)	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action
Loans Past Due 30-89 Days/Gross Assets (%)	Total loans and lease financing receivables past due 30 through 89 days and still accruing interest divided by gross assets (gross assets equal total assets plus allowance for loan and lease financing receivable losses and allocated transfer risk).
Nonperforming Loans/Gross Assets (%)	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest, total nonaccrual loans and lease financing receivables, and other real estate owned divided by gross assets.
Net Loan Charge-Offs/Gross Assets (%)	Total charged-off loans and lease financing receivables debited to the allowance for loan and lease losses less total recoveries credited to the allowance for loan and lease losses for the most recent twelve months divided by gross assets.
Net Income before Taxes/Risk-Weighted Assets (%)	Income before income taxes and extraordinary items and other adjustments for the most recent twelve months divided by risk-weighted assets.
Volatile Liabilities/Gross Assets (%)	Sum of foreign office deposits, federal funds purchased and securities sold under agreements to repurchase, and time deposits $100,000 or more held in domestic offices divided by gross assets.
The weighted average of the "C," "A," "M," "E" and "L" component ratings	The weighted sum of the "C," "A," "M," "E" and "L" CAMELS components, with weights of 28 percent each for the "C" and "M" components, 22 percent for the "A" component, and 11 percent each for each of the "E" and "L" components. (For the regression, the "S" component is omitted.)

Equation (1a) presents the proposed method in general form. The dependent variable, $Downgrade(0,1)_{i,t}$ is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination for an institution i between 3 and 12 months after time t. Time t is the end of a year within the multi-year estimation period. The dependent variable takes a value of 1 if a downgrade occurs and 0 if it does not.[95]

[95] If an institution is not examined during the period over which downgrades are measured, it is excluded from an estimation sample. State and federal bank and thrift regulators who monitor institutions' conditions between on-site examinations have the opportunity to schedule an examination should an institution's condition deteriorate.

Equation 1a

$$
\begin{aligned}
Downgrade(0,1)_{i,t} = {} & \beta_0 + \beta_1(Tier\ 1\ leverage\ ratio_{it}) \\
& + \beta_2(Loans\ past\ due\ 30\ to\ 89\ days\ ratio_{it}) \\
& + \beta_3(Nonperforming\ loan\ ratio_{it}) \\
& + \beta_4(Net\ loan\ charge\text{-}off\ ratio_{it}) \\
& + \beta_5(Net\ income\ before\ taxes\ ratio_{it}) \\
& + \beta_6(Volatile\ liabilities\ ratio_{it}) \\
& + \beta_7(Weighted\ average\ of\ the\ C, A, M, E\ and\ L\ component\ ratings_{it})
\end{aligned}
$$

Equation (1a) provides the basis for estimates of the probability of downgrade. As shown in equation (1b) below, these coefficients are multiplied by values of risk measures at time *T*, which is the date of the report of condition corresponding to the end of the quarter for which the assessment rate is computed. The sum of the products is then added to the constant amount to produce an estimated probability, $d_{i,T}$, that an institution will be downgraded to 3 or worse within 3 to 12 months from time *T*. The risk measures are financial ratios defined in Table 1.1 and a weighted sum of six CAMELS component ratings, with weights of 25 percent each for the "C" and "M" components, 20 percent for the "A" component, and 10 percent each for the "E," "L," and "S" components.

Equation 1b

$$
\begin{aligned}
d_{iT} = {} & \beta_0 + \beta_1(Tier\ 1\ leverage\ ratio_{iT}) \\
& + \beta_2(Loans\ past\ due\ 30\ to\ 89\ days\ ratio_{iT}) \\
& + \beta_3(Nonperforming\ loan\ ratio_{iT}) \\
& + \beta_4(Net\ loan\ charge\text{-}off\ ratio_{iT}) \\
& + \beta_5(Net\ income\ before\ taxes\ ratio_{iT}) \\
& + \beta_6(Volatile\ liabilities\ ratio_{iT}) \\
& + \beta_7(Weighted\ average\ of\ CAMELS\ component\ ratings_{iT})
\end{aligned}
$$

The explanatory variables draw from the SCOR model, but also reflect policy considerations that may not be relevant to off-site monitoring systems. Among other things, in selecting financial variables for its assessment models, the FDIC attempted to ensure fair treatment across different types of insured institutions and to avoid introducing potential incentive conflicts.[96]

- The allowance for loan and lease losses and provisions for loan losses are excluded from the model. Higher loan-loss provisions and loan-loss allowances

[96] In addition to the changes discussed here, SCOR's long-term assets measure, which comprises loans and long-term securities, is also excluded due to the lack of comparability of data for institutions that file Reports of Condition and Income versus Thrift Financial Reports.

tend to predict a higher (i.e., worse) CAMELS ratings and, if used in the model, could lead to higher insurance assessments. However, loan-loss reserves serve to protect the insurance fund against loss and, therefore, the FDIC does not want to give institutions an incentive to lower loan-loss provisions and loan-loss allowances.

- The non-performing loan ratio combines loans that are 90 or more days delinquent, loans that are no longer accruing interest and other real estate owned. As a result, the effect on the assessment rate would be identical whether an institution classifies loans as 90 or more days delinquent, non-accruing, or as other real estate owned.
- Including both non-performing loans and net charge-off rates in the model ensures that the FDIC does not create an incentive for an institution either to delay or to hasten charge-offs.
- Net income before taxes is divided by risk-weighted assets to account for low-risk business models that may also result in lower earnings and to avoid unintentionally rewarding high-risk strategies that boost earnings.
- Volatile liabilities do not include other borrowed money, which primarily consists of Federal Home Loan Bank (FHLB) advances, in order to avoid penalizing those institutions (particularly savings institutions) that have traditionally relied on advances.
- Volatile liabilities include time deposits in excess of $100,000, among other items. These largely uninsured deposits may provide a long-term stable source of funding for many well-capitalized and well-managed institutions. However, they are more likely to be withdrawn as the financial condition of the institution deteriorates (either to be replaced by insured deposits or paid off with the proceeds from high-quality assets), thus increasing the risk exposure of the insurance fund.[97]

In additional to these financial ratios, the model also includes a weighted average of the "C," "A," "M," "E" and "L" component ratings. As discussed previously, to estimate the model the weighted average is determined by assigning a 28 percent weight to each of the "C" and "M" components, a 22 percent weight to "A" component and an 11 percent weight to each of the E and L components. The weights are based on the view of the FDIC regarding the relative importance of these component ratings in determining assessment rates within Risk Category I institutions.

III. Data and sample

The small institution model is estimated using year-end financial data from 1984 through 2004, and examination data from the 3-to-12 month period after the end of each of these years. The 1984 to 2004 period includes the regional and sectoral banking crises of the 1980s and early 1990s, and the subsequent period of very favorable financial institution conditions from the mid-1990s to the present. For all periods before 1990, the

[97] For example, between March 2001 and January 2002 – the period leading up to the failure of Hamilton Bank – Hamilton Bank's total deposits declined 27 percent, while its total uninsured deposits declined 50 percent. Andrew M. Davenport and Kathleen M. McDill, "The Depositor behind the Discipline: A Micro-level Case Study of Hamilton Bank," *Journal of Financial Services Research* (forthcoming).

sample consists of commercial banks and FDIC-supervised savings banks. Starting in 1990, the sample also includes thrifts supervised by the Office of Thrift Supervision (OTS). The sample only includes examination ratings for OTS-supervised thrifts for the period after the dissolution of the Federal Savings and Loan Insurance Corporation and transfer of the thrift deposit insurance function to the FDIC.

The small institution model is estimated for all insured institutions, regardless of size, except new institutions (defined for modeling purposes as those established within seven years of a year-end Call Report date used in estimation) and institutions whose financial ratios make them outliers.[98,99] Estimates from the small institution model will be used to determine insurance assessments for small Risk Category I institutions.

New institutions are excluded because of their unique characteristics. A new institution undergoes rapid changes in the scale and scope of operations, causing its financial ratios to be fairly volatile. In addition, a new institution's loan portfolio is often unseasoned, and therefore current financial ratios are generally not a good indicator of future performance. Statistical tests of the small institution model show that the same financial ratios imply different risk levels for new institutions than for more established institutions and new institutions are typically riskier than established institutions.[100]

Because risk-weighted assets were not reported prior to 1990, the FDIC used a proxy measure for the pre-1990 period. For all institutions, the FDIC used the average ratio of risk-weighted assets to gross assets from 1990 forward for similarly sized institutions to estimate institutions' risk-weighted assets before 1990.[101, 102]

Table 1.2 shows descriptive statistics for each of seven regressors in the model. A comparison of standard deviations shows that the financial ratios vary significantly more over the sample period than do weighted averages of the "C," "A," "M," "E" and "L" component ratings

[98] Outliers are defined as those institutions whose balance-sheet regressor ratios were less than or equal to -100 percent or greater than or equal to 100 percent, or whose income and expense regressor ratios were less than or equal to -5 percent or greater than or equal to 5 percent.

[99] For this analysis, new institutions are defined as new "brick and mortar" institutions and not institutions that have simply changed charters.

[100] Specifically, when a dummy variable is added to the small institution model to test the significance of new status, the coefficient for new status is usually statistically significant and positive, indicating greater risk. In addition, interaction terms of the dummy variable and equity and earnings are statistically significant, indicating that equity and earnings data for new institutions are not comparable to those of more established institutions. Furthermore, the predictive accuracy of the model improves when new institutions are excluded from the estimation sample.

[101] Institutions were placed into one of four groups based upon asset size: less than $100 million, $100 million to $500 million, $500 million to $1 billion and $1 billion to $10 billion.

[102] The proposed model was also estimated using an alternative method of estimating risk-weighted assets for years prior to 1990. The alternative method assigns a zero percent weight to cash and Treasuries, a 20-percent weight to all securities other than Treasuries, a 50-percent weight to residential mortgages and a 100-percent weight to all other balance-sheet items. The choice of the risk-weighted asset measure had little effect on the coefficient of any explanatory variable.

Table 1.2

Descriptive Statistics of Explanatory Variables
1984-2004

Regressor	Mean	Median	Standard deviation
Tier 1 Leverage Ratio (%)	9.53	8.77	3.54
Loans Past Due 30-89 Days/Gross Assets (%)	0.98	0.74	0.93
Nonperforming Loans/Gross Assets (%)	0.91	0.60	1.05
Net Loan Charge-Offs/Gross Assets (%)	0.19	0.09	0.34
Net Income before Taxes/Risk-Weighted Assets (%)	2.31	2.33	1.16
Volatile Liabilities/Gross Assets (%)	11.16	9.40	8.36
Weighted Average CAMELS Component Ratings	1.63	1.61	0.40

IV. Estimation and Evaluation

A. Estimation Results

The dependent variable in the proposed small institution model – a CAMELS downgrade – takes on values of either one or zero, depending on whether a downgrade occurred or not. This type of dependent variable is commonly known as a binary dependent variable. There is a wide array of statistical techniques designed for predicting binary dependent variables.

The statistical techniques that are most appropriate for binary dependent variables, logistic regression and probit analysis, are in a class of estimation techniques known as maximum likelihood estimation. Maximum likelihood estimation allows for nonlinear relationships between each regressor (explanatory variable) and the dependent variable (here, the incidence of downgrade). As a result, the effect of changes in a regressor on the probability of downgrade is not straightforward and depends upon the actual level of that regressor and all other regressors used in the model.

In the interest of simplicity, both the proposed model and the alternative model (which excludes CAMELS component ratings) are estimated using ordinary least squares (OLS) regression, a statistical technique that assumes a linear relationship between regressors and the probability of downgrade. With OLS regression, the effect of an increase in the value of a regressor upon an institution's downgrade probability is the same regardless of the level of that regressor or any other regressor in the model.

While OLS regression is not the standard technique for estimating a model with a binary dependent variable, the FDIC believes it produces acceptable results in this context for two reasons. First, models using OLS, logistic, and probit regressions produce highly similar risk rankings for those small Risk Category I institutions that are to be charged rates between the minimum and maximum. The Pearson's correlation statistic between predicted 2005 downgrade probabilities for the OLS, logistic, and probit models exceed 0.79 for the proposed small institution model and exceed 0.82 for the alternative model.

Second, concerns about using OLS regression instead of logistic or probit regression are partly mitigated by the large sample size employed in the estimation. The model uses nearly 96,000 observations over the period 1984 to 2004. An OLS regression assumes that the error terms (ε_t) are normally distributed, but the error terms in a probability model follow a Bernoulli distribution (and, therefore, are not normally distributed). While violation of the normality assumption in an OLS regression does not bias the resulting coefficients, normality is needed for the purpose of statistical inference. The distribution of error terms tends to converge to a normal distribution as sample size increases, however. Thus, the large sample size in the estimation suggests that OLS regression may be used to estimate downgrade probabilities without affecting the ability to infer the statistical significance of the regressors.[103]

Table 1.3 presents the OLS estimation results using a panel dataset beginning in 1984 and ending in 2004. Both the proposed small institution model and the alternative model have also been estimated over several shorter panel periods. Coefficients for each regressor are found to be highly stable both in value and significance in recent years. All regressors, other than the constant term, are statistically significant at a 1 percent level and have the expected signs. As expected, poorer asset quality -- measured by loans past due 30 to 89 days as a percent of gross assets, nonperforming loans as a percent of gross assets and net charge-offs as a percent of gross assets -- and greater reliance on volatile liabilities each increase the probability of an institution being downgraded from a CAMELS rating of 1 or 2 to a rating of 3 or worse. Higher earnings and a higher Tier 1 leverage ratio reduce the institution's downgrade probability. An institution with higher (worse) current CAMELS component ratings has a higher probability of being downgraded.

[103] The robustness of the model was tested by using White-corrected standard errors that are adjusted to account for the presence of heteroskedasticity (non-fixed variance). Results do not change with the use of White-corrected standard errors.

Table 1.3

OLS Estimation Results: 1984 – 2004
Estimated Coefficients

	Proposed Model	Alternative Model
Constant term	-0.008 (0.005)	0.056 *** (0.003)
Tier 1 Leverage Ratio (%)	-0.002 *** (0.000)	-0.003 *** (0.000)
Loans past Due 30-89 Days/Gross Assets (%)	0.024 *** (0.001)	0.025 *** (0.001)
Nonperforming Loans/Gross Assets (%)	0.041 *** (0.001)	0.050 *** (0.001)
Net Loan Charge-Offs/Gross Assets (%)	0.045 *** (0.002)	0.060 *** (0.002)
Net Income before Taxes/Risk Weighted Assets (%)	-0.026 *** (0.001)	-0.029 *** (0.001)
Volatile Liabilities/Gross Assets (%)	0.002 *** (0.000)	0.002 *** (0.000)
Weighted Average of the "C," "A," "M," "E" and "L" Component Ratings	0.033 *** (0.002)	
No. of Obervations	95,943	102,235
Adjusted R-Square	0.13	0.15

Standard errors in parenthesis.
*** indicates signficance at the 1% level

B. Model Evaluation

Chart 1.1 uses power curves to evaluate how well the proposed model and the alternative model predict downgrades. The alternative model uses only financial ratios to predict downgrade probabilities. The horizontal axis shows the cumulative percentage of total institutions scored by each method. For both models, institutions are sorted from those most likely to be downgraded to those least likely to be downgraded. Downgrade probabilities are computed by multiplying financial ratios and weighted average CAMELS component ratings as of year-end 2004 by coefficients estimated over the 1984 to 2003 period. The vertical axis shows the cumulative percentage of total actual downgrades in 2005. The closer the curve is to the upper-left corner of the graph, the

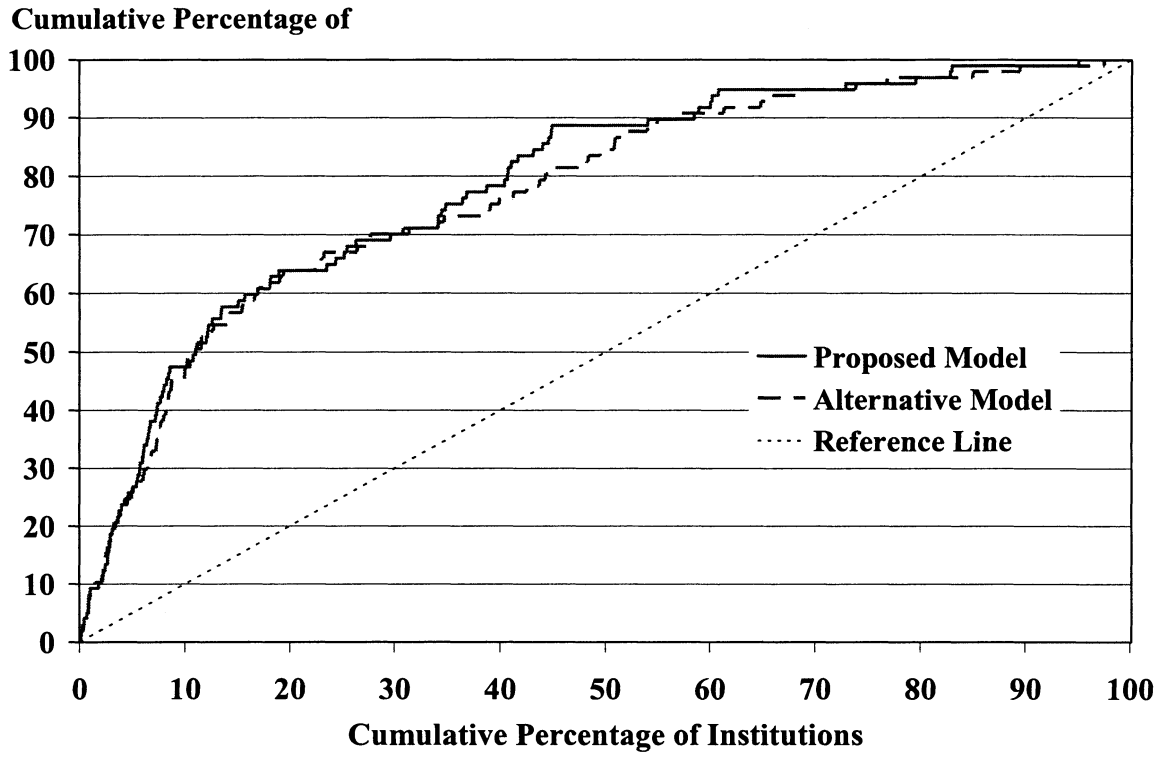
more accurate the particular method is at identifying downgrades. A diagonal line represents a system with no predictive power, where the number of downgrades identified is proportional to the percentile of observations.

Chart 1.1 shows that the proposed model and the alternative model differentiate the risk of small institutions in Risk Category I very similarly. For instance, the first 10 percent of the institutions ranked according to the proposed small institution model and alternative model accounted for 47 percent of the total downgrades in 2005 and the first 20 percent accounted for 64 percent of total downgrades.

The predictive accuracy can be also compared with a downgrade identification score that measures the area between an option's respective curve and a diagonal, reference line that goes through the origin. Based upon this score, the proposed model has slightly more predictive power (28.9) than the alternative model using financial ratios alone (27.6).

Chart 1.1

Power Curves Comparing the Proposed Model with the Alternative Model



V. Assessment Rates

As described previously, the proposed small institution model is estimated using financial ratios and a weighted average of the "C," "A," "M," "E" and "L" component

ratings from 1984 to 2004 and downgrade data from 1985 to 2005.[104] Multiplying the value of each financial ratio and the weighted average CAMELS component rating as of year-end 2005 by the estimated coefficients from the 1984-2004 period produces a probability that a given institution would be downgraded in 2006.[105] These predicted "out-of-sample" downgrade probabilities provide the basis for determining assessment rates.[106] Assessment rates are derived as follows:

- Based on year-end 2005 data, the minimum assessment rate is applied to 45 percent of small insured institutions in Risk Category I (excluding new institutions) with the lowest downgrade probabilities according to the proposed small institution model. This percentage equates to a downgrade probability of 3 percent or less.[107] This downgrade probability, however, would not necessarily equate to the 45th percentile as of June 30, 2006, or in future years.
- Based on year-end 2005 data, the maximum assessment rate is applied to 5 percent of institutions with the highest downgrade probabilities according to the small institution model.[108] This percentage equates to the downgrade probability of 16 percent or greater. This downgrade probability, however, would not necessarily equate to the 95th percentile as of June 30, 2006, or in future years.
- All new institutions, i.e., those that have been chartered for less than seven years, are charged the maximum assessment rate.
- Assuming minimum and maximum assessment rates of 2 and 4 basis points, respectively, downgrade probabilities (d_{iT}) for all other institutions at time T are converted to assessment rates (P_{iT}) as follows:

  Equation 2

  $$P_{iT} = \alpha_0 + \alpha_1 * d_{iT}, \text{ subject to } 2 <= P_{iT} <= 4$$

  where α_0 is a constant term, α_1 is a scale factor used for conversion, and d_{iT} is the downgrade probability for institution i at time T.[109]

---

[104] The alternative model was estimated in the same manner except for excluding supervisory component ratings.

[105] The coefficient of the weighted average of the "C," "A," "M," "E" and "L" component ratings is multiplied by the weighted average CAMELS component rating, which includes the "S" component.

[106] Downgrade probabilities computed for a given year are referred to as "out-of-sample" when the estimation sample used to obtain coefficients does not include risk measures for that year.

[107] For the alternative model, 43 percent of small insured institutions in Risk Category I (excluding new institutions) with the lowest downgrade probabilities (3 percent or less) would be charged the minimum assessment rate.

[108] For the alternative model, 5 percent of institutions with the highest downgrade probabilities (17 percent or greater) would be charged the maximum assessment rate.

[109] The FDIC has proposed that assessment rates, including the minimum ($P_{\min}$) and maximum assessment rates for Risk Category I, can be uniformly raised or lowered within limits by the FDIC's Board without the necessity of notice-and-comment rulemaking. As a result, the assessment rate (P_{iT}) can be more generally expressed as $P_{iT} = \alpha_0 + \alpha_1 * d_{iT}$, subject to $P_{\min} <= P_i <= P_{\min} + 2$ (maximum rate must remain 2 basis

- Solving equation (2) for minimum and maximum assessment rates simultaneously, ($2 = \alpha_0 + \alpha_1 * 0.03$ and $4 = \alpha_0 + \alpha_1 * 0.16$), results in a constant term, $\alpha_0 = 1.5$, a scale factor, $\alpha_1 = 15.8$ and an assessment rate for institution *i* at time *T*,

  Equation 3[110]

$$P_{iT} = 1.5 + 15.8 * d_{iT}$$

- Restating equation (1b), the downgrade probability for institution *i* at a given time T (d_{iT}) is:

  Equation 4

$$d_{iT} = \beta_0 + \sum_{j=1}^{7} \beta_j X_{ij,T}$$

  where β_0 is the constant term, β_j is the coefficient for regressor *j* and $X_{ij,T}$ is the value of regressor *j* for institution *i* at time *T*.

- The assessment rate can be expressed directly in terms of financial ratios and the weighted average CAMELS component rating, each multiplied by a pricing multiplier($\tilde{\beta}_j$), with the resulting products added to a uniform amount ($\tilde{\beta}_0$) as follows:

  Equation 5

$$P_{iT} = \tilde{\beta}_0 + \sum_{j=1}^{7} (\tilde{\beta}_j X_{ij,T})$$

- Replacing d_{iT} in equation (3) with the right hand side of equation (4) and rearranging the resulting equation, the assessment rate for institution *i* at time *T* (P_{iT}) using the proposed model is then:

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points above the minimum rate). The minimum assessment rate is $P_{\min} = \alpha_0 + 0.03 * \alpha_1$ and the maximum assessment rate is $P_{\min} + 2 = \alpha_0 + 0.16 * \alpha_1$. Simultaneously solving minimum and maximum assessment rate equations results in $\alpha_0 = P_{\min} - 0.5$ and $\alpha_1 = 15.8$. These results show that the constant term, α_0, is a function of the minimum assessment rate while the scale factor, α_1, would not change as long as the spread between minimum and maximum assessment rates remains unchanged.

[110] Due to the rounding of downgrade probabilities, the constant term and scale factor shown here appear slightly different from what would be obtained by solving minimum and maximum assessment rate equations.

Equation 6

$$P_{iT} = (1.5 + 15.8 * \beta_0) + \sum_{j=1}^{7} (15.8 * \beta_j) X_{ij,T}$$

where $1.5 + 15.8 * \beta_0$ equals the uniform amount, $\tilde{\beta}_0$, and $15.8 * \beta_j$ equals the pricing multiplier, $\tilde{\beta}_j$.

Table 1.4 illustrates the conversion of small institution model coefficients to pricing multipliers shown in equation (6), using the coefficients based on the 1984-2004 estimation sample. The uniform amount is calculated as $\tilde{\beta}_0 = 1.5 + (15.8 * -0.008) = 1.37$.

Table 1.4
Converting Small Institution Model Coefficients to Pricing Multipliers

Risk Measures	Coefficients (β_j)	Conversion Formula	Pricing Multipliers
Tier 1 Leverage Ratio (%)	(0.002)		(0.03)
Loans Past Due 30-89 Days/Gross Assets (%)	0.024		0.37
Nonperforming Loans/Gross Assets (%)	0.041		0.65
Net Loan Charge-Offs/Gross Assets (%)	0.045	15.8*(β_j)	0.71
Net Income before Taxes/Risk-Weighted Assets (%)	(0.026)		(0.41)
Volatile Liabilities/Gross Assets (%)	0.002		0.03
Weighted Average CAMELS Component Ratings	0.033		0.52

* The scale factor in the conversion formula may be different from what would be derived from equations (2) through (6) due to rounding.

VI. Alternative Approaches Considered to Measure Risk

The FDIC has, in recent years, considered several approaches to determine risk-based assessments.[111] This section discusses some of the alternatives considered.

A. Alternative Proxies for Risk of Loss to the Insurance Fund

Federal bank and thrift regulators' off-site monitoring systems focus on institution safety and soundness, as measured by composite CAMELS ratings. Using CAMELS ratings as risk measures has several advantages. First, CAMELS ratings are determined

[111] See, for example, Eric P. Bloecher, Gary A. Seale, and Robert D. Vilim, "Options for Pricing Federal Deposit Insurance," *FDIC Banking Review* 15(4), 1-17 (2003).

using the uniform guidelines.[112] Second, CAMELS ratings are updated periodically (within 12 to 18 months). Third, CAMELS ratings are available for all insured institutions.

Using historical examination ratings, the FDIC investigated models designed to predict composite CAMELS ratings in addition to models designed to predict the likelihood of composite CAMELS ratings downgrades from ratings of 1 or 2 to 3, 4 or 5. The FDIC found that models that predict CAMELS levels produced results similar to models that predict downgrades. A model that predicts CAMELS ratings does not directly estimate the probability of downgrade, although the disparity between an institution's current and predicted CAMELS rating may imply a probability. To explicitly relate insurance assessment rates to the probability of downgrades, the FDIC chose a model that directly predicts a probability of CAMELS downgrade.

The FDIC also investigated models that predict institution failure. First, the FDIC used the explanatory variables in the proposed small institution model to predict institution failure. The FDIC found that most of the proposed model explanatory variables are significant predictors of institution failure within one year, as well as two-to-three years hence. Second, the FDIC compared institutions' risk rankings based on failure prediction models with rankings based on the small institution model. In general, the risk rankings are similar.

Finally, the FDIC compared institution risk rankings based on the small institution model with the results of models that predict failure-resolution costs as a percentage of failed-bank assets (loss rates). The risk rankings from these two types of models are not similar. This result is not unexpected since many of the factors that influence failure-resolution costs, such as the composition of institution liabilities, may not directly influence institution safety and soundness. The difference in risk rankings also suggests the FDIC would need to address expected failure-resolution costs through measures that are distinct from those described in this notice of proposed rulemaking. The FDIC is not recommending a separate consideration of expected loss rates on failed institution assets at this time.

The FDIC uses a downgrade probability model rather than failure prediction model primarily due to lack of recent failures.[113] While both downgrade probability and failure prediction models rely heavily on data from the late 1980s and early 1990s, CAMELS downgrades continue to occur – albeit with less frequency – while there have been few failures in recent years. Between 2000 and 2005, there were 1,425 instances of CAMELS 1 or 2-rated institutions being downgraded to ratings of 3 or worse. There were only 29 failures over the same period. As a result, CAMELS downgrades provide more updated information on the relationship between the regressors in the proposed small institution model and downgrades.

[112] These guidelines are established by the Federal Financial Institutions Examination Council (FFIEC).

[113] The lack of recent data also affects models that predict failure-resolution costs, which are based on historical failure data.

B. Alternative Regressors (Risk Measures) Used to Predict Downgrade

The FDIC also considered alternative regressors (explanatory risk measures) to predict the probability of downgrade to a CAMELS composite rating of 3 or worse, the small institution model's dependent variable that serves as a proxy for risk of loss to the insurance fund. The alternative explanatory variables were evaluated to see if they added new or different information that would improve the model. Variations on measures already included in the model, such as different ratios to measure capital adequacy, were also tested.[114] The evaluation of potential regressors for the small institution model took into account potential incentive conflicts. For example, while including loan loss allowances would improve model accuracy, it could create a disincentive for an institution to set adequate loss reserves. Furthermore, some regressors intended to measure institution condition and performance may not adequately take into account differing business models. For example, measures of profitability based on the book value of assets do not account for differences in the relative riskiness of assets among institutions.

In addition to the regressors included in the proposed small institution model (shown in Table 1.1), the FDIC considered the following variables, among others

- Asset growth;
- Loan concentrations for consumer loans, commercial and industrial loans, residential real estate and commercial real estate;
- Income volatility (as measured by the standard deviation of the ratio of net income before extraordinary items and taxes to gross assets over the previous eight quarters);
- Operating efficiency (as measured by the ratio of the sum of expenses for salaries, employee benefits, premises, fixed assets and all other noninterest expenses to the sum of net interest income and total noninterest income); and
- Liquid assets (as measured by the sum of cash and balances due from depository institutions, securities, federal funds sold and securities purchased under resale agreements).

While often statistically significant, these alternative regressors do not, in general, add significantly to the explanatory power of the models.

Finally, the FDIC investigated alternative ways of measuring explanatory variables in the small institution model. These alternatives include lagged values and squared values of financial ratios to capture potentially more complex relationships between these measures and downgrade probability.[115] In general, these alternative measures are either statistically or economically insignificant or did not improve model accuracy.

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[114] The accuracy of the model was little affected by the capital measure used.

[115] Specifically, asset growth over the prior year and three previous years was considered, as well as the squared value of each growth measure. In addition, the squared values of nonperforming assets (as a percent of gross assets) over the prior year were considered.

C. Prediction Time Horizon

The proposed small institution model and the alternative model predict, as a proxy for risk of loss to the insurance fund, the probability of a CAMELS downgrade to 3 or worse *within one year* from the date of the values for the regressors. However, it could be argued that a deposit insurance assessment system should look forward more than one year. There are important differences between factors that contribute to risk in the short term (within one year) and those that contribute to risk in the long term. For example, very high rates of asset growth can, in some instances, lead to financial distress in the long term. On the other hand, low rates of asset growth are often experienced by institutions with current financial difficulties that are often restricting loan growth and retrenching lending practices.

The FDIC therefore tested explanatory variables in a model that would predict CAMELS downgrades over a longer period—two to three years. The FDIC also compared the explanatory variables in one-year and longer-term CAMELS downgrade models that would directly predict failure probability (as discussed in section A) in the short term and in the long term. The FDIC found that the explanatory variables used in the small institution model are, in general, statistically significant explanatory variables in both short-term and long-term CAMELS downgrade models, as well as in short and long-term failure prediction models.[116] However, an increase in the value of certain regressors, such as asset growth, lowers the downgrade probability over a one-year horizon, but increases the downgrade probability over a longer-term horizon. Model accuracy diminishes substantially as the forecast horizon lengthens.

VII. Model Validation

The FDIC believes that the downgrade probabilities estimated using the proposed small institution model provide a reasonable basis for differentiating risk among insured institutions in Risk Category I. Downgrade probability, however, is a proxy for the probability that an institution will fail and, hence, is only indirectly related to insurance fund losses. This section investigates how well risk differentiation under the proposed small institution model is aligned with insurance fund losses over an historical period. The investigation relies on historical data on deposit growth and failure resolution costs to estimate historical failure rates as well as benchmark assessment rates: what assessment rates would have been needed to offset the costs of failure. Historical failure rates and benchmark assessment rates that rise monotonically from risk category to risk category (as defined by the proposal) would be consistent with risk differentiation; failure rates and benchmark assessment rates that change randomly from risk category to risk category would not.

While maintaining a single assessment rate for all other Risk Categories, the FDIC proposes incremental assessment rates for Risk Category I, subject to minimum

[116] Generally, the size of coefficients for each explanatory variable becomes smaller as the forecast horizon lengthens.

and maximum rates.[117] As discussed in Section V, the minimum assessment rate is applied to all small insured institutions in Risk Category I, other than new institutions, with a downgrade probability of 3 percent or less while the maximum assessment rate is applied to those institutions with a downgrade probability of 16 percent or greater. All new institutions would be charged the maximum assessment rate. All other institutions in Risk Category I would be charged an incremental assessment rate, based on their estimated downgrade probabilities. With incremental assessment rates, many insured institutions will be assessed different assessment rates.

Benchmark rates provide a basis for measuring relative premium differences between risk groups; however, actual assessment rates will depend on aggregate revenue needs of the insurance fund. The FDIC must manage the balance of the fund, as a percentage of estimated insured deposits, within a range mandated by Congress. Estimated insured deposit growth, losses caused by insured institution failures, and returns on fund investments will primarily determine actual assessment rates.

A. Benchmark Assessment Rates: General Framework

Benchmark assessment rates are defined as those rates the FDIC would have had to charge institutions in each of the proposed new Risk Categories, and in each subgroup (defined below) of Risk Category I, to recover the failure-resolution costs of each category. Equation 7 shows in more detail how one can estimate the benchmark assessment rate for a risk category or subgroup of institutions, r_0, using an actuarial approach:

Equation 7

$$r_0\left[D_0 + \frac{D_0(1+g_1)}{(1+i_1)} + \frac{D_0(1+g_2)^2}{(1+i_2)^2} + \ldots + \frac{D_0(1+g_4)^4}{(1+i_4)^4}\right] = \left[C_0 + \frac{C_1}{(1+i_1)} + \frac{C_2}{(1+i_2)^2} + \ldots + \frac{C_4}{(1+i_4)^4}\right]$$

where D_0 is the assessment base as of the starting time ($t=0$), g_t is the growth rate in the assessment base over period t, C_t is expected failure-resolution costs and i_t is the discount rate for period t. Equation (7) derives r_0 by equating the present discounted value of expected future insurance assessments to the present discounted value of expected future failure-resolution costs over a five-year period. While equation (7) assumes the assessment rate remains constant for the five-year period, as a practical matter, institutions will pay varying assessment rates over time if they move into a different insurance risk category, or if the FDIC alters the assessment rate schedule.[118]

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[117] Incremental rates avoid potentially large differences in assessment rates among institutions that have only small differences in risk characteristics, as well as large changes from period to period in an institution's rate when its financial condition or performance changes slightly.

[118] The FDIC also considered assessment systems that incorporate the movement of institutions into different insurance-risk categories over time. Specifically, the FDIC placed institutions into initial

The failure history of institutions insured by the Bank Insurance Fund (BIF) is used to estimate benchmark assessment rates. Failure-resolutions of several hundred thrifts insured by the FSLIC were delayed during the 1980s and early 1990s due to insufficient FSLIC insurance funds, substantially increasing final failure-resolution costs.[119] As a result, FSLIC-insured thrift failure dates and failure-resolution costs are not comparable to those of BIF-insured banks and thrifts during the 1980s and early 1990s. Moreover, the regulatory issues that influenced FSLIC-insured thrift failure resolutions have been addressed by subsequent legislation, making the thrift crisis an inappropriate basis for determining benchmark assessment rates for the fund.

In calculating benchmark assessment rates, domestic deposits are used as an estimate of the insurance assessment base; the assessment base for each of three risk subgroups in Risk Category I – groups that would be charged the minimum assessment rate, incremental assessment rate and maximum assessment rate – for future years is estimated using the historical average annual growth rate for the subgroup.[120] Failure-resolution costs are the costs incurred by the FDIC in resolving failures and do not include losses to uninsured creditors. Finally, the average annual yield on the insurance fund investment portfolio of U.S. Treasury securities is used as the discount rate. This discount rate is the opportunity cost to the insurance fund for incurring failure-resolution expenses. Treasury security interest rates include a risk premium for maturity or repricing risk, but do not include premiums for default and liquidity risk, as do private-sector debt securities.

B. Fraud-related Failures

Between 1989 and 2005, 726 BIF-member institutions failed or received FDIC open-bank assistance. Fraud was a primary contributing factor in 87 (12 percent) of these failures and fraud was present in an additional 187 failures (26 percent).[121] Fraud and insider abuse are difficult to detect through off-site monitoring systems.[122] As a result, the FDIC is unlikely to uncover fraud through the condition and performance measures it

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insurance-risk categories to form subgroups and followed their transitions across risk categories over a five-year period. Each subgroup was required to recover the present value of its failure-resolution costs through assessments (i.e., subgroups were revenue neutral). This system allowed for repricing of individual institutions' insurance risk annually, but held assessment rates for each risk category constant for the five-year period. This system yields a set of simultaneous equations; one for each risk category that must be solved to determine each risk category's assessment rate. The FDIC chose not to use this system for the analysis in this section primarily because it yielded counter-intuitive results; rates for low-risk categories were often negative. Negative rates occur when no (or very few) institutions within an initial low-risk cohort fail while still classified in that low-risk category.

[119] Timothy Curry and Lynn Shibut, "The Cost of Savings and Loan Crisis: Truth and Consequences," *FDIC Banking Review* 13(2), 26-35 (2000).

[120] An institution's assessment base equals its total domestic deposits minus regulatorily determined percentages for float, with other relatively minor technical adjustments.

[121] For failures that occurred in 1989 through 2005, the FDIC has identified the cases where fraud was the primary contributing factor that led to failure.

[122] Christine M. Brickman, "Fraud in the Banking Industry: Definition, Causes, and Defenses," *FDIC Banking Review* (forthcoming).

uses in the small institution model or other risk measures based on the CAMELS attributes.

Until the fraud is discovered, risk-measurement models will generally incorrectly assess the risk posed by an institution where fraud is occurring. Consequently, the models do not attribute fraud-related failure-resolution costs to the risk subgroups to which the fraudulent institutions are assigned. Rather, the models assign fraud-related failure-resolution costs to all insured institutions on a pro-rata basis (based on their share of the total assessment base).

C. Insurance Risk Subgroups and Assessment Schedule

To derive benchmark assessment rates as described above, the proposed small institution model and the alternative model are re-estimated for each year from 1984 through 2004, using all historical data from 1984 through each year. Downgrade probabilities were obtained for each institution for each year by multiplying the values of each regressor as of the end of each year by the coefficients estimated over prior years.[123] For each year, insured institutions in Risk Category I were assigned to one of three subgroups based on estimated downgrade probabilities. Risk Category I is divided into three subgroups based on what an institution would pay under the proposed small institution model -- those institutions that would pay the minimum rate, those that would pay the maximum rate, and those in between that would pay rates varying incrementally. (Risk Category I is also divided into these three subgroups for the alternative model.) For the subgroup that would be charged an incremental assessment rate, downgrade probabilities were converted to assessment rates for 1985 to 2005, based on the relationship between downgrade probabilities and assessment rates using year-end 2005 financial ratios and supervisory component ratings. Insured institutions that are less than seven years old are also placed in the maximum rate subgroup. All remaining institutions are assigned to proposed Risk Category II, III, or IV, depending on their CAMELS rating and capitalization

D. Historically Derived Benchmark Assessment Rates

Failure rates and baseline assessment rates for all BIF-member institutions are estimated for Risk Categories II through IV and the three Risk Category I subgroups. An institution's risk category or subgroup is determined as of the end of each year from 1985 to 2000 and a failure is deemed to occur if the institution fails within five years from that year. Table 1.5 presents historical average five-year failure rates for each of three subgroups in Risk Category I as well as those for other Risk Categories. For both the proposed model and the alternative model, failure rates generally rise from the lowest Risk Category (I – minimum) to the highest Risk Category (IV).

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[123] For example, the coefficients from the estimation sample using financial ratios and weighted averages of the "C," "A," "M," "E" and "L" component ratings from 1984 to 1995 (and downgrades from 1985 to 1996) are multiplied by financial ratios and supervisory component ratings at year-end 1996 to compute the probability that each institution would be downgraded over the next three to twelve-month period (that is, from April through the end of 1997). The process is repeated for all years.

Table 1.5
Historical Average Five-Year Failure Rates*: 1985 – 2000
(BIF-Member Institutions with Assets Less Than $10 Billion)

Assessment Category	Proposed Model	Alternative Model
I - Minimum Assessment Rate	0.06	0.05
I - Incremental Assessment Rate	0.44	0.42
I - Maximum Assessment Rate	3.75	3.76
II	3.52	3.52
III	11.04	11.04
IV	28.76	28.76

* Excludes failures where fraud was determined to be a primary contributing factor. Failures within 5 years of group assignment.

Similarly, Table 1.6 presents the benchmark assessment rates for the proposed small institution model and the alternative model.[124] Benchmark assessment rates include fraud-related failure-resolution costs that were allocated to all institutions on a pro-rata basis. Due to the small number of failures that occur within the first two subgroups in Risk Category I, benchmark assessment rates can be influenced by a few high-loss failures. The average benchmark rates agree with prior expectations, increasing with the predicted probability of a CAMELS composite downgrade to 3 or worse.

Table 1.6
Benchmark Assessment Rates (annual, basis points): 1985 – 2000
(BIF-Member Institutions with Assets Less Than $10 Billion,
Fraud Costs Shared by All Banks*)

Assessment Category	Proposed Model	Alternative Model
I - Minimum Assessment Rate	1.27	1.38
I - Incremental Assessment Rate	1.68	1.60
I - Maximum Assessment Rate	5.69	5.58
II	9.32	9.32
III	28.78	28.78
IV	100.28	100.28

* Failures in which fraud was determined to be a primary contributing factor. Failures within 5 years of group assignment.

[124] As explained earlier, these assessment rates—being historically derived—will not necessarily be the rates that the FDIC charges in the future.

E. Individual Assessment Rates and Continuous Risk Measures

The results in the previous two tables show that the risk of subgroups of institutions within Risk Category I generally rise from one subgroup to the next. These results do not necessarily extend to comparisons of risk among individual institutions in Risk Category I. As is the case with all predictions, there is statistical error in the measures of risk. Therefore, one cannot say with certainty that risk rankings based on estimated probability of downgrade will comport with actual downgrades. In particular, the models cannot with certainty measure relative risk among individual institutions for which assessments would vary incrementally. Nonetheless, avoiding significant changes in deposit insurance rates when a Risk Category I institution's risk varies slightly is, in the FDIC's view, a desirable feature of the proposed assessment system. Furthermore, the proposal would apply the same minimum rate to a significant percentage of institutions based on similarly low risk. While the FDIC acknowledges potential error in risk measurement, it believes that the historical failure rates and benchmark assessment rates shown in Tables A.5 and A.6, respectively, lend support to the risk rankings used for Risk Category I institutions.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 2
Distribution of Assessment Rates

The distribution of assessment rates for the 1997-2005 period across asset size groups, and between CAMELS 1 and 2-rated institutions, is obtained using the following steps.

- The proposed small institution model and the alternative are re-estimated for every year from 1996 through 2004, using all historical data from 1984 through each year. Therefore, for 1996, the model is estimated using financial ratios and supervisory ratings from 1984 to 1996 and downgrade data from 1985 and 1997. For 1997, it is estimated using financial ratios and supervisory ratings from 1984 to 1997 and downgrade data from 1985 to 1998, and so on.
- Multiplying the values of each regressor as of the end of each year by the coefficients estimated over prior years produced out-of-sample downgrade probabilities. Thus, the coefficients from the estimation sample using financial ratios and supervisory component ratings from 1984 to 1996 (and downgrades from 1985 to 1997) are multiplied by financial ratios and CAMELS component ratings at year-end 1997 to compute the probability that each institution would be downgraded over the next three to twelve-month period (that is, from April through the end of 1998). The process is continued for each succeeding year.
- Downgrade probabilities were converted to assessment rates for year-ends 1997 to 2005, based on the relationship between downgrade probabilities and assessment rates for 2005, using steps described in Section V of Appendix 1. Tables 9, 10, 12 and 13 reflect the distribution of assessment rates for all institutions for all years from 1997 to 2005.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 3
Large Institution Type Categories

Processing Banks and Trust Companies: Institutions whose last 3 years' non-lending interest income plus fiduciary revenues plus investment banking fees exceed 50 percent of total revenues (and last 3 years' fiduciary revenues are non-zero).

Residential Mortgage Lenders: Institutions not described above whose mortgage loans plus mortgage-backed securities exceed 50 percent of total assets.

Non-diversified Regional Institutions: Institutions not described above if: 1) credit card plus securitized receivables exceed 50 percent of assets plus securitized receivables; or 2) residential mortgage loans, plus credit card loans, plus other loans to individuals exceeds 50 percent of assets.

Large Diversified Institutions: Institutions not described above with over $100 billion in assets.

Diversified Regional Institutions: Institutions not described above with less than $100 billion in assets.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 4
Analysis of the Projected Effects of the Payment of Assessments On the Capital and Earnings of Insured Depository Institutions

I. Introduction

This analysis estimates the effect of an increase in the annual deposit insurance assessment rates for all insured institutions on their tangible equity capital and profitability, assuming that actual rates adopted are 5 basis points higher than those in the proposed base rate schedule.[125] These are the highest rates that the Board may set in accordance the proposed base rate schedule, without further notice-and-comment rulemaking. Under the proposal, the Board could adopt lower rates.

[125] Under the proposal, institutions in Risk Category I would pay rates that vary incrementally, subject to minimum and maximum rates. The proposed base rate schedule sets the Risk Category I minimum rate at 2 basis points and the maximum rate at 4 basis points. Proposed base rates for Risk Categories II, III, and IV are 7, 25, and 40 basis points, respectively. The proposal would allow the Board to adjust rates uniformly up to a maximum of five basis points higher or lower than the base rates without the necessity of further notice-and-comment rulemaking, provided that any single adjustment from one quarter to the next could not move rates more than five basis points. This analysis assumes rates are uniformly 5 basis points higher than the base rates. Furthermore, in this analysis, all institutions in Risk Category I pay a uniform rate of 7.5 basis points, which is approximately the average rate for that category when rates are set 5 basis points higher than the base rates. For Risk Categories II, III, and IV, it is assumed that institutions in those categories pay 5 basis points above the applicable rates in the proposed base rate schedule.

While an assessment rate increase would not take effect until 2007, the effect of the new rates is projected using March 2006 reports of condition, and rates are assumed to remain in effect for four quarters.[126] Furthermore, the analysis excludes the effect of any reduction in assessment costs from institutions' use of one-time credits authorized under the Act, in order to evaluate the effect on earnings and capital once the one-time credits have been exhausted.

II. Analysis

While an increase in deposit insurance assessment rates will reduce institutions' profitability and capitalization, the reduction will not necessarily equal the full amount of the assessment increase. Two factors can reduce the effect of increased assessments on institutions' profits and capital. First, a portion of the assessment increase may be transferred to customers in the form of higher borrowing rates, increased service fees and lower deposit interest rates. Since information is not readily available on the extent to which institutions are able to share assessment costs with their customers, this analysis assumes that institutions bear the full after-tax cost of the assessment increase. Second, deposit insurance assessments are a tax-deductible operating expense; therefore, the increase in the assessment expense can be used to lower taxable income. This analysis considers the tax consequences of assessments and estimates the effective after-tax cost of assessments.[127]

Institutions' earnings retention and dividend policies also influence the extent to which increased assessments affect equity levels. If institutions maintain the same dollar amount of dividends, despite an increase in operating costs, equity (retained earnings) will decline by the full amount of the after-tax cost of the assessment. This analysis, instead, assumes that institutions will maintain dividend rates (that is, dividends as a fraction of net income) unchanged from those reported in the March 31, 2006 reports of condition.

The analysis indicates that the effect on institution profitability and capital is very small. Industry tangible equity capital of insured institutions as of March 31, 2006, is $782.464 billion. March 31, 2007 tangible equity capital is projected to equal $784.754 billion if the current assessment rates are maintained.[128] It would be $2.214 billion lower, i.e., $782.540 billion, if assessment rates are raised to 5 basis points above the proposed base rate schedule. The number of institutions projected to be undercapitalized by March 31, 2007 is unchanged from the number based on current assessment rates, if assessment rates are raised to this level.[129]

With an increase in assessment rates, the approximately $4.763 billion in additional assessment costs to insured institutions is projected to lead to $2.214 billion

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[126] Institution earnings and capital are projected using the same methodology currently used by the FDIC in determining the contingent loss reserve for potential insured-institution failures.

[127] The analysis does not incorporate any tax effects from an operating loss carry forward or carry back.

[128] Under current assessment rates, approximately 95 percent of insured institutions are charged nothing for deposit insurance.

[129] Undercapitalized institutions are defined as institutions with projected tangible equity capitalization of less than 2 percent by March 31, 2007.

less in tangible capital and $1.336 billion less in dividends as of March 31, 2007, compared to amounts if current assessment rates applied. The remaining $1.213 billion in additional assessment costs are projected to be offset by the tax benefit of deducting assessment expenses.

The effect of higher assessments on institution income is measured by the percentage change in income before taxes and extraordinary items, gross of loan loss provisions, due to the assessment rate increase (hereafter, income). This income measure is used in order to eliminate the potentially transitory effects of loan losses, extraordinary items and taxes on profitability. Institutions' March 31, 2006 income is adjusted to reflect the increase in operating costs (pre-tax) that might result from the proposed assessment rate increase.[130] The analysis indicates that the proposed increases in assessment rates will reduce institution income somewhat.[131] Table 4.1 shows that approximately 61.6 percent of institutions, with 91.4 percent of insured institution assets, are projected to experience a 0 to 5 percent reduction in income. In addition, 23.7 percent of institutions, with 6.1 percent of aggregate assets, are projected to incur a 5 to 10 percent reduction in income.[132]

Table 4.1

Percentage Change in Income

If Assessment Rates Are Raised 5 Basis Points Above the Proposed Assessment Rate Schedule

(All FDIC-Insured Institutions, $Millions)

Percentage Change	Number	Percent	Assets	Percent
Below -50%	93	1.1	$27,730	0.2
-25% to -50%	123	1.4	43,685	0.4
-15% to -25%	233	2.7	49,907	0.5
-10% to -15%	371	4.2	101,933	0.9
-5% to -10%	2,080	23.7	682,812	6.1
0% to -5%	5,418	61.6	10,249,022	91.4
Missing	472	5.3	54,999	0.5

Notes:

(1) Income refers to income before taxes and extraordinary items, gross of loan loss provisions.

(2) Most institutions with results categorized as "Missing" already have negative pre-tax income. The percentage change cannot therefore be calculated.

(3) Insured branches of foreign banks were not included in the analysis.

[130] Specifically, the proposed increase in semiannual assessment costs before taxes is deducted from institutions' income, as defined previously, for the first quarter of 2006.

[131] Because assessments are tax deductible, the after-tax effect on income should be smaller.

[132] In a separate analysis (not presented here), the economic effect of a smaller assessment rate increase – specifically, an increase only to the proposed base rates -- was also analyzed. If assessment rates were to increase to the proposed base rates, projected income for approximately 89 percent of banks would decline by only between 0 to 5 percent.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD02

Deposit Insurance Assessments—Designated Reserve Ratio

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Proposed Rulemaking with Request for Comment.

SUMMARY: Under the Federal Deposit Insurance Reform Act of 2005, the FDIC must by regulation set the Designated Reserve Ratio (DRR) for the Deposit Insurance Fund (DIF) within a range of 1.15 percent to 1.50 percent of estimated insured deposits. In this rulemaking, the FDIC seeks comment on the proposal to establish the DRR for the DIF at 1.25 percent of estimated insured deposits.

DATES: Comments must be submitted on or before September 22, 2006.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- E-mail: *comments@FDIC.gov*. Include ''DRR'' in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and use the title ''Part 327—Designated Reserve Ratio.'' The FDIC may post comments on its Internet site at: *http://www.fdic.gov/regulations/laws/federal/propose.html*. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 N. Fairfax Dr., Arlington, Virginia, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Senior Policy Analyst, Division of Insurance and Research, (202) 898–8967; or Christopher Bellotto, Counsel, Legal Division, (202) 898–3801, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Reform Act of 2005 (the Reform Act) amends section 7(b)(3) of the Federal Deposit Insurance Act (the FDI Act) to eliminate the current fixed designated reserve ratio (DRR) of 1.25 percent.[1] Section 2105 of the Reform Act directs the FDIC Board of Directors (Board) to set and publish annually a DRR for the Deposit Insurance Fund (DIF) within a range of 1.15 percent to 1.50 percent of estimated insured deposits.[2] 12 U.S.C. 1817(b)(3)(B), (D). Under section 2109(a)(1) of the Reform Act, the Board must prescribe final regulations setting the DRR after notice and opportunity for comment not later than 270 days after enactment of the Reform Act. Thereafter, any change to the DRR must also be made by regulation after notice and opportunity for comment.

While the Reform Act requires the Board to set a DRR annually, it does not direct the Board how to use the DRR. There is no longer a requirement for the reserve ratio to meet the DRR within a particular timeframe. In effect, the Reform Act permits the Board to manage the reserve ratio within a range. In contrast to the prior law, the Reform Act does not establish a role for the DRR as a trigger, whether for assessment rate determination, recapitalization of the fund, assessment credit use, or dividends.

The FDIC sets forth below background information, its analysis of the statutory factors that must be considered in setting the DRR and its proposal to set the initial DRR for the DIF at 1.25 percent, the current DRR.

I. Background

In setting the DRR for any year, section 2105(a), amending section 7(b)(3) of the FDI Act, directs the Board to consider the following factors:

(1) The risk of losses to the DIF in the current and future years, including historic experience and potential and estimated losses from insured depository institutions.

(2) Economic conditions generally affecting insured depository institutions. (In general, the Board should consider allowing the DRR to increase during more favorable economic conditions and decrease during less favorable conditions.)

(3) That sharp swings in assessment rates for insured depository institutions should be prevented.

(4) Other factors as the Board may deem appropriate, consistent with the requirements of the Reform Act.[3]

The DRR may not exceed 1.50 percent of estimated insured deposits nor be less than 1.15 percent of estimated insured deposits. Any future change to the DRR shall be made by regulation after notice and opportunity for comment. In soliciting comment on any proposed change in the DRR, the FDIC must include in the published proposal a thorough analysis of the data and projections on which the proposal is based.[4]

The analysis of the statutory factors begins in part II. The manner in which the FDIC's Board evaluates the statutory factors may depend on its view of the role of the DRR, which may change over time. The FDIC has identified two potential general roles for the DRR: a signal of the reserve ratio that the Board would like the fund to achieve; and a signal of the Board's expectation of the change in the reserve ratio under the assessment rate schedule adopted by the Board.

1. Signaling a Goal for the Reserve Ratio

One role for the DRR would be to serve as a signal of the reserve ratio that the Board would like the fund to achieve. Using the DRR in this manner could convey useful information to insured institutions and others about future deposit insurance assessment rates. Suppose, for example, the Board sets the DRR at 1.25 percent, intending it to be a target for the reserve ratio. If

[1] Section 2104 of the Reform Act, Public Law 109–171, 120 Stat. 9.

[2] To be codified at 12 U.S.C. 1817(b)(3)(B), (D).

[3] Section 2105 of the Reform Act (to be codified at 12 U.S.C. 1817(b)(3)(C)) provides:

(C) FACTORS—In designating a reserve ratio for any year, the Board of Directors shall—

(i) Take into account the risk of losses to the Deposit Insurance Fund in such year and future years, including historic experience and potential and estimated losses from insured depository institutions;

(ii) Take into account economic conditions generally affecting insured depository institutions so as to allow the designated reserve ratio to increase during more favorable economic conditions and to decrease during less favorable economic conditions, notwithstanding the increased risks of loss that may exist during such less favorable conditions, as determined to be appropriate by the Board of Directors;

(iii) Seek to prevent sharp swings in the assessment rates for insured depository institutions; and

(iv) Take into account such other factors as the Board of Directors may determine to be appropriate, consistent with the requirements of this subparagraph.

[4] Section 2105 of the Reform Act (to be codified at 12 U.S.C. 1817(b)(3)(D)).

the actual reserve ratio was 1.30 percent, the industry and the public could reasonably infer that the Board would be less likely to raise assessment rates in the near term than either to leave them unchanged or lower them.

A key consideration in using the DRR to signal a goal for the reserve ratio is the amount of time that the Board would allow to achieve the desired ratio. As noted earlier, by eliminating the current fixed DRR and certain assessment rules triggered by the fixed DRR, the Reform Act permits the Board to manage the reserve ratio within a range. There is no statutorily required timeframe for a reserve ratio to achieve a specific DRR.[5] Nonetheless, a DRR viewed as a reserve ratio target to achieve over time would convey to the public that the Board would generally want to avoid a sustained, significant deviation of the reserve ratio from the DRR.

The staff's best estimate is that the reserve ratio is likely to be less than 1.25 percent at year-end 2006 primarily due to strong insured deposit growth. If the Board considers the DRR to be a goal for the reserve ratio and adopts the proposal to set the DRR at 1.25 percent, it would need to determine how soon the reserve ratio should return to 1.25 percent. The use of one-time credits required by the Reform Act will limit assessment revenue initially.[6] Therefore, if the Board chooses to raise the reserve ratio to the DRR quickly and insured deposit growth is expected to remain strong, then a substantial increase in assessment rates might be required. The magnitude of the necessary assessment rate increase would likely diminish the more time that the Board allows the reserve ratio to climb back to its target.

2. Anticipating Changes in the Reserve Ratio

Another role for the DRR would be to signal the Board's expectation of the change in the reserve ratio under the assessment rate schedule adopted by the Board.

For example, the Board may use the DRR to anticipate how the reserve ratio may move in response to changing economic conditions given the premium rate schedule adopted. Should deteriorating economic conditions precipitate an increase in bank failures that reduces the fund balance under the assessment rate schedule in effect, the Board could lower the DRR as the reserve ratio falls. Should improving economic conditions lead to a reduction in the fund's contingent loss reserve (estimated liability for anticipated failures), the Board could raise the DRR in recognition of the boost to the fund balance. In these two instances, using the DRR to signal expected changes in the reserve ratio is consistent with a statutory factor (discussed below) under which the Board would consider increasing the DRR during more favorable economic conditions and decreasing during less favorable ones.[7]

Assuming that insured deposit growth remains strong while institutions use their one-time assessment credits, the Board could adopt an assessment rate schedule under which the reserve ratio would likely decline temporarily. In recognition of the anticipated decline in the reserve ratio, the Board could lower the DRR for one or more years. As the depletion of the credits results in greater revenue and an increase in the reserve ratio, the Board could then raise the DRR.

Setting the DRR to anticipate the actual direction of change in the reserve ratio under a given assessment rate schedule would, however, convey little information about future changes in assessment rates. The Reform Act requires regulatory action for any further change in the DRR (subsequent to the initial determination under this rulemaking), with notice and opportunity for comment. Furthermore, in soliciting comment on any proposed change in the DRR, the FDIC must include in the published proposal a thorough analysis of the data and projections on which the proposal is based. While the FDIC can meet these requirements for changing the DRR in order to reflect expected near-term changes in the reserve ratio, the notice-and-comment process and accompanying analysis may be more useful in the context of changes to a DRR that serves as a longer term target for the reserve ratio.

II. Proposed Designated Reserve Ratio

The FDIC must set the DRR in accordance with its analysis of the statutory factors listed above: risk of losses to the DIF; economic conditions generally affecting insured institutions; preventing sharp swings in assessment rates; and any other factors that the Board may determine to be appropriate and consistent with these three factors.

The analysis that follows considers each statutory factor, including several ''other factors.''

Risk of Losses to the DIF

The FDIC has estimated that potential loss provisions in 2006 related to future failures will range from $1 million to $241 million, with a best estimate of $93 million.[8] (The bounds of this range do not represent ''best case'' and ''worst case'' scenarios, and larger or smaller losses could occur.) These estimates suggest that near-term losses to the insurance fund would not significantly alter the reserve ratio.

The FDIC also considered economic stress events and their potential implications for losses to the insurance fund by running several two-year stress event simulations, affecting institutions specializing in residential mortgages, subprime loans, commercial real estate mortgages, commercial and industrial loans, and consumer loans. The results of each simulation, which were derived from historical stress events, demonstrate that banks are well positioned to withstand a significant degree of financial adversity. In no case did the stress simulation results raise any significant concerns.

Economic Conditions Affecting FDIC-Insured Institutions

The performance of the economy and banking industry remains strong. The

[5] However, the Board must adopt a restoration plan when the fund falls below 1.15 percent. Section 2108 of the Reform Act (to be codified at 12 U.S.C. 1817(b)(3)(E)).

[6] Section 7(e)(3) of the Federal Deposit Insurance Act, as amended by the Reform Act, requires that the Board provide by regulation an initial, one-time assessment credit to each ''eligible'' insured depository institution (or its successor) based on the assessment base of the institution as of December 31, 1996, as compared to the combined aggregate assessment base of all eligible institutions as of that date, taking into account such other factors the Board may determine to be appropriate. The aggregate amount of one-time credits is to equal the amount that the FDIC could have collected if it had imposed an assessment of 10.5 basis points on the combined assessment base of the Bank Insurance Fund and Savings Association Insurance Fund as of December 31, 2001. 12 U.S.C. 1817(e)(3).

[7] The reserve ratio may not necessarily rise (fall) under more (less) favorable economic and industry conditions. For example, the current economic outlook is generally good and industry conditions remain strong. Because of strong insured deposit growth and a low contingent loss reserve with little room for further reduction, there have been several consecutive quarterly declines in the reserve ratio.

[8] The FDIC has estimated a likely of insurance losses based on projected changes in the contingent loss reserve during 2006. These projections are influenced by several factors, including: (1) The shifting of problem banks among different risk categories within the reserve; (2) the reduction in problem banks due to improved financial conditions, mergers, or failures; and (3) the addition of new problem banks. To capture the effects of these changes, the FDIC uses a migration approach, which estimates the probabilities of banks entering into or leaving the group of banks included in the contingent loss reserve as well as the probability of banks moving between loss reserve risk categories. These probabilities are based on the recent history of changes to the reserve. Other factors driving changes in the contingent loss reserve are changes in expected failure rates and changes in rates of loss in the event of failure; however, for purposes of projecting changes to the contingent loss reserve, the FDIC assumes that failure and loss rates remain constant.

consensus expectation is that real economic growth will run near its long-run average of 3.0 to 3.5 percent in 2006, but will ease moderately in 2007 as higher interest rates continue to weigh on economic activity, especially the housing sector. A slower pace of home price appreciation may impede growth in consumer spending, but it is unclear by how much. Corporate balance sheets remain strong and real nonresidential investment is forecast to grow by 9 percent in 2006.[9]

In the banking industry, earnings have set five consecutive annual records, capital is at historically high levels, and asset quality remains solid. For 2005, aggregate return on assets (ROA) remained high at 1.30 percent, marking the fourth successive year where ROA was over 1.28 percent. The aggregate equity-to-asset ratio of 10.38 percent at year-end 2005 was the highest since 1939. No insured institutions have failed in two years, extending the longest period without a failure since the creation of the FDIC in 1933. Therefore, banks in general appear to be well positioned to withstand the financial stress that may arise from potential economic shocks in the next few years.

Prevent Sharp Swings in Assessment Rates

The Reform Act directs the FDIC's Board to consider preventing sharp swings in the assessment rates for insured depository institutions.

In the current environment, maintaining a DRR of 1.25 percent is more likely to be consistent with relative premium stability if the Board also allows a period of a few years for the reserve ratio to meet the DRR. As discussed above, the reserve ratio is expected to be below 1.25 percent at the end of 2006. The use of assessment credits will temporarily limit future assessment income. Therefore, there may be further downward pressure on the reserve ratio if recent robust insured deposit growth continues. The downward pressure is expected to reverse itself once institutions begin to use up their assessment credits. Raising the reserve ratio to a DRR of 1.25 percent quickly could require (depending on insured deposit growth) a substantial increase in assessment rates that would exhaust most of the credits rapidly. Once the DRR is achieved, there could be a substantial reduction in rates. Increasing the reserve ratio more gradually toward the DRR could result in less substantial increases (followed by less substantial reductions) in rates, consistent with this statutory factor.

Other Factors

The FDIC has identified certain ''other factors'' that the Board may choose to consider in setting the DRR. In the FDIC's view, these factors favor maintaining the DRR at 1.25 percent.

1. Transition to a New Assessment System

The assessment system is about to undergo significant change. Once proposed risk-based assessment regulations are finalized and become effective, all insured institutions will pay deposit insurance assessments regardless of the level of the reserve ratio. These proposed regulations also will change how the FDIC differentiates among insured institutions for risk in assigning assessment rates.

Furthermore, to provide institutions a transition to the new system, one-time assessment credits will be available to those institutions that contributed in earlier years to the build-up of the insurance funds. The application of these credits to assessments will limit assessment revenue in the near term. If insured deposit growth remains strong, this may place temporary downward pressure on the reserve ratio, which is expected to reverse itself once banks begin to use up their credits.

Finally, as described above, the FDIC will be changing to a system where the reserve ratio will be managed within a range from a system where a hard target for the reserve ratio applied.

Therefore, the FDIC staff believes that the changes facing the FDIC and insured institutions as a new assessment system is implemented argue against altering the DRR from the current 1.25 percent.

2. Midpoint of the Normal Operating Range for the Reserve Ratio

The Reform Act authorizes the Board to set the DRR at no less than 1.15 percent and no greater than 1.50 percent. The FDIC must adopt a restoration plan when the reserve ratio falls below 1.15 percent. When the reserve ratio exceeds 1.35 percent, the Reform Act generally requires the FDIC to begin to pay dividends. Because there is no requirement to achieve a specific reserve ratio within a given timeframe, these provisions in effect establish a normal operating range for the reserve ratio of 1.15 percent to 1.35 percent within which the Board has considerable discretion to manage the size of the insurance fund.[10] The current DRR of 1.25 percent is the midpoint of the normal operating range. The FDIC believes that at the commencement of the new assessment system, it would be reasonable to leave the DRR at the middle of this range.

3. Historical Experience

Historical experience with a DRR of 1.25 percent indicates that it has worked well under varying economic conditions in ensuring an adequate insurance fund and maintaining a sound deposit insurance system. The FDIC believes that more experience with managing the fund under the new framework established by the Reform Act will be of benefit in determining whether the DRR should be raised or lowered from 1.25 percent.

Balancing the Statutory Factors

In the FDIC's view, the best way to balance all of the statutory factors (including the ''other factors'' identified above that the Board may choose to consider) and to preserve the FDIC's new flexibility to manage the DIF is to maintain the DRR at 1.25 percent. The FDIC recognizes that the Reform Act directs its Board to consider allowing the DRR to increase in favorable economic conditions and that the present economic conditions are favorable. However, several other factors that the Board must (or may) consider—preventing sharp swings in assessment rates, the transitional nature of the assessment system, maintaining a DRR at the midpoint of the reserve ratio's normal operating range, the historical experience with a DRR of 1.25 percent, as well as the intent of the new legislation to provide the FDIC with flexibility to manage the reserve ratio within a range—all support or are consistent with maintaining the current DRR of 1.25 percent.

III. Request for Comment

The Board invites comments on all aspects of the proposed rule setting the DRR at 1.25 percent of estimated insured deposits. Interested persons are invited to submit written comments during the 60-day comment period.

IV. Paperwork Reduction Act

The proposed rule will set the Designated Reserve Ratio for the Deposit Insurance Fund. It will not involve any new collections of information pursuant to the Paperwork Reduction Act (44

[9] Growth forecast from Macroeconomic Advisers. Although the economy should stay in strong shape over the medium term, a number of downside risks exist, including further energy price spikes, an abrupt decline in U.S. financial or housing markets, or an abrupt decline in the foreign-exchange value of the dollar.

[10] Based on March 31, 2006 aggregate insured deposits of $4.002 trillion, a 20 basis point range for the reserve ratio would be equivalent to an $8 billion range for the fund balance.

U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small businesses (*i.e.,* insured depository institutions with $165 million or less in assets) within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The proposed rule, if finalized, will set the Designated Reserve Ratio (DRR) at 1.25 percent of estimated insured deposits, which is unchanged from the present Designated Reserve Ratio. Under the Federal Deposit Insurance Reform Act of 2005, the DRR provides no trigger for assessment determinations, recapitalization of the insurance fund, assessment credit use, or dividends. Consequently, retaining the DRR at 1.25 will not have a significant economic impact on a substantial number of small businesses.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Public Law 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to further amend part 327 of Title 12 of the Code of Federal Regulations as proposed to be amended at 71 FR 28790 on May 18, 2006, as follows:

PART 327—DESIGNATED RESERVE RATIO

Subpart A—In General

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

2. Add paragraph (g) to § 327.4 (as proposed at 71 FR 28790) to read as follows:

§ 327.4 Annual Assessment Rate.

* * * * *

(g) *Designated reserve ratio.* The designated reserve ratio for the Deposit Insurance Fund is 1.25 percent.

By order of the Board of Directors.

Dated at Washington, DC this 11th day of July, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 06–6280 Filed 7–21–06; 8:45 am]

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Federal Register

Monday,
July 24, 2006

Part IV

Securities and Exchange Commission

17 CFR Part 241

Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 241

[Release No. 34–54165; File No. S7–13–06]

Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation; solicitation of comment.

SUMMARY: The Securities and Exchange Commission is publishing this interpretive release with respect to the scope of ''brokerage and research services'' and client commission arrangements under Section 28(e) of the Securities Exchange Act of 1934 (''Exchange Act''). The Commission is soliciting further comment on client commission arrangements under Section 28(e).

DATES: *Effective Date:* July 24, 2006.

Comment Due Date: Comments should be received on or before September 7, 2006.

Other Date: Market participants may continue to rely on the Commission's prior interpretations of Section 28(e) until January 24, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interp.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–13–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–13–06. 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/interp.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Jo Anne Swindler, Assistant Director, at (202) 551–5750; Patrick M. Joyce, Special Counsel, at (202) 551–5758; Stanley C. Macel, IV, Special Counsel, at (202) 551–5755; or Marlon Quintanilla Paz, Special Counsel, at (202) 551–5756, in the Office of Enforcement Liaison and Institutional Trading, Division of Market Regulation, United States Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

Section 28(e) [1] of the Exchange Act [2] establishes a safe harbor that allows money managers to use client funds to purchase ''brokerage and research services'' for their managed accounts under certain circumstances without breaching their fiduciary duties to clients. In this release, the Commission is issuing interpretive guidance with respect to the safe harbor, with the particular goal of clarifying the scope of ''brokerage and research services'' in the light of evolving technologies and industry practices.

Fiduciary principles require money managers to seek the best execution for client trades, and limit money managers from using client assets for their own benefit.[3] Use of client commissions to pay for research and brokerage services presents money managers with significant conflicts of interest, and may give incentives for managers to disregard their best execution obligations when directing orders to obtain client commission services as well as to trade client securities inappropriately in order to earn credits for client commission services.[4] Recognizing the value of research in managing client accounts, however, Congress enacted Section 28(e) [5] of the Exchange Act to provide a safe harbor that protects money managers from liability for a breach of fiduciary duty solely on the basis that they paid more than the lowest commission rate in order to receive ''brokerage and research services'' provided by a broker-dealer, if the managers determined in good faith that the amount of the commission was reasonable in relation to the value of the brokerage and research services received.[6]

As discussed below in Section II, over the past thirty years, the Commission has issued several releases interpreting the Section 28(e) safe harbor. In 1998, the Commission published a report of its Office of Compliance Inspections and Examinations (''OCIE'') detailing a staff review of client commission practices at broker-dealers and investment advisers.[7] The Commission also has

[1] 15 U.S.C. 78bb(e).

[2] 15 U.S.C. 78a.

[3] Money managers include investment advisers, who have a fundamental obligation under the Investment Advisers Act of 1940 (''Advisers Act'') [15 U.S.C. 80b–1] and state law to act in the best interest of their clients, *SEC* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 189–191 (1963). This includes the obligation to seek ''best execution'' of clients' transactions under the circumstances of the particular transaction. Exchange Act Release No. 23170 (Apr. 23, 1986), 51 FR 16004, 16011 (Apr. 30, 1986) (''1986 Release''). *See also Delaware Management Co.*, 43 SEC 392, 396 (1967). The fundamental obligation of the adviser to act in the best interest of his client also generally precludes the adviser from using client assets for the adviser's own benefit or the benefit of other clients, at least without client consent. *See* Restatement (Second) of Trusts § 170 cmt. a, § 216 (1959).

[4] For a discussion of managers' conflicts in connection with the safe harbor, see generally Exchange Act Release No. 35375 (Feb. 14, 1995), 60 FR 9750, 9751 (Feb. 21, 1995) (''1995 Rule Proposal'') (the Commission took no further action on this proposal). *See also Sage Advisory Services LLC,* Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001) (Commission charged that adviser churned advised account to generate client commission credits to pay personal operating expenses and failed to seek to obtain best execution by causing account to pay commissions twice the rate the same broker charged other customers for comparable services).

To avoid confusion that may arise over the usage of the phrase ''soft dollars,'' in this release, the Commission uses the term ''client commission'' practices or arrangements to refer to practices under Section 28(e). Similarly, to minimize confusion with the phrase ''commission-sharing arrangements'' as used in the United Kingdom to refer to unique arrangements in that market place, we refer to arrangements under Section 28(e) as ''client commission arrangements'' or ''Section 28(e) arrangements.''

[5] 15 U.S.C. 78bb(e).

[6] *See* Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 161–62 (1975).

Congressional enactment of Section 28(e) did not alter the money manager's duty to seek best execution. *See* 1986 Release, 51 FR at 16011. The directors of an investment company have a continuing fiduciary duty to oversee the company's brokerage practices. *See* Investment Company Act Release No. 11662 (Mar. 4, 1981), 46 FR 16012 (Mar. 10, 1981). In addition, the directors have an obligation in connection with their review of the fund's investment advisory contract to review the adviser's compensation, including any ''soft dollar'' benefits the adviser may receive from fund brokerage. *See* 1986 Release, 51 FR at 16010.

[7] *See* Office of Compliance Inspections and Examination, U.S. Securities and Exchange Commission, *Inspection Report on the Soft Dollar Practices of Broker-Dealers, Investment Advisers and Mutual Funds* 3 (Sept. 22, 1998) (''1998 OCIE Report''), *available at http://www.sec.gov/news/studies/softdolr.htm.*

brought enforcement actions involving purported client commission practices.[8]

On October 19, 2005, the Commission issued a proposed interpretive release regarding client commission practices under Section 28(e) (''Proposing Release'').[9] We received letters from seventy-one commenters in response to the Proposing Release.[10] More than half of the commenters supported the Commission's efforts in the Proposing Release to clarify the scope of Section 28(e).[11] Overall, the comments provided useful information regarding industry practices in this area.[12]

After considering the comments received and the Commission's experience with Section 28(e), and upon further examination of changing market conditions, current industry practices, and the purposes underlying Section 28(e), we are issuing this interpretive release on money managers' use of client assets to pay for research and brokerage services under Section 28(e) of the Exchange Act.[13] This release interprets the scope of the safe harbor as follows:

- ''Research services'' are restricted to ''advice,'' ''analyses,'' and ''reports'' within the meaning of Section 28(e)(3).
- Physical items, such as computer hardware, which do not reflect the expression of reasoning or knowledge relating to the subject matter identified in the statute, are outside the safe harbor.
- Research related to the market for securities, such as trade analytics (including analytics available through order management systems) and advice on market color and execution strategies, are eligible for the safe harbor.
- Market, financial, economic, and similar data could be eligible for the safe harbor.
- Mass-marketed publications are not eligible as research under the safe harbor.
- ''Brokerage services'' within the safe harbor are those products and services that relate to the execution of the trade from the point at which the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution, through the point at which funds or securities are delivered or credited to the advised account.
- Eligibility of both brokerage and research services for safe harbor protection is governed by the criteria in Section 28(e)(3),[14] consistent with the Commission's 1986 ''lawful and appropriate assistance'' standard.
- Mixed-use items must be reasonably allocated between eligible and ineligible uses, and the manager must keep adequate books and records concerning allocations so as to enable the manager to make the required good faith determination of the reasonableness of commissions in relation to the value of brokerage and research services.
- In order for the safe harbor to be available to the money manager, the following principles apply:
- Broker-dealers that are parties to arrangements under Section 28(e) are involved in ''effecting'' the trade if they execute, clear, or settle the trade, or perform one of four specified functions[15] and allocate the other functions to another broker-dealer.
- Broker-dealers ''provide'' the research if they (i) prepare the research, (ii) are financially obligated to pay for the research, or (iii) are not financially obligated to pay but their arrangements have certain attributes.

[8] *See, e.g.*, *Dawson-Samberg Capital Management, Inc. and Judith A. Mack*, Advisers Act Release No. 1889, 54 SEC 786 (Aug. 3, 2000); *Marvin & Palmer Associates, Inc., et al.*, Advisers Act Release No. 1841, 70 SEC Docket 1643 (Sept. 30, 1999); *Fleet Investment Advisors, Inc.*, Advisers Act Release No. 1821, 70 SEC Docket 1217 (Sept. 9, 1999); *Republic New York Sec. Corp. and James Edward Sweeney,* Exchange Act Release No. 41036, 53 SEC 1283 (Feb. 10, 1999); *SEC* v. *Sweeney Capital Management, Inc.*, Litigation Release No. 15664, 66 SEC Docket 1613 (Mar. 10, 1998), 1999 U.S. Dist. LEXIS 22298 (1999) (order granting permanent injunction and other relief); *Renaissance Capital Advisers, Inc.,* Advisers Act Release No. 1688, 66 SEC Docket 408 (Dec. 22, 1997); *Oakwood Counselors, Inc.,* Advisers Act Release No. 1614, 63 SEC Docket 2034 (Feb. 11, 1997); *S Squared Technology Corp.,* Advisers Act Release No. 1575, 62 SEC Docket 1446 (Aug. 7, 1996); *SEC* v. *Galleon Capital Mgmt.,* Litigation Release No. 14315, 57 SEC Docket 2593 (Nov. 1, 1994).

[9] Exchange Act Release No. 52635 (Oct. 19, 2005), 70 FR 61700 (Oct. 25, 2005).

[10] Seventy-one different commenters submitted seventy-six comment letters. The comment letters are available for inspection in the Commission's Public Reference Room in File No. S7–09–05, or may be viewed at *http://www.sec.gov/rules/interp/s70905.shtml*. The commenters were: Committee on Federal Regulation of Securities, Business Law Section, American Bar Association (''ABA''); Adams Harkness (''Adams Harkness''); American Bankers Association (''AmBankers''); The Alliance in Support of Independent Research, Nov. 23, 2005 (''ASIR 1''); The Alliance in Support of Independent Research , June 2, 2006 (''ASIR 2''); Axia Advisory Corporation (''Axia''); Bingham McCutcheon LLP, on behalf of Frank Russell Securities, Inc. (''Bingham McCutcheon''); Bloomberg L.P. (''Bloomberg''); BNY Securities Group on behalf of the Bank of New York Company, Inc., Nov. 25, 2005 (''BNY 1''); BNY Securities Group on behalf of the Bank of New York Company, Inc., May 2, 2006 (''BNY 2''); California Public Employees' Retirement System (''CalPERS''); Capital Institutional Services, Inc. (''CAPIS''); Carolina Capital Markets, Inc., Nov. 23, 2005 (''CCM 1''); Carolina Capital Markets, Inc., Nov. 25, 2005 (''CCM 2''); CFA Centre for Financial Market Integrity, CFA Institute (''CFA Institute''); Consumer Federation of America/Fund Democracy (joint letter) (''CFA/FD''); Charles River Brokerage (''Charles River''); C.L. King & Associates, Inc. (''CL King''); Commission Direct, Inc. (''Commission Direct''); Credit Suisse Securities (USA) LLC (''Credit Suisse''); Neal J. Dean (''Dean''); U.S. Department of Labor, Employee Benefits Security Administration (''DOL''); Michael Donovan (''Donovan''); Dow Jones & Company, Inc. (''Dow Jones''); E*Trade Financial Corporation (''E*Trade''); European Association of Independent Research Providers (''EuroIRP''); Eze Castle Software (''Eze Castle''); Fidelity Management and Research Company (''Fidelity''); FinTech Securities (''FinTech''); Tamar Frankel (''Frankel''); William T. George, Oct. 20, 2005 (''George 1''); William T. George, Oct. 28, 2005 (''George 2''); William T. George, Apr. 4, 2006 (''George 3''); GovernanceMetrics International (''GMI''); Independent Directors Council (''IDC''); Instinet, LLC (''Instinet''); International Securities Association for Institutional Trade Communications (''ISITC''); The Interstate Group (''Interstate Group''); Investment Adviser Association (''IAA''); Investment Company Institute (''ICI''); Investment Management Association (''IMA''); Investorside Research Association (''Investorside''); International Shareholder Services Inc. (''ISS''); ITG Inc. (''ITG''); J.P. Morgan Securities Inc., Nov. 28, 2005 (''JP Morgan 1''); J.P. Morgan Securities Inc., Mar. 28, 2006 (''JP Morgan 2''); Thomas F. Lamprecht (''Lamprecht''); Mellon Financial Corporation (''Mellon''); Merrill Lynch & Co., Inc. (''Merrill''); Managed Funds Association (''MFA''); Mutual Fund Directors Forum (''MFDF''); Morgan Stanley & Co., Inc. (''Morgan Stanley''); Missouri State Employees'' Retirement System (''MOSERS''); Emmett Murphy (''Murphy''); National Compliance Services, Inc. (''NCS''); Bernard Notas (''Notas''); National Society of Compliance Professionals Inc. (''NSCP''); Junius W. Peake, Oct. 21, 2005 (''Peake 1''); Junius W. Peake, Oct. 26, 2005 (''Peake 2''); Rainier Investment Management, Inc. (''Rainier''); The Reserve Funds (''Reserve''); Reuters America LLC (''Reuters''); Riedel Research Group (''Riedel''); Charlotte Roederer (''Roederer''); Sanderson & Stocker, Inc. (''Sanderson & Stocker''); U.S. Senator Charles C. Schumer and U.S. Senator John E. Sununu (joint letter) (''Senators Schumer and Sununu''); Charles Schwab & Co., Inc. (''Schwab''); Seward & Kissel LLP (''Seward & Kissel''); Securities Industry Association (''SIA''); Security Traders Association (''STA''); T. Rowe Price Associates, Inc. (''T. Rowe Price''); UBS Securities LLC (''UBS''); Vandham Securities Corp. (''Vandham''); The Vanguard Group, Inc. (''Vanguard''); Ward & Smith, P.A. on behalf of First Citizens Bank & Trust Company (''Ward & Smith''); West Virginia Investment Management Board (''WVIMB'').

[11] ABA; ASIR 1; AmBankers; BNY; Bloomberg; CalPERS; CAPIS; CFA Institute; Charles River; Commission Direct; DOL; Dow Jones; E*Trade; EuroIRP; Eze Castle; Fidelity; FinTech; IDC; ISS; Interstate Group; IAA; ICI; IMA; Investorside; ITG; JP Morgan 1; MFA; Mellon; Merrill; Morgan Stanley; NCS; NSCP; Reuters; Riedel; Roederer; Schwab; SIA; STA; T. Rowe Price; UBS; Vandham; Vanguard.

[12] Ten commenters expressed the view that money managers should refrain from using client commissions to obtain brokerage and research or that Congress should repeal Section 28(e). *See* Axia; CFA/FD (joint letter); Dean; Frankel; MOSERS; MFDF; Peake 2; Reserve; WVIMB.

[13] 15 U.S.C. 78bb(e). The Commission also is considering whether at a later time to propose requirements for disclosure and recordkeeping of client commission arrangements.

[14] 15 U.S.C. 78bb(e)(3).

[15] The four functions are: (1) Taking financial responsibility for customer trades; (2) maintaining records relating to customer trades; (3) monitoring and responding to customer comments concerning the trading process; and (4) monitoring trades and settlements. *See* discussion *infra* note 176 and accompanying text.

This Release reiterates the statutory requirement that money managers must make a good faith determination that commissions paid are reasonable in relation to the value of the products and services provided by broker-dealers in connection with the managers' responsibilities to the advisory accounts for which the managers exercise investment discretion.

The guidance in this Release shall be effective immediately upon its publication in the **Federal Register**. Market participants may continue to rely on the Commission's prior interpretations for six months following the publication of this Release in the **Federal Register**. Nonetheless, the Commission will receive and consider additional comment regarding Section III.I of this Release with respect to client commission arrangements given evolving developments in the industry. Based on any comments received, the Commission may, but need not, supplement the guidance in this Release in the future.

II. ''Brokerage and Research Services'' Under Section 28(e) of the Exchange Act

A. Origins of the Section 28(e) Safe Harbor

In the early 1970's, the Commission studied whether to require unfixing commission rates on national exchanges, which had been fixed by custom and regulation since the founding of the New York Stock Exchange nearly two hundred years earlier.[16] At the same time, the House and Senate began to consider whether to eliminate fixed commission rates legislatively.[17] The Commission adopted Rule 19b–3 under the Exchange Act,[18] which ended fixed commission rates on national securities exchanges effective May 1, 1975.[19] Just one month later, Congress passed legislation unfixing commission rates as part of the Securities Acts Amendments of 1975 (''1975 Amendments'').[20]

In the era of fixed rates, when broker-dealers could not compete on the basis of the commissions that they could charge for executing orders, they competed on the basis of services including non-execution services that they could offer.[21] Indeed, broker-dealers had long been accustomed to attracting order execution business from institutional money managers by offering them brokerage functions and research reports to distinguish their services from those of their competitors.[22] As the end of the fixed-rate era drew near, however, money managers and broker-dealers alike questioned how competition over commission rates would disrupt these practices. Institutional money managers expressed concern that, in an environment of competitive commission rates, they would be forced to allocate brokerage solely on the basis of lowest execution costs, or that paying more than the lowest commission rate would be deemed a breach of fiduciary duty, and that useful research might become more difficult to obtain.[23] Broker-dealers, which were accustomed to producing proprietary ''Street'' research, expressed concern that they could no longer be compensated in commissions for their work product if orders were routed to broker-dealers that provided execution-only service at lower rates.[24]

In an effort to address the industry's uncertainties about competitive commission rates, Congress included a safe harbor in the 1975 Amendments, codified as Section 28(e) of the Exchange Act.[25] The safe harbor provides generally that a money manager does not breach his fiduciary duties under state or federal law solely on the basis that the money manager has paid brokerage commissions to a broker-dealer for effecting securities transactions in excess of the amount another broker-dealer would have charged, if the money manager determines in good faith that the amount of the commissions paid is reasonable in relation to the value of the brokerage and research services provided by such broker-dealer.

As fiduciaries, money managers are obligated to act in the best interest of their clients, and cannot use client assets (including client commissions) to benefit themselves, absent client consent.[26] Money managers who obtain brokerage and research services with client commissions do not have to purchase those services with their own funds, which creates a conflict of interest for the money managers. Section 28(e) addresses this conflict by permitting money managers to pay higher commissions on behalf of a client than otherwise are available to obtain brokerage and research services, if managers make their good faith determination regarding the reasonableness of commissions paid.[27]

[16] *See* U.S. Securities and Exchange Commission, *Institutional Investor Study Report*, H.R. Doc. No. 64, 92d Cong., 1st Sess., Vol. 4, at 2206 (1971). *See also* U.S. Securities and Exchange Commission, Special Study of Securities Markets, H.R. Doc. No. 88–95, pt. 2, at 323 (1963) (''Special Study'').

[17] *See generally* Senate Comm. on Banking, Housing and Urban Affairs, Securities Industry Study Report of the Subcommittee on Securities, S. DOC. NO. 93–13 (1973).

[18] 17 CFR 240.19b–3. Rule 19b–3 was codified in certain respects by Section 6(e)(1) of the Exchange Act [15 U.S.C. 78f(e)(1)], which was enacted as part of the Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 107–08 (1975). *See also* Exchange Act Release No. 26180 (Oct. 14, 1988), 53 FR 41205 (Oct. 20, 1988) (rescinding Rule 19b–3).

[19] *See* Exchange Act Release No. 11203 (Jan. 23, 1975), 40 FR 7394 (Feb. 20, 1975).

[20] *See* Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 107–08 (1975) (enacting Section 6(e)(1) of the Exchange Act [15 U.S.C. 78f(e)(1)]). *See generally* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 69 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 247; House Comm. on Interstate and Foreign Commerce, Securities Reform Act of 1975, H.R. Rep. No. 94–123 (1975); Joint Explanatory Statement of the Comm. of Conference, Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 94–229, at 108 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321, 338.

[21] *See* Exchange Act Release No. 12251 (Mar. 24, 1976), 41 FR 13678, 13679 (Mar. 31, 1976) (''1976 Release'').

[22] *See* Special Study, H.R. Doc. No. 88–95, pt. 2, at 321.

[23] *See* 1995 Rule Proposal, 60 FR at 9750; Report of Investigation in the Matter of Investment Information, Inc. Relating to the Activities of Certain Investment Advisers, Banks, and Broker-Dealers, Exchange Act Release No. 16679, 19 SEC Docket 926, 931 (Mar. 19, 1980) (''III Report''); 1976 Release, 41 FR at 13679.

[24] *Securities Acts Amendments of 1975: Hearings on S. 249 Before the Subcomm. on Securities of the Senate Comm. on Banking, Housing, and Urban Affairs,* 94th Cong., 1st Sess. 329–31 (1975) (''S. 249 Hearings'') (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell, Hutchins Inc., and Oppenheimer & Co.).

[25] *See* Securities Acts Amendments of 1975, Pub. L. 94–29, 89 Stat. 97, 161–62 (1975). Section 28(e) [15 U.S.C. 78bb(e)] governs the conduct of all persons who exercise investment discretion with respect to an account, including investment advisers, mutual fund portfolio managers, fiduciaries of bank trust funds, and money managers of pension plans and hedge funds. The scope of Section 28(e) therefore extends to entities that are within the jurisdiction of the Board of Governors of the Federal Reserve, the Office of the Comptroller of the Currency, the Department of Labor, and the Office of Thrift Supervision.

[26] *See supra* note 3.

[27] The Commission has interpreted Section 28(e) as encompassing client commissions on agency transactions and fees on certain riskless principal transactions that are reported under NASD trade reporting rules. Exchange Act Release No. 45194 (Dec. 27, 2001), 67 FR 6, 7 (Jan. 2, 2002) (''2001 Release''). Managers may not use client funds to obtain brokerage and research services under the safe harbor in connection with fixed income trades that are not executed on an agency basis, principal trades (except for certain riskless principal trades), or other instruments traded net with no explicit commissions.

Further, transactions for which the client has directed the money manager to a particular broker in order to recapture a portion of the commission for that client or to pay expenses of that client such as sub-transfer agent fees, consultants' fees, or administrative services fees generally do not raise the types of conflicts for the money manager that the safe harbor of Section 28(e) was designed to address. *See, e.g.*, 1986 Release, 51 FR at 16011. These types of directed brokerage arrangements typically involve use of a client's commission dollars to obtain services that directly and exclusively benefit the client. *See* Payment for Investment Company Services with Brokerage

Conduct not protected by Section 28(e) may constitute a breach of fiduciary duty as well as a violation of the federal securities laws, particularly the Advisers Act [28] and the Investment Company Act of 1940 (''Investment Company Act''),[29] and the Employee Retirement Income Security Act of 1974 (''ERISA'').[30] In particular, money managers of registered investment companies and pension funds subject to ERISA may violate Section 17(e)(1) of the Investment Company Act and ERISA, respectively, unless they satisfy the requirements of the Section 28(e) safe harbor.[31]

B. Previous Commission Guidance on the Scope of Section 28(e)

The Commission has issued three interpretive releases under Section 28(e) and a report pursuant to Section 21(a) of the Exchange Act that addresses issues associated with Section 28(e).[32] We discuss these below.

1. 1976 Release

In 1976, the Commission issued an interpretive release stating that the safe harbor did not protect ''products and services which are readily and customarily available and offered to the general public on a commercial basis.'' [33] The Commission identified these products and services as examples of excluded items: ''newspapers, magazines and periodicals, directories, computer facilities and software, government publications, electronic calculators, quotation equipment, office equipment, airline tickets, office furniture and business supplies.'' [34]

In that release, the Commission also admonished money managers not to direct broker-dealers to make ''give-up'' payments, in which the money manager asked the broker-dealer, retained to effect a transaction for the account of a client, to ''give up'' part of the commission negotiated by the broker-dealer and the money manager to another broker-dealer designated by the money manager for whom the executing or clearing broker is not a normal and legitimate correspondent. The Commission stated that in order to be within the definition of ''brokerage and research services'' under Section 28(e), ''it was intended * * * that a research service paid for in commissions by accounts under management be provided by the particular broker which executed the transactions for those accounts.'' [35] At the same time, the Commission acknowledged the value of third-party research by stating that, ''under appropriate circumstances, [Section 28(e) might] be applicable to situations where a broker provides a money manager with research produced by third parties.'' [36] The Commission emphasized that the money manager ''should be prepared to demonstrate the required good faith determination in connection with the transaction.'' [37]

2. Report in the Matter of Investment Information, Inc.

In 1980, the Commission issued a report pursuant to Section 21(a) of the Exchange Act following an investigation of Investment Information, Inc.'s (''III'') purported client commission arrangements (''III Report''). [38] III managed the client commission programs of money managers. Typically, under these arrangements, the money manager directed brokerage transactions to broker-dealers that III designated. The broker-dealers, who provided execution services only, retained half of each commission and remitted the balance to III. III retained a fee (for ''services'' that III provided to money managers, ostensibly for managing the client commission accounts) and credited a portion of its commission to the money manager's account. The money manager could either recapture the credited amount (*i.e.*, receive cash) for the benefit of his client or use the credit to purchase research services.[39] The money managers made the arrangements for acquiring the research services directly with the service vendors, and III simply paid the bills for the services as the money managers requested. The executing broker-dealers were unaware of the specific services the money managers acquired from the vendors. III was not a registered broker-dealer, and it did not perform any kind of brokerage function in the securities transactions.

The Commission found that these arrangements did not fall within Section 28(e) of the Exchange Act because the broker-dealers that were ''effecting'' the transactions ''in no significant sense provided the money managers with research services.'' [40] They only executed the transactions and paid a portion of the commissions to III. The broker-dealers were not aware of the specific services that the managers acquired and did not pay the bills for these services. The Commission concluded that, although Section 28(e) does not require a broker-dealer to produce research services ''in-house,'' the services must nevertheless be

Commissions, Securities Act Release No. 7197 (July 21, 1995), 60 FR 38918 (July 28, 1995).

[28] 15 U.S.C. 80b–1. *See* 1986 Release, 51 FR at 16008–09 (discussing the principal provisions of the Advisers Act and rules and forms thereunder that impose disclosure and other obligations on investment advisers and related persons).

[29] 15 U.S.C. 80a–1. *See* 1986 Release, 51 FR at 16009 (discussing the principal provisions of the Investment Company Act and rules and forms thereunder that impose disclosure and other obligations on investment advisers of registered investment companies and related persons).

[30] Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001. *See also Statement of Policies Concerning Soft Dollar and Directed Commission Arrangements,* ERISA Technical Release No. 86–1, [1986–87 Decisions] Fed. Sec. L. Rep. ¶ 84,009 (May 22, 1986).

[31] Section 17(e)(1) of the Investment Company Act [15 U.S.C. 80a–17(e)(1)] generally makes it unlawful for any affiliated person of a registered investment company to receive any compensation for the purchase or sale of any property to or for the investment company when that person is acting as an agent other than in the course of that person's business as a broker-dealer. Essentially, Section 17(e)(1) may be violated if an affiliated person of a registered investment company, such as an adviser, receives compensation for the purchase or sale of property to or from the investment company. Absent the protection of Section 28(e), an investment adviser's receipt of compensation under a client commission arrangement for the purchase or sale of any property, including securities, for or to the investment company may constitute a violation of Section 17(e)(1). *See U.S.* v. *Deutsch,* 451 F.2d 98, 110–11 (2d Cir. 1971), *cert. denied,* 404 U.S. 1019 (1972). If a client commission arrangement is not consistent with Section 28(e), disclosure of the arrangement would not cure any Section 17(e)(1) violation. *See* 1986 Release, 51 FR at 16010 n.55.

[32] *See* 2001 Release; 1986 Release; 1976 Release; III Report. In addition, the Commission has charged money managers and broker-dealers with violations of the federal securities laws in circumstances in which they did not act within the safe harbor and defrauded investors. *See, e.g., Portfolio Advisory Services, LLC, and Cedd L. Moses,* Advisers Act Release No. 2038, 77 SEC Docket 2759–31 (June 20, 2002); *Dawson-Samberg Capital Management, Inc. and Judith A. Mack,* Advisers Act Release No. 1889, 54 SEC 786 (Aug. 3, 2000); *Founders Asset Management LLC and Bjorn K. Borgen,* Advisers Act Release No. 1879, 54 SEC 762 (June 15, 2000); *Marvin & Palmer Associates, Inc., et al.*, Advisers Act Release No. 1841, 70 SEC Docket 1643 (Sept. 30, 1999); *Fleet Investment Advisors, Inc.,* Advisers Act Release No. 1821, 70 SEC Docket 1217 (Sept. 9, 1999); *Republic New York Sec. Corp. and James Edward Sweeney,* Exchange Act Release No. 41036, 53 SEC 1283 (Feb. 10, 1999); *SEC* v. *Sweeney Capital Management, Inc.,* Litigation Release No. 15664, 66 SEC Docket 1613 (Mar. 10, 1998), 1999 U.S. Dist. LEXIS 22298 (1999) (order granting permanent injunction and other relief); *Renaissance Capital Advisers, Inc.,* Advisers Act Release No. 1688, 66 SEC Docket 408 (Dec. 22, 1997); *Oakwood Counselors, Inc.,* Advisers Act Release No. 1614, 63 SEC Docket 2034 (Feb. 11, 1997); *S Squared Technology Corp.,* Advisers Act Release No. 1575, 62 SEC Docket 1446 (Aug. 7, 1996); *SEC* v. *Galleon Capital Mgmt.,* Litigation Release No. 14315, 57 SEC Docket 2593 (Nov. 1, 1994).

[33] 1976 Release, 41 FR at 13678.

[34] *Id.*

[35] *Id.* at 13679.

[36] *Id.*

[37] *Id.*

[38] *See* III Report, 19 SEC Docket at 926.

[39] Applying the 1976 standard, the Commission found that certain services received by some participating money managers were not research services because these services were readily and customarily available and offered to the general public on a commercial basis. These included such items as periodicals, newspapers, quotation equipment, and general computer services. *See* III Report, 19 SEC Docket at 931 n.17.

[40] *Id.* at 931–32.

''provided by'' the broker-dealers. The Commission found that a broker-dealer is not providing research services when it pays obligations the money manager owes to a third party. The Commission indicated that, consistent with Section 28(e), broker-dealers could arrange to have the third-party research provided directly to the money manager, with the payment obligation falling on the broker-dealer.[41]

3. 1986 Release

Following a staff examination of client commission practices in 1984–1985, the Commission concluded that the 1976 standard was ''difficult to apply and unduly restrictive in some circumstances,'' particularly as the types of research products and their method of delivery had proliferated and become more complex.[42] The Commission expressed concern that ''uncertainty about the standard may have impeded money managers from obtaining, for commission dollars, goods and services'' that they believed were important to making investment decisions.[43]

The Commission withdrew the 1976 standard and construed the safe harbor to be available to research services that satisfy the statute's definition of ''brokerage and research services'' in Section 28(e)(3) and provide ''lawful and appropriate assistance to the money manager in the performance of his investment decision-making responsibilities.'' [44] We concluded that a product or service that was readily and customarily available and offered to the general public on a commercial basis nevertheless could constitute research. The 1986 Release also re-affirmed that, under appropriate circumstances, money managers may use client commissions to obtain third-party research (*i.e.,* research produced by someone other than the executing broker-dealer).[45] The 1986 Release also emphasized the importance of written disclosure of client commission arrangements to clients and reiterated a money manager's duty to seek best execution.

The 1986 Release also introduced the concept of ''mixed use.'' In many cases, a product or service obtained using client commissions may serve functions that are not related to the investment decision-making process, such as accounting or marketing. Management information services, which may integrate trading, execution, accounting, recordkeeping, and other administrative matters such as measuring the performance of accounts, were noted as an example of a product that may have a mixed use. The Commission indicated that where a product has a mixed use, an investment manager should make a reasonable allocation of the cost of the product according to its use, and should keep adequate books and records concerning the allocations.[46] The Commission also noted that the allocation decision itself poses a conflict of interest for the money manager that should be disclosed to the client. In the 1986 Release, the Commission stated that a money manager may use client commissions pursuant to Section 28(e) to pay for the portion of a service or specific component that assists him in the investment decision-making process, but he cannot use client commissions to pay for that portion of a service that provides him administrative assistance.[47]

The 1986 Release also addressed third-party research. Citing to the III Report, the Commission reaffirmed its view that, ''while a broker may under appropriate circumstances arrange to have research materials or services produced by a third party, it is not 'providing' such research services when it pays obligations incurred by the money manager to the third party.'' [48] In the III Report, the Commission found that the money managers and the research vendors, rather than the broker-dealers, had made all of the arrangements for acquiring the services.[49]

4. 2001 Release

Until 2001, the Commission interpreted Section 28(e) to be available only for research and brokerage services obtained in relation to commissions paid to a broker-dealer acting in an ''agency'' capacity.[50] That interpretation meant that money managers could not rely on the safe harbor for research and brokerage services obtained in relation to fees charged by market makers when they executed transactions in a ''principal'' capacity. The Commission interpreted the term ''commission'' in Section 28(e) in this fashion because, in the Commission's view, fees on principal transactions were not quantifiable and fully disclosed in a way that would permit a money manager to determine that the fees were reasonable in relation to the value of research and brokerage services received.[51]

In 2001, the Nasdaq Stock Market asked the Commission to reconsider this interpretation of Section 28(e) to apply also to research and brokerage services obtained in relation to fully and separately disclosed fees on certain riskless principal transactions effected by National Association of Securities Dealers, Inc. (''NASD'') members and reported under NASD trade reporting rules.[52] Based on required disclosure of fees under confirmation rules and reporting of the trade under NASD rules, the Commission determined that the money manager could make the necessary determination of the reasonableness of these charges under Section 28(e). The Commission therefore modified its interpretation of ''commission'' for purposes of the Section 28(e) safe harbor to encompass fees paid for riskless principal transactions in which both legs are executed at the same price and the transactions are reported under the NASD's trade reporting rules.[53]

C. 1998 Office of Compliance Inspections and Examinations Report

In 1998, after OCIE conducted examinations of approximately 355 broker-dealers, advisers, and funds, the Commission published the staff's report, which described the range of products and services that advisers obtain under their client commission arrangements.[54] The report raised concerns about the nature of products and services that were being treated as ''research,'' the purchase of ''mixed-use'' items, disclosure by advisers about their client commission arrangements, and recordkeeping.[55] The 1998 OCIE Report made several recommendations for improving commission practices, including that the Commission provide further guidance on the scope of the safe harbor and require better recordkeeping and enhanced disclosure of client commission arrangements and transactions.[56]

[41] *Id.* at 932.

[42] 1986 Release, 51 FR at 16005.

[43] *Id.* at 16005–06.

[44] *Id.* at 16006.

[45] *Id.* at 16007.

[46] *Id.* at 16006.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 16007.

[50] *See* 2001 Release, 67 FR at 6; 1995 Rule Proposal, 60 FR at 9751 n.10; Investment Company Act Release No. 20472 (Aug. 11, 1994), 59 FR 42187, 42188 n.3 (Aug. 17, 1994).

[51] 2001 Release, 67 FR at 7.

[52] *See* Letter from Hardwick Simmons, Chief Executive Officer, The Nasdaq Stock Market, Inc. to Harvey L. Pitt, Chairman, U.S. Securities and Exchange Commission (Sept. 7, 2001) (on file with the Commission).

[53] 2001 Release, 67 FR at 7.

[54] *See* 1998 OCIE Report, at 3.

[55] 1998 OCIE Report, at 4–5.

[56] *Id.* at 47–52.

D. Report of the NASD's Mutual Fund Task Force

In 2004, the NASD Mutual Fund Task Force, composed of senior executives from mutual fund management companies and broker-dealers, as well as representatives from the academic and legal communities, published observations and recommendations to the Commission concerning client commission practices and portfolio transaction costs.[57] In particular, the NASD Task Force Report recommended that the Section 28(e) safe harbor be retained, but that the interpretation of the scope of research services be narrowed to better tailor it to the types of client commission services that principally benefit the adviser's clients rather than the adviser.[58] The NASD Task Force Report recommended that the Commission interpret the safe harbor to protect only brokerage services as described in Section 28(e)(3) and the ''intellectual content'' of research, but not the means by which such content is provided.[59] The NASD Task Force Report suggested that this approach would exclude magazines, newspapers, and other such publications that are in general circulation to the retail public, and such items as computer hardware, phone lines, and data transmission lines.[60]The NASD Task Force Report emphasized that the safe harbor should encompass third-party research and proprietary research on equal terms, and recommended improved disclosure.[61]

E. United Kingdom Financial Services Authority (''FSA'')

On July 22, 2005, the FSA adopted final client commission rules in conjunction with issuing policy statement PS 05/9.[62] The final rules describe ''execution'' and ''research'' services and products eligible to be paid for by commissions, and specify a number of ''non-permitted'' services that must be paid for in hard dollars, such as custody not incidental to execution, computer hardware, telephone lines, and portfolio performance measurement and valuation services.[63] The policy statement also acknowledges that some products and services may be permitted or non-permitted depending on how they are used by the money manager.[64] The rules became effective beginning in January 2006, with a transitional period until June 2006.[65]

With the globalization of the world's financial markets, many U.S. market participants have a significant presence abroad, and in particular in the United Kingdom. To the extent that the Commission's approach to client commissions is compatible with that taken in the United Kingdom., market participants' costs of compliance with multiple regulatory regimes are reduced. Therefore, we have taken the FSA's work into account in developing our position in this release, while recognizing the significant differences in our governing law and rules, such as the fact that the United Kingdom. does not have a statutory provision similar to Section 28(e).[66] This interpretive guidance is generally consistent with the FSA's rules, with a few exceptions.[67]

III. Commission's Interpretive Guidance

In light of developments in client commission practices, evolving technologies, marketplace developments, the observations of the staff in examinations of industry participants, and comments received on the Proposing Release, we have revisited our previous guidance as to the meaning of the phrase ''brokerage and research services'' in Section 28(e). After careful consideration, we are providing a revised interpretation that replaces Sections II and III of the 1986 Release.[68] Specifically, we are providing guidance with respect to: (i) The appropriate framework for analyzing whether a particular service falls within the ''brokerage and research services'' safe harbor; (ii) the eligibility criteria for ''research''; (iii) the eligibility criteria for ''brokerage''; and (iv) the appropriate treatment of ''mixed-use'' items. We also discuss the money manager's statutory requirement to make a good faith determination that the commissions paid are reasonable in relation to the value of the brokerage and research services received. Finally, we are issuing guidance on third-party research and client commission arrangements and are seeking further comment relating to client commission arrangements (Section III.I of this Release).

Section 28(e) applies equally to arrangements involving client commissions paid to full service broker-

[57] *See* NASD, Report of the Mutual Fund Task Force, ''Soft Dollars and Portfolio Transaction Costs'' (Nov. 11, 2004) (''NASD Task Force Report''), *available* at *http://www.nasd.com/web/groups/rules_regs/documents/rules_regs/nasdw_012356.pdf.*

[58] NASD Task Force Report, at 5.

[59] NASD Task Force Report, at 6–7. The Task Force proposed that ''intellectual content'' be defined as ''any investment formula, idea, analysis or strategy that is communicated in writing, orally or electronically and that has been developed, authored, provided or applied by the broker-dealer or third-party research provider (other than magazines, periodicals or other publications in general circulation).'' *Id.* at 7.

[60] Specifically, the NASD Task Force indicated that its proposed definition of research services would exclude the following: Computer hardware and software, unrelated to any research content or analytical tool; phone lines and data transmission lines; terminals and similar facilities; magazines, newspapers, journals, and on-line news services; portfolio accounting services; proxy voting services unrelated to issuer research; and travel expenses incurred in company visits. NASD Task Force Report, at 7.

[61] Regarding disclosure, the NASD Task Force Report recommended, among other things: (a) Ensuring that fund boards obtain information about a fund adviser's brokerage allocation practices and client commission services received; (b) mandating enhanced disclosure in fund prospectuses to improve investor awareness; (c) applying disclosure requirements to all types of commissions; and (d) enhancing disclosure to investors about portfolio transaction costs. NASD Task Force Report, at 4. *See supra* note 13.

[62] U.K. Financial Services Authority, Policy Statement 05/9, Bundled Brokerage and Soft Commission Arrangements: Feedback on CP 05/5 and Final Rules (July 2005) (''FSA Final Rules''), *available* at *http://www.fsa.gov.uk/pages/library/policy/policy/2005/05_09.shtml.* The rules apply only to equity trades and not to fixed income trades. FSA Final Rules, at Annex, p. 6 (Conduct of Business Sourcebook Rule 7.18.1). The FSA proposed the rules in March 2005. *See* Consultation Paper 05/5, Bundled Brokerage and Soft Commission Arrangements: Proposed Rules (Mar. 2005) (''FSA Rule Proposal''), available at *http://www.fsa.gov.uk/pubs/cp/cp05_05.pdf.*

[63] *See* FSA Final Rules, at Annex, pp. 8–9 (Conduct of Business Sourcebook Rules 7.18.4 to 7.18.8). *See also* FSA Rule Proposal, at 63–64.

[64] FSA Final Rules, at 5. The rules also set forth the principle that investment managers should inform advisory clients how their commissions are being spent, and indicate that, in evaluating compliance with this principle, the FSA will have regard for the extent to which investment managers adopt the disclosure standards developed by industry associations such as the U.K. Investment Management Association (''IMA''). *See* FSA Final Rules, at Annex, p. 11 (Conduct of Business Sourcebook Rule 7.18.14). *See also* Investment Management Association, Pension Fund Disclosure Code, Second Edition (Mar. 2005), *available* at *http://www.investmentuk.org/news/standards/pfdc2.pdf.*

[65] FSA Final Rules, at 5. Firms were permitted to continue to comply with existing rules until the earlier of the expiration of existing agreements or June 30, 2006.

[66] We have also taken note of the views of other regulators. *See* Ontario Securities Commission, Concept Paper 23–402, *Best Execution and Soft Dollar Arrangements* (Feb. 8, 2005), *available* at *http://www.osc.gov.on.ca/ Regulation/Rulemaking/Current/Part2/cp_20050204_23-402_bestexecution.jsp;* Australian Securities and Investments Commission, Press Release 04–181, *Soft Dollar Benefits Need Clear Disclosure* (June 10, 2004), available at *http://www.asic.gov.au/asic/ASIC_PUB.NSF/byid/77D7FCEFB7653EC5CA256EAF0002F6C2?opendocument.*

[67] The FSA has determined that market data that has not been analyzed or manipulated does not meet the requirements of a research service, but permits managers to justify using client commissions to pay for raw data feeds as execution services. The FSA also has identified subscriptions for publications and seminar fees as ''non-permitted'' services. FSA Final Rules, at 2.15 and Annex, p. 9 (Conduct of Business Sourcebook Rules 7.18.7, 7.18.8(d), and 7.18.8(e)).

[68] Our interpretation does not replace other sections of the 1986 Release.

dealers that provide brokerage and research services directly to money managers, and to third-party research arrangements where the research services and products are developed by third parties and provided by a broker-dealer that participates in effecting the transaction. Today, it remains true that, if the conditions of the safe harbor of Section 28(e) are met, a money manager does not breach his fiduciary duties solely on the basis that he uses client commissions to pay a broker-dealer more than the lowest available commission rate for a bundle of products and services provided by the broker-dealer (*i.e,.* anything more than ''pure execution'').

A. Present Environment

In the 1986 Release, the Commission incorporated from the legislative history the phrase ''lawful and appropriate assistance'' to the money manager in carrying out his investment decision-making responsibilities in developing the Commission standard governing the range of brokerage and research products and services that may be obtained by a money manager within the safe harbor.[69] Since that time, some have construed this standard broadly to apply to services and products that are only remotely connected to the investment decision-making process. In some cases, ''administrative'' or ''overhead'' goods and services have been classified as research.[70] In the 1998 OCIE Report, examiners reported that 28% of the money managers and 35% of the broker-dealers that were examined had entered into at least one arrangement that, in the staff's view, was outside of the scope of Section 28(e) and the 1986 Release.[71] In particular, OCIE examiners identified numerous examples of advisers that it believed failed to separate overhead or administrative expenses from those items that provide benefits to clients as brokerage and research services.[72] Examples of non-research items included: Chartered financial analyst (''CFA'') exam review courses, membership dues and professional licensing fees, office rent, utilities, phone, carpeting, marketing, entertainment, meals, copiers, office supplies, fax machines, couriers, backup generators, electronic proxy voting services, salaries, and legal and travel expenses.[73]

Client commissions are also used extensively to pay for mechanisms related to the delivery of research or brokerage services. In the 1998 OCIE Report, staff reported that some advisers used client commissions to pay for various peripheral items that support hardware and software, such as the power needed to run the computer and the dedicated telephone line used to receive information into the computer.[74]

The products and services available to money managers have grown more varied and complex. For example, a single software product may perform an array of functions, but only some of the functions are properly ''brokerage and research services'' under Section 28(e). In the 1998 OCIE Report, staff reported that ''the types of products available for purchase with client commissions have greatly expanded since 1986,'' leaving industry participants to grapple with decisions as to whether these products are ''research'' or ''brokerage'' within the safe harbor, or whether these products should be considered part of money managers' overhead expenses to be paid for by managers with their own funds.[75]

The Commission observes that developments in technology have led to difficulties in applying client commission standards that were developed over the past thirty years. In addition, OCIE staff reported that money managers have taken an overbroad view of the products and services that qualify as ''brokerage and research services'' under the safe harbor.[76] The complexity of products and services creates uncertainty about whether client commissions may be used within the safe harbor to purchase all or a portion of particular products and services. This uncertainty may result in the use of client commission dollars to acquire products and services that are outside of the safe harbor, improper allocation of research and non-research mixed-use products and services (as contemplated by the 1986 Release), or inadequate documentation of allocations.[77]

Questions regarding the use of client commissions have led legislators, regulators, fund industry participants, and investors to consider whether some uses of client commissions should be banned, the safe harbor withdrawn, or changes made to the regulatory landscape.[78] As a step to address the present environment and comments received in response to the Proposing Release, the Commission has determined to provide further guidance on the scope of the safe harbor.[79] Further guidance in this area may be particularly important because, under existing law and rules, money managers must disclose client commission arrangements as material information,[80] and may provide more detailed disclosure when they receive products or services that fall outside the scope of the safe harbor. If a money manager incorrectly concludes that a product or service is within the safe harbor, the money manager may provide disclosure that is inadequate. In addition, guidance will assist money managers of registered investment companies and pension funds subject to ERISA in determining whether they are complying with the Investment Company Act and ERISA because using client commissions to pay for products that are outside the safe harbor may violate these laws.

B. Framework for Analyzing the Scope of the ''Brokerage and Research Services'' Under Section 28(e)

The Commission has recognized the need to interpret the scope of the terms

[69] *See* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249. *See also infra* note 82.

[70] 1998 OCIE Report, at 31.

[71] *Id.* at 22, 31.

[72] *Id.* at 31.

[73] *Id.* at 31–32.

[74] *Id.* at 34–35.

[75] *Id.* at 49.

[76] *See id.* at 3–4, 31–32.

[77] *See id.* at 4–6, 32–33.

[78] *See, e.g.,* Mutual Funds Integrity and Fee Transparency Act of 2003, H.R. 2420, 108th Cong. (2003) (This bill would have required, among other things, that the Commission do the following: Issue rules requiring mutual funds to disclose their policies and practices regarding the use of client commissions to obtain research, advice, or brokerage activities; issue rules requiring managers to maintain copies of the written contracts with third-party research providers; and conduct a study on the use of client commission arrangements by managers.); Mutual Fund Transparency Act of 2003, S. 1822, 108th Cong. (2003) (This bill would have required, among other things, that the Commission issue a rule to require mutual funds to disclose as fund fees and expenses brokerage commissions paid by the fund and borne by shareholders.).*See also* Letter from Matthew P. Fink, President, The Investment Company Institute, to William H. Donaldson, Chairman, U.S. Securities and Exchange Commission (Dec. 16, 2003) (urging the Commission to issue interpretative guidance excluding from the Section 28(e) safe harbor: (1) computer hardware and software and other electronic communications facilities used in connection with trading investment decision-making; (2) publications, including books, newspapers, and electronic publications, that are available to the general public; and (3) third-party research services), *available at http://www.sec.gov/rules/petitions/petn4-492.htm.*

[79] In addition to concerns over the scope of the safe harbor under current market conditions, the Commission recognizes that improvements may be necessary in disclosure and documentation of client commission practices. For example, the ability to enforce client commission standards may be hampered by inadequate documentation. The Commission will evaluate whether further action is necessary.

[80] *See* Form ADV. Pt. II, Items 12.B and 13.A. *See also Sage Advisory Services LLC,* Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001).

''brokerage and research services'' in Section 28(e) in light of Congress's intention to provide a limited safe harbor for conduct that otherwise may be a breach of fiduciary duty.[81] In the 1986 Release, the Commission adopted the ''lawful and appropriate assistance'' standard for ''brokerage and research services,'' [82] which was intended to supplement the statutory elements of the analysis of whether a money manager's payment for a product or service with client commissions is within the safe harbor. While the 1986 Release focused on the application of the ''lawful and appropriate assistance'' standard to research, we believe the standard also applies to brokerage services.

Taking into account the legislative history of Section 28(e) and our prior guidance, the analysis of whether a particular product or service falls within the safe harbor should involve three steps.[83] First, the money manager must determine whether the product or service falls within the specific statutory limits of Section 28(e)(3) (*i.e.*, whether it is eligible ''research'' under Section 28(e)(3)(A) or (B) or eligible ''brokerage'' under Section 28(e)(3)(C)).[84] Second, the manager must determine whether the eligible product or service actually provides lawful and appropriate assistance in the performance of his investment decision-making responsibilities. Where a product or service has a mixed use, a money manager must make a reasonable allocation of the costs of the product according to its use. Finally, the manager must make a good faith determination that the amount of client commissions paid is reasonable in light of the value of products or services provided by the broker-dealer. [85] We discuss these statutory elements in more detail below.

C. Eligibility Criteria for ''Research Services'' Under Section 28(e)(3)

In response to the Proposing Release, nine comment letters supported the Commission's proposed narrowing of the scope of research under Section 28(e).[86] Three commenter stated that the Commission's approach did not sufficiently narrow the scope of ''research,'' [87] while another commenter recommended that the Commission improve clarity by providing extensive lists of research items that are eligible and ineligible for the Section 28(e) safe harbor.[88] Based on the language of the statute and our analysis of the legislative history, and taking into consideration the comments to the Proposing Release regarding the types of products and services paid for and their uses, we believe that the eligibility criteria for ''research'' under the safe harbor discussed in the Proposing Release and set forth below represents the appropriate interpretation of Section 28(e).

The eligibility criteria that govern ''research services'' are set forth in Section 28(e)(3) of the Exchange Act:

> For purposes of the safe harbor, a person provides * * * *research services* insofar as he—
>
> (A) furnishes *advice,* either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;
>
> (B) furnishes *analyses* and *reports* concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; * * *. [89]

In determining that a particular product or service falls within the safe harbor, the money manager must conclude that it constitutes ''advice,'' ''analyses,'' or ''reports'' within the meaning of the statute and that its subject matter falls within the categories specified in Section 28(e)(3)(A) and (B). With respect to the subject matter of potential ''research services,'' we note that the categories expressly listed in Section 28(e)(3)(A) and (B) also subsume other topics related to securities and the financial markets.[90] Thus, for example, a report concerning political factors that are interrelated with economic factors could fall within the scope of the safe harbor. The form (*e.g.,* electronic, paper, or oral discussions) of the research is irrelevant to the analysis of eligibility under the safe harbor.

In evaluating the statutory language, the Commission notes that an important common element among ''advice,'' ''analyses,'' and ''reports'' is that each reflects substantive content—that is, the expression of reasoning or knowledge.[91] Thus, in determining whether a product or service is eligible as ''research'' under Section 28(e), the money manager must conclude that it reflects the expression of reasoning or knowledge and relates to the subject matter identified in Section 28(e)(3)(A) or (B). Traditional research reports analyzing the performance of a particular company or stock clearly are eligible under Section 28(e). Discussions with research analysts also fall squarely within the statute because they involve ''furnish[ing] advice * * * directly * * * as to the * * * advisability of investing in securities.'' Thus, they reflect the expression of reasoning or knowledge (*i.e.,* furnishing advice) relating to the statutory subject matter (*i.e.,* the advisability of investing in securities). Meetings with corporate

[81] Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 74 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249.

[82] *See* 1986 Release, 51 FR at 16006 n.9 (quoting from Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249) (The Report concludes, ''Thus, the touchstone for determining when a service is within or without the definition in Section 28(e)(3) is whether it provides lawful and appropriate assistance to the money manager in the carrying out of his responsibilities.''). In articulating the ''commercial availability'' standard for safe-harbor eligibility in the 1976 Release, the Commission also expressly recognized ''lawful and appropriate assistance'' as the ''touchstone for whether a service is within or without the provision of Section 28(e)(3). 1976 Release, 41 FR at 13679.''

[83] In the Commission's view, the prudent way for a money manager to meet its burden of showing eligibility for the safe harbor is to document fully its client commission arrangements.

[84] *See* 1986 Release, 51 FR at 16006. *See also* 1976 Release, 41 FR at 13679 (''The term 'brokerage and research services', as used in Section 28(e), is defined in Section 28(e)(3).''). Section 28(e)(3) states that ''a person provides brokerage and research services insofar as he—(A) furnishes advice, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities; (B) furnishes analyses and reports concerning issuers, industries, securities, economic factors and trends, portfolio strategy, and the performance of accounts; or (C) effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or person associated with a member or in which such person is a participant.'' 15 U.S.C. 78bb(3)(A)–(C).

[85] 15 U.S.C. 78bb(e). *See* 1986 Release, 51 FR at 16006–07. The Commission also emphasized the money manager's disclosure and other obligations under the federal securities laws, including the duty to seek best execution of his or her client's transactions. *Id.* at 16007–11.

[86] ASIR 1; BNY 1; CFA Institute; FinTech; IMA; MFDF; NCS; T. Rowe Price; Vanguard.

[87] CFA/FD (joint letter); IDC.

[88] Notas.

[89] 15 U.S.C. 78bb(e)(3)(A)–(B) (emphasis added).

[90] *See* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted* in 1975 U.S.C.C.A.N. 179, 249 (''[T]he reference [in Section 28(e)] to economic factors and trends would subsume political factors which may have economic implications which may in turn have implications in terms of the securities markets as a whole or in terms of the past, present, or future values of individual securities or groups of securities.''). *See also* S. 249 Hearings, at 329, 330 (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell, Hutchins Inc., and Oppenheimer & Co.) (Research under Section 28(e) should include ''advice and information on industries, economics, world conditions, portfolio strategy and other areas.'').

[91] The content may be original research or a synthesis, analysis, or compilation of the research of others.

executives to obtain oral reports on the performance of a company are eligible because reasoning or knowledge will be imparted at the meeting (*i.e.,* reports) about the subject matter of Section 28(e) (*i.e.,* concerning issuers). Seminars or conferences may also be eligible under the safe harbor if they truly relate to research, that is, they provide substantive content relating to the subject matter in the statute, such as issuers, industries, and securities.[92] Software that provides analyses of securities portfolios is eligible under the safe harbor because it reflects the expression of reasoning or knowledge relating to subject matter that is included in Section 28(e)(3)(A) and (B).[93] Corporate governance research (including corporate governance analytics) and corporate governance rating services could be eligible if they reflect the expression of reasoning or knowledge relating to the subject matter of the statute (for example, if they provide reports and analyses about issuers, which can have a bearing on the companies' performance outlook).[94]

As noted above, even if the manager properly concludes that a particular product or service is an ''analysis,'' ''advice,'' or ''report'' that reflects the expression of reasoning or knowledge, it is eligible research only if the subject matter of the product or service falls within the categories specified in Section 28(e)(3)(A) and (B). Thus, for example, consultants' services may be eligible for the safe harbor if the consultant provides advice with respect to portfolio strategy, but such services are not eligible if the advice relates to the managers' internal management or operations.

1. Mass-Marketed Publications

The Proposing Release sought comment on whether the Commission should provide further guidance regarding mass-marketed publications. More than half of the commenters who discussed this issue indicated that mass-marketed publications were readily distinguishable from traditional research products and should be excluded from the safe harbor on that basis.[95] Other commenters believed that mass-marketed publications should be subjected to the same eligibility criteria as other forms of research.[96]

The congressional hearings on the 1975 Amendments and contemporaneous statements support the view that ''research services'' intended to be covered by the safe harbor are the types that broker-dealers had historically provided to money managers during the era of fixed commissions—exemplified by research reports produced by Wall Street brokerage firms—rather than newspapers, magazines, and other periodical publications that are in general circulation to the retail public.[97] Accordingly, we believe that Section 28(e) should not protect the money manager's purchase of publications that are mass-marketed. Mass-marketed publications are those publications that are intended for and marketed to a broad, public audience. Indicia of these mass-marketed publications include, among other things, that they are circulated to a wide audience, intended for and marketed to the public, rather than intended to serve the specialized interests of a small readership, and have low cost. These mass-marketed publications are more appropriately considered as overhead expenses of money managers.[98]

Our conclusion that the safe harbor of Section 28(e) should not include mass-marketed publications does not affect the eligibility of certain other publications that qualify as ''research'' under the guidance above. Indicia of publications that are not mass-marketed and could be eligible research under the safe harbor include, among other things, that they are marketed to a narrow audience, directed to readers with specialized interests in particular industries, products, or issuers, and have high cost. For example, financial newsletters and other financial and economic publications that are not targeted to a wide, public audience may be eligible research under the safe harbor. Trade magazines and technical journals concerning specific industries (*e.g.,* nano-technology) or product lines (*e.g.,* medical devices) are eligible as research under Section 28(e) if they are marketed to, and intended to serve the interests of a narrow audience (*e.g.,* physicians), rather than the general public.

The method of distribution of a publication does not determine whether it is mass-marketed. Thus, whether a publication is distributed in paper or electronically does not determine the availability of the safe harbor. Moreover, it is the focus of the marketing and not the availability of the publication that is an important criterion for determining the applicability of the safe harbor. Even if a publication that is marketed to a narrow audience, such as investment professionals, can be accessed over the internet by the general population, this does not alter its eligibility as research

[92] As discussed below, travel and related expenses (*e.g.,* meals and entertainment) associated with arranging trips to meet corporate executives or to attend seminars or conferences are not eligible under the safe harbor. *See* 1986 Release, 51 FR at 16007. We note that the FSA has identified seminars as ''non-permitted'' services. *See* FSA Final Rules, at Annex, p. 9 (Conduct of Business Sourcebook Rule 7.18.8(d)).

[93] *See* Senate Comm. on Banking, Housing and Urban Affairs, Securities Acts Amendments of 1975, S. Rep. No. 94–75, at 71 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 249 (''computer analyses of securities portfolios would * * * be covered'').

[94] This paragraph incorporates responses to commenters' requests to clarify the eligibility of the following: discussions with analysts (T. Rowe Price); meetings with corporate executives (Murphy; T. Rowe Price); and corporate governance research, corporate governance research analytics, and corporate governance rating services (GMI; ISS).

[95] Bloomberg; CFA/FD; George 2; ICI; IDC; Merrill Lynch; SIA; T. Rowe Price. Two other commenters seemed to believe that certain mass-marketed publications should be included and others excluded. Charles River; ISITC.

[96] ABA; CFA Institute; Commission Direct; Dow Jones; Reuters; Seward & Kissel. Commission Direct questioned whether, as a practical matter, managers will pay for mass-marketed publications under Section 28(e), noting that money managers that provide to clients a list of services paid for with commissions ''will be very reluctant to identify ubiquitous newspapers or journals.''

[97] S. 249 Hearings, at 201–205 (Statement of Ray Garrett, Jr., Chairman, U.S. Securities and Exchange Commission). *See also* S. 249 Hearings, at 330–31 (Combined statement of Baker, Weeks & Co., Inc., Donaldson, Lufkin & Jenrette Sec. Corp., Mitchell, Hutchins Inc., and Oppenheimer & Co.) (legislation is necessary to protect professional fiduciary's access to broker-generated research.); Harvey E. Bines, *The Law of Investment Management* 9–56 (1978); Richard L. Teberg and Mary B. Cane, *Paying Up for Research,* 115 Trusts & Estates 62 (January 1976) (''[T]he Wall Street Journal or Fortune * * * [and other] services, of course, are clearly not within the congressional purposes of Section 28(e) since they do not relate to the research or execution function.''); A.A. Sommer, Jr., A Glance at the Past, a Probe of the Future, Address at the Mid-Continental District of the Securities Industry Association (Mar. 18, 1976) (''There continues to be the problem of how the good research capacity of Wall Street can be compensated and preserved * * * .''); James F. Jorden, *Paying Up for Research: A Regulatory and Legislative Analysis,* 1975 Duke L.J. 1103, 1123–24 (1975) (''[A] prudent adviser * * * cannot use brokerage to purchase * * * a subscription to the Wall Street Journal.''). Speaking just weeks before the safe harbor legislation was signed into law, Commissioner Sommer stated: ''Already we are being asked questions about what can properly be deemed research for which business may be allocated or commissions paid * * * .[F]rankly I don't think a conscientious, scrupulous professional needs us to tell him that a subscription to The Wall Street Journal or Fortune, or legal or accounting services, or office furniture, is not the ''research'' which he can lawfully buy with his beneficiary's dollars.'' A.A. Sommer, Jr., Have We Learned Anything? Address at the Investment Company Institute (May 14, 1975), in Securities Week, 14 (May 19, 1975).

[98] The Commission recognizes that mass-marketed publications can play a role in keeping money managers informed about matters relevant to the performance of their responsibilities. It is the Commission's expectation that money managers may market their services and receive advisory fees based on a fundamental level of knowledge about the industry, which could include review of these mass-marketed publications. Nonetheless, money managers should obtain these mass-marketed publications with their own funds, rather than have clients pay for them through commissions.

under Section 28(e). The purpose of such publications is to reach a small audience and to serve the specialized interests of a narrow group. Accordingly, if these publications otherwise meet the eligibility criteria for research (that is, they contain the expression of reasoning or knowledge related to the statutory subject matter), money managers can use client commissions to pay for them under Section 28(e).

2. Inherently Tangible Products and Services

Products or services that do not reflect the expression of reasoning or knowledge, including products with inherently tangible or physical attributes (such as telephone lines or office furniture), are not eligible as research under the safe harbor. We do not believe that these types of products and services could be said to constitute ''advice,'' ''analyses,'' or ''reports'' within the meaning of the statute. Applying this guidance, a money manager's operational overhead expenses do not constitute eligible ''research services.'' [99] For example, expenses for travel, entertainment, and meals associated with attending seminars, and travel and related expenses associated with arranging trips to meet corporate executives, analysts, or other individuals who may provide eligible research orally are not eligible under the safe harbor. Similarly, office equipment, office furniture and business supplies, salaries (including research staff), rent, accounting fees and software, Web site design, e-mail software, Internet service, legal expenses, personnel management, marketing, utilities, membership dues (including initial and maintenance fees paid on behalf of the money manager or any of its employees to any organization or representative or lobbying group or firm), professional licensing fees, and software to assist with administrative functions such as managing back-office functions, operating systems, word processing, and equipment maintenance and repair services are examples of other overhead items that do not meet the statutory criteria for research set forth in this release and are not eligible under the safe harbor.[100]

Computer hardware, including computer terminals,[101] and computer accessories, while they may assist in the delivery of research, are not eligible ''research services'' because they do not reflect substantive content related in any way to making decisions about investing.[102] Similarly, the peripherals and delivery mechanisms associated with computer hardware or associated with the oral delivery of research, including telecommunications lines, transatlantic cables, and computer cables, are outside the ''research services'' safe harbor.[103]

3. Market Research

Based on the comments we received in response to the Proposing Release, we believe that technology now permits managers to obtain research related to the market for securities from many sources and products, and through many delivery mechanisms, including order management systems (''OMS'') and trade analytical software.[104] In many instances, this ''market research'' is the type of research report and advice historically provided directly by broker-dealers, such as advice on market color and execution strategies. Therefore, we believe that it is appropriate to clarify that ''advice,'' ''analyses,'' and ''reports'' regarding the market for securities—or ''market research''—may be eligible under the safe harbor if they otherwise satisfy the standards for ''research.'' For example, market research that may be eligible under Section 28(e) can include pre-trade and post-trade analytics, software, and other products that depend on market information to generate market research, including research on optimal execution venues and trading strategies.[105] In addition, advice from broker-dealers on order execution, including advice on execution strategies, market color, and the availability of buyers and sellers (and software that provides these types of market research) may be eligible ''research'' under the safe harbor.

4. Data

The Proposing Release proposed that data services, including market data, would be eligible under the safe harbor if the data reflected substantive content related to the subject matter categories identified in Section 28(e). Based on the comments received on this issue regarding the content and use of these products, we believe that the analysis regarding data set forth in the Proposing Release is appropriate.[106] In our view, this approach will promote innovation by money managers who use raw data to create their own research analytics, thereby leveling the playing field with those money managers who buy finished research, which incorporates raw data, from others. Additionally, we believe that excluding market data from the safe harbor could become meaningless if it encouraged purveyors of this information to simply add some minimal or inconsequential

[99] *See* 1986 Release, 51 FR at 16006–07.

[100] According to the 1998 OCIE Report, advisers used client commissions to pay for many of these items. *See* notes 70–74 and accompanying text. *See also Sage Advisory Services LLC,* Exchange Act Release No. 44600, 75 SEC Docket 1073 (July 27, 2001) (adviser improperly used client commission credits to pay for undisclosed non-research business expenses such as legal, accounting, and back-office record keeping services, payments of self-regulatory organization (''SRO'') fees, and rent).

[101] The Proposing Release asked how investors, money managers, broker-dealers, and others would be affected by the Commission's interpretive guidance that client commissions cannot be used to obtain computer equipment as research under Section 28(e). *See* Proposing Release, Question 2. Commenters either expressly supported the proposal to exclude computer equipment from the safe harbor (Bloomberg; Commission Direct; E*Trade; IMA; Merrill; Reuters) or indicated that this position would have minimal impact to industry participants (Charles River; George 2). Four commenters sought clarification about whether computer terminals dedicated to the transmission of particular research products are eligible. IMA; Mellon; NCS; STA. For the reasons explained in this Release, we do not believe that any computer terminals are eligible ''research'' under Section 28(e).

[102] In 1986, the Commission suggested that advisers could use client commissions to pay for the portion of the cost of computers that relate to receiving research. *See* 1986 Release, 51 FR at 16006–07. In light of developments in technology and broad application of the 1986 standard to products and services that are only remotely connected to investment decision-making, as discussed above, we now believe that it is important to clarify that computers fall outside the scope of the safe harbor.

[103] As indicated above, the products or services delivered over computer terminals and T–1 lines may be eligible if they satisfy the criteria set forth in this Release.

[104] Twenty-one commenters to the Proposing Release indicated that OMS should be eligible under the safe harbor as brokerage or research. AmBankers; ASIR 1; BNY; CAPIS; Charles River; Eze Castle; IAA; ICI; IMA; Interstate; ISITC; ITG; Mellon; Merrill; Morgan Stanley; NSCP; Rainier; SIA; STA; UBS; Ward & Smith. Of these, fourteen commenters proposed that OMS should be eligible either as research services (if the Commission determined that they could not be appropriately analyzed as eligible brokerage) (CAPIS; Eze Castle; IAA; ICI; Interstate; ISITC; ITG; NSCP; Rainier) or as undifferentiated ''brokerage and research services'' (ASIR 1; BNY 1; Mellon; SIA; Ward & Smith).

[105] If these products and services also contain functionality that is not eligible brokerage or research under the safe harbor, or if the products and services are eligible brokerage or research but the money manager does not use them in a way that provides lawful and appropriate assistance in investment decision-making, they may be mixed-use items. *See infra* note 125.

[106] Eight commenters expressed views about market data. ASIR 1; CFA/FD; CFA Institute; IDC; IMA; Reuters; T. Rowe Price. Of these, four commenters advocated that data should be excluded from the safe harbor as overhead. CFA/FD; IDC; T. Rowe Price. An equal number supported the proposal to include market data in the safe harbor as research or as brokerage. ASIR 1; CFA Institute; IMA; Reuters. A ninth commenter, the SIA, implicitly endorsed the inclusion of market data in the safe harbor by describing market data as part of order management systems that should be eligible under Section 28(e).

functionality to the data to bring it within the safe harbor.

Accordingly, with respect to data services—such as those that provide market data or economic data—we believe that such services could fall within the scope of the safe harbor as eligible ''reports'' provided that they satisfy the subject matter criteria and provide lawful and appropriate assistance in the investment decision-making process. In the 1986 Release, we included market data services within the safe harbor, finding that they serve ''a legitimate research function of pricing securities for investment and keeping a manager informed of market developments.'' [107] Because market data contain aggregations of information on a current basis related to the subject matter identified in the statute, and in light of the history of Section 28(e), we conclude that market data, such as stock quotes, last sale prices, and trading volumes, contain substantive content and constitute ''reports concerning * * * securities'' within the meaning of Section 28(e)(3)(B),[108] and thus are eligible as ''research services'' under the safe harbor.[109] Other data are eligible under the safe harbor if they reflect substantive content—that is, the expression of reasoning or knowledge—related to the subject matter identified in the statute. For example, we believe that company financial data and economic data (such as unemployment and inflation rates or gross domestic product figures) are eligible as research under Section 28(e).

5. Proxy Services

The Proposing Release requested information regarding industry practice with respect to proxy services (which include research and voting products and services provided by ''proxy service'' providers). The commenters that responded to this issue expressed the view that proxy services should qualify under the safe harbor depending on how they are used, and should be subject to the mixed-use criteria.[110] These commenters believe that certain proxy services should qualify as eligible research because they provide information and analysis that money managers consider when they determine the advisability of investing in, or retaining a position in, a security. Some of these commenters went further by suggesting that proxy research services used by managers in deciding how to vote proxies should also be eligible research under the safe harbor.[111] All the commenters on this issue recognize that proxy services may serve administrative or other non-research purposes as well. For example, these services may assist in receiving ballots, voting, returning ballots, and reporting on the votes cast.

As discussed above, in order for an eligible research product or service to be within Section 28(e), it must provide the money manager with lawful and appropriate assistance in making investment decisions. This standard focuses on how the manager uses eligible research. It is possible that managers could determine after a careful analysis that certain proxy products that contain reports and analyses on issuers, securities, and the advisability of investing in securities may be eligible research that may provide managers with lawful and appropriate assistance in investment decision-making. In contrast, we do not believe that eligible research that assists a manager in deciding how to vote proxy ballots provides the manager lawful and appropriate assistance in making decisions about investments for his clients.

In view of these comments, we believe that proxy services may be treated as mixed-use items, as appropriate.[112] Proxy service providers offer a range of products, some of which may satisfy the standards set forth in this Release for eligible ''research'' under the safe harbor. For example, reports and analyses on issuers, securities, and the advisability of investing in securities that are transmitted through a proxy service may be within Section 28(e).[113] In contrast, we believe that products or services offered by a proxy service provider that handle the mechanical aspects of voting, such as casting, counting, recording, and reporting votes, are administrative overhead expenses of the manager and are not eligible under Section 28(e).

D. Eligibility Criteria for ''Brokerage'' Under Section 28(e)(3)

We recognize that to the extent that this interpretive release narrows the scope of eligible research under the safe harbor, there is a risk that, without further guidance on brokerage, some services and products that were previously classified as research could be inappropriately reclassified as brokerage.[114] In 1998, OCIE staff recommended that the Commission provide further guidance on the scope of the safe harbor concerning the use of items that may facilitate trade execution, based on examiners' reports that

> [t]he technological explosion in the money management industry has been met with an increasing use of soft dollars to purchase state-of-the-art computer and communications systems that may facilitate trade execution * * *. The use of soft dollars to purchase these products may present advisers with questions similar to those surrounding computers purchased for research and analysis, *i.e.*, how should an adviser distinguish between 'brokerage' services and 'overhead' expenses.[115]

For these reasons, we are providing the guidance set forth below to assist money managers in determining whether items are eligible as ''brokerage services'' under the safe harbor.

The Proposing Release discussed a ''temporal'' standard to distinguish between brokerage services that are related to the execution of securities transactions, which are eligible as brokerage under the safe harbor, and those that are overhead expenses, which are not. Twenty-seven commenters believe that the safe harbor should include certain products and services as eligible ''brokerage.'' [116] Many of these commenters advocated expanding the temporal standard on the front end to include pre-trade analytics [117] and

[107] 1986 Release, 51 FR at 16006. We believe that, in the 1986 Release, the Commission's indication that quotation equipment may be eligible under the safe harbor was intended to address market data.

[108] 15 U.S.C. 78bb(e)(3)(B).

[109] We note that the FSA has determined that, ''Examples of goods or services that relate to the provision of research that the FSA do not regard as meeting the requirements of [a research service] include price feeds or historical price data that have not been analyzed or manipulated to reach meaningful conclusions.'' FSA Final Rules, at Annex p. 9 (Conduct of Business Sourcebook Rule 7.18.7).

[110] ASIR 1; BNY 1; IAA; ICI; ISS; Mellon; Seward & Kissel.

[111] BNY 1; ICI; ISS; Mellon; Seward & Kissel.

[112] *See* Section III.F below for a discussion of mixed-use items.

[113] Proxy services may also provide corporate governance research and corporate governance rating services. As discussed above, these products and services may be eligible research under Section 28(e) to the extent that they are used for investment decision-making but not in connection with voting.

[114] The NASD Task Force Report made a similar observation, and recommended that the Commission ''monitor the use of the safe harbor for brokerage services for such inappropriate attempts to maintain the *status quo* by expanding the brokerage services aspect of the safe harbor.'' NASD Task Force Report, at 7 n.20.

[115] 1998 OCIE Report, at 35–36, 50.

[116] ABA; ASIR 1; Bloomberg; BNY 1; Charles River; E*Trade; Eze Castle; Fidelity; George 2; ICI; IMA; ISITC; Interstate Group; ITG; Mellon; Merrill; MFA; Morgan Stanley; NSCP; Rainier; Reuters; Seward & Kissel; SIA; STA; T. Rowe Price; UBS; Ward & Smith. Only two commenters stated that the proposed brokerage standard was overbroad. CFA/FD.

[117] Bloomberg; E*Trade; George 2; IMA; Interstate Group; ITG; Mellon; MFA; Morgan Stanley; NSCP; Reuters; SIA; STA; UBS. In addition, Fidelity questioned whether the Commission should exclude all pre-trade services.

OMS,[118] and others suggested expanding it on the back end to include long-term custody.[119] We considered these comments and for the reasons discussed below, we do not believe that all of the products and services identified by commenters fit within the proposed temporal standard, which we believe reflects an appropriate interpretation of the scope of ''brokerage'' services under Section 28(e). As clarified above, we have determined that market research (which includes pre- and post-trade analytics, including trade analytics transmitted through OMS) may be eligible research under the safe harbor. In addition, as explained below, we believe that Section 28(e) covers short-term custody, but not long-term custody. Also as explained, certain functionality provided through OMS may be eligible brokerage or research.

Under Section 28(e)(3)(C) of the Act, a person provides ''brokerage * * * services'' insofar as he or she:

> Effects securities transactions and performs functions incidental thereto (such as clearance, settlement, and custody) or required in connection therewith by rules of the Commission or a self-regulatory organization of which such person is a member or in which such person is a participant.[120]

Section 28(e)(3)(C) describes the brokerage products and services that are *eligible* under the safe harbor. In addition to activities required to effect securities transactions, Section 28(e)(3)(C) provides that functions ''incidental thereto'' are also eligible for the safe harbor, as are functions that are required by Commission or SRO rules. Clearance, settlement, and custody services in connection with trades effected by the broker are explicitly identified as eligible incidental brokerage services. Therefore, the following post-trade services relate to functions incidental to executing a transaction and are eligible under the safe harbor as ''brokerage services'': post-trade matching of trade information; other exchanges of messages among broker-dealers, custodians, and institutions related to the trade; electronic communication of allocation instructions between institutions and broker-dealers; routing settlement instructions to custodian banks and broker-dealers' clearing agents; and short-term custody related to effecting particular transactions in relation to clearance and settlement of the trade. Similarly, comparison services that are required by the Commission or SRO rules are eligible under the safe harbor. For example, in certain circumstances, the use of electronic confirmation and affirmation of institutional trades is required in connection with settlement processing.[121]

1. Temporal Standard

Guided by the statute and legislative history, we believe that Congress intended ''brokerage'' services under the safe harbor to relate to the execution of securities transactions.[122] In our view, brokerage under Section 28(e) should reflect historical and current industry practices that execution of transactions is a process, and that services related to execution of securities transactions begin when an order is transmitted to a broker-dealer and end at the conclusion of clearance and settlement of the transaction. We believe that this temporal standard is an appropriate way to distinguish between ''brokerage services'' that are eligible under Section 28(e) and those products and services, such as overhead, that are not eligible. Specifically, for purposes of the safe harbor, we believe that brokerage begins when the money manager communicates with the broker-dealer for the purpose of transmitting an order for execution and ends when funds or securities are delivered or credited to the advised account or the account holder's agent. Unlike brokerage, research services include services provided before the communication of an order. Thus, advice provided by a broker or trade analytical software that relates to the subject matter of the statute before an order is transmitted may fall within the research portion of the safe harbor, but not the brokerage portion of the safe harbor.[123]

Under this temporal standard, communications services related to the execution, clearing, and settlement of securities transactions and other functions incidental to effecting securities transactions, *i.e.*, connectivity service between the money manager and the broker-dealer and other relevant parties such as custodians (including dedicated lines between the broker-dealer and the money manager's order management system; lines between the broker-dealer and order management systems operated by a third-party vendor; dedicated lines providing direct dial-up service between the money manager and the trading desk at the broker-dealer; and message services used to transmit orders to broker-dealers for execution) are eligible under Section 28(e)(3)(C). In addition, trading software used to route orders to market centers, software that provides algorithmic trading strategies, and software used to transmit orders to direct market access (''DMA'') systems are within the temporal standard and thus are eligible ''brokerage'' under the safe harbor.[124]

2. Ineligible Overhead

On the other hand, hardware, such as telephones or computer terminals, including those used in connection with OMS and trading software, are not eligible for the safe harbor as ''brokerage'' because they are not sufficiently related to order execution and fall outside the temporal standard for ''brokerage'' under the safe harbor. In addition, software functionality used for recordkeeping or administrative purposes, such as managing portfolios, and quantitative analytical software used to test ''what if'' scenarios related to adjusting portfolios, asset allocation, or for portfolio modeling (whether or not provided through OMS) do not qualify as ''brokerage'' under the safe harbor because they are not integral to the execution of orders by the broker-

[118] ASIR 1; BNY 1; Charles River; Eze Castle; ICI; IMA; Interstate Group; ISITC; ITG; Mellon; Morgan Stanley; NSCP; Rainier; STA; T. Rowe Price; UBS; Ward & Smith.

[119] ASIR 1; Merrill; Morgan Stanley; NSCP; SIA; STA. Commenters also suggested that the safe harbor should include the following products and services as eligible brokerage: advice on market color (ABA; BNY 1; ITG; Merrill; Seward & Kissel; SIA; UBS) and indications of interest (ABA; Merrill; SIA; UBS); capital commitment (BNY 1; SIA; UBS); and prime brokerage services (including extending stock loans and margin) (UBS).

[120] 15 U.S.C. 78bb(e)(3)(C).

[121] *See* NASD Rule 11860(a)(5); New York Stock Exchange (''NYSE'') Rule 387(a)(5); American Stock Exchange Rule 423(5); Chicago Stock Exchange Article XV, Rule 5; Pacific Exchange Rule 9.12(a)(5); Philadelphia Stock Exchange Rule 274(b).

[122] *See* Securities Acts Amendments of 1974, H.R. 5050, 93d Cong. (1974) (House bill on safe harbor referred to ''brokerage services, including * * * research or execution services''); H.R. Rep. No. 93–1476 (1974) (House Committee Report on H.R. 5050 referred to ''brokerage'' as ''research and other services related to the execution of securities transactions''); Joint Explanatory Statement of the Comm. of Conference, Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 94–229, at 108 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321, 338 (House Conference Report on final House bill on Section 28(e) describes the safe harbor as relating to paying more than the lowest available price for ''execution and research services'').

[123] *See supra* text accompanying notes 104–105 for discussion of market research that may be eligible under Section 28(e).

[124] Unlike research, brokerage services can include connectivity services and trading software where they are used to transmit orders to the broker, because this transmission of orders has traditionally been considered a core part of the brokerage service. We believe that mechanisms to deliver research, on the other hand, are separable from the research and the decision-making process.

We understand that OMS may include trading software used to route orders, provide algorithmic trading strategies, or transmit orders to DMA systems or provide connectivity to this software. Accordingly, these aspects of the OMS may be eligible brokerage.

dealers, *i.e.*, they fall outside the temporal standard described above. Further, managers may not use client commissions under the safe harbor to meet their compliance responsibilities,[125] such as: (i) Performing compliance tests that analyze information over time in order to identify unusual patterns, including for example, an analysis of the quality of brokerage executions (for the purpose of evaluating the manager's fulfillment of its duty of best execution), an analysis of the portfolio turnover rate (to determine whether portfolio managers are overtrading securities), or an analysis of the comparative performance of similarly managed accounts (to detect favoritism, misallocation of investment opportunities, or other breaches of fiduciary responsibilities); (ii) creating trade parameters for compliance with regulatory requirements, prospectus disclosure, or investment objectives; or (iii) stress-testing a portfolio under a variety of market conditions or to monitor style drift. Additionally, trade financing, such as stock lending fees, and capital introduction and margin services are not within the safe harbor because these services are not sufficiently related to order execution.[126] Moreover, error correction trades or related services in connection with errors made by money managers are not related to the initial trade for a client within the meaning of Section 28(e)(3)(C) because they are separate transactions to correct the manager's error, not to benefit the advised account, and thus error correction functions are not eligible ''brokerage services'' under the safe harbor.[127] The products and services described in this paragraph are properly characterized as ''overhead,'' *i.e.*, part of the manager's cost of doing business, and are ineligible under Section 28(e).

3. Custody

Several commenters asked the Commission to clarify that custody is within the safe harbor,[128] and several of these commenters advocated broadly including long-term custody in Section 28(e), arguing that the statute explicitly references custody without limitation.[129] On its face, the plain language of the statute limits the scope of the safe harbor to custody that is incidental to effecting securities transactions. We believe that short-term custody related to effecting particular transactions and clearance and settlement of those trades fits squarely within the statute because it is tied to processing the trade between the time the order is placed and settlement of the trade. In contrast, long-term custody is provided post-settlement and relates to long-term maintenance of securities positions. Further, we understand that many money managers and their clients consider long-term custody to be a direct benefit to the advisory client and custody fees to be client expenses. In fact, advisory clients, rather than money managers, typically enter into contractual arrangements directly with custodians for their services, and many advisory clients pay for their own long-term custody.[130] We believe this is a healthy approach that provides transparency. Common industry practice is that financial firms that do not execute transactions for the client at all (*e.g.*, custodian banks) provide this service, which has no relationship to, and cannot be considered incidental to, effecting securities transactions. Therefore, we believe that custodial services, such as long-term custody and custodial recordkeeping, provided in connection with accounts after clearance and settlement of transactions, are not incidental to effecting securities transactions and are services provided to the adviser's client, for the benefit of the client. As such, payment for a client's long-term custody and custodial recordkeeping with that client's commissions does not implicate Section 28(e).[131]

E. Lawful and Appropriate Assistance

In order for a product or service to be within the safe harbor, eligible research must not only satisfy the specific criteria of the statute, but it also must provide the money manager with lawful and appropriate assistance in making investment decisions. This standard focuses on how the manager uses the eligible research. For example, some money managers appear to be using client commissions to pay for analyses of account performance that are used for marketing purposes.[132] Although analyses of the performance of accounts are eligible research items because they reflect the expression of reasoning or knowledge regarding subject matter included in Section 28(e)(3)(B), these items when used for marketing purposes are not within the safe harbor because they are not providing lawful and appropriate assistance to the money manager in performing his investment decision-making responsibilities.[133]

As with research, in order to obtain safe harbor protection for products and services that are eligible as brokerage, the money manager must be able to show that the eligible product or service provides him or her lawful and appropriate assistance in carrying out the manager's responsibilities.

F. ''Mixed-Use'' Items

As discussed above, the 1986 Release introduced the concept of ''mixed use.'' [134] Where a product or service obtained with client commissions has a mixed use, a money manager faces an additional conflict of interest in obtaining that product with client commissions.[135] The 1986 Release

[125] For example, to the extent that money managers use trade analytics, including trade analytical software to test ''what if'' scenarios related to adjusting portfolios, asset allocations, or portfolio modeling, or OMS both for research and to assist in fulfilling contractual obligations to the client or to assess whether they have complied with their own regulatory or fiduciary obligations such as the duty of best execution or for other internal compliance purposes, the trade analytical software or OMS is a mixed-use product, and managers must use their own funds to pay for the allocable portion of the cost of the software or OMS that is not within the safe harbor because it is attributable to purposes outside Section 28(e) such as for internal compliance.

[126] Often, advisory clients pay their own trade financing costs, which provides transparency that is beneficial to investors and does not necessarily implicate Section 28(e).

[127] We note that the staff has taken a similar position. *See* Charles Lerner, Department of Labor, No-Action Letter (Oct. 25, 1988) (Dept. of Labor (''DOL'') sought Commission staff advice regarding applicability of Section 28(e) to commission practices discovered by DOL investigators involving ERISA plans).

[128] ASIR 1; Merrill; Morgan Stanley; NSCP; Schwab; SIA; STA; UBS.

[129] Merrill; Schwab; SIA. In addition, UBS argued that the temporal standard is too narrow because the standard would exclude some important services, such as custody, that take place after settlement.

[130] *See, e.g.*, Phyllis Feinberg, *''Takeaway Game'': Some Custody Banks Create 2-Tiered Bidding System For Old, New Clients*, Pensions and Investments, Dec. 8, 2003, at 1 (discussing services and fees custodial banks charge their clients, such as Indiana State Teachers' Retirement System or the New Mexico Board of Finance). In addition, registered investment companies must disclose the amount of fees and expenses paid in connection with custody of investments. *See* Form N–1A, Item 23(g)(Registered investment companies must attach custodian agreements and depository contracts concerning the fund's securities and similar investments, including the schedule of remuneration, as an exhibit to the registration statement.); Regulation S–X 210.6–07 (requiring that registered investment companies describe in the statement of operations the total amount of fees and expenses in connection with custody of investments).

[131] In some cases, we understand that advisory clients may pay for long-term custodial services through directed brokerage. *See* discussion of directed brokerage, *supra* note 27.

[132] *See* 1998 OCIE Report, at 20.

[133] As discussed below in the mixed-use section, if the manager uses account performance analyses for both marketing purposes and investment decision-making, the manager may use client commissions only to pay for the allocable portion of the item attributable to use for investment decision-making under Section 28(e). *See infra* Section III.F.

[134] *See* 1986 Release, 51 FR at 16007.

[135] *Id.* at 16006–07.

stated that where a product has a mixed use, a money manager should make a reasonable allocation of the cost of the product according to its use, and emphasized that the money manager must keep adequate books and records concerning allocations so as to be able to make the required good faith determination.[136] Moreover, the allocation determination itself poses a conflict of interest for the money manager that should be disclosed to the client.[137] It appears that, in practice, some managers may have made questionable mixed-use allocations and failed to document the bases for their allocation decisions.[138] Lack of documentation makes it difficult for the manager to make the required good faith showing of the reasonableness of the commissions paid in relation to the value of the portion of the item allocated as brokerage and research under Section 28(e), and also makes it difficult for compliance personnel to ascertain the basis for the allocation.[139] The Proposing Release asked whether the Commission should provide additional guidance on the allocation and documentation of mixed-use items.[140]

Twenty-seven commenters submitted comments that touched upon the concept of mixed use.[141] Most of those commenters endorsed the mixed-use concept by recommending that the Commission consider particular products as mixed-use items.[142] For example, commenters indicated that the following products and services may be mixed-use products: trade analytical software (which may sometimes be put to administrative use);[143] proxy voting services;[144] and OMS.[145]

We continue to believe that the ''mixed-use'' approach is appropriate. In that connection, we reiterate today the Commission's guidance provided in the 1986 Release regarding the mixed-use standard:[146] ''The money manager must keep adequate books and records concerning allocations so as to be able to make the required good faith showing.''[147] As stated above, the mixed-use approach requires a money manager to make a reasonable allocation of the cost of the product according to its use. For example, an allocable portion of the cost of portfolio performance evaluation services or reports may be eligible as research, but money managers must use their own funds to pay for the allocable portion of such services or reports that is used for marketing purposes.[148]

G. The Money Manager's Good Faith Determination as to Reasonableness Under Section 28(e)

Section 28(e) requires money managers who are seeking to avail themselves of the safe harbor to make a good faith determination that the commissions paid are reasonable in relation to the value of the brokerage and research services received.[149] None of the commenters questioned the good faith determination requirement under the safe harbor. The Commission reaffirms the money manager's essential obligation under Section 28(e) to make this good faith determination. The burden of proof in demonstrating this determination rests on the money manager.[150]

A money manager satisfies Section 28(e) if he or she can demonstrate that the item is eligible under the language of the statute, the manager has used the item in performing investment decision-making responsibilities for accounts over which he exercises investment discretion, and, in good faith, the manager believes that the amount of commissions paid is reasonable in relation to the value of the research or brokerage product or service received, either in terms of the particular transaction or the manager's overall responsibilities for discretionary accounts.[151] Thus, for example, a money manager may purchase an eligible item of research with client commissions if he or she properly uses the information in formulating an investment decision, but another money manager cannot rely on Section 28(e) to acquire the very same item if the manager does not use the item for investment decisions or if the money manager determines that the commissions paid for the item are not reasonable with respect to the value of the research or brokerage received. Similarly, a money manager may not obtain eligible products, such as market data, to camouflage the payment of higher commissions to broker-dealers for ineligible services, such as shelf space or client referrals.[152] In this instance, the money manager could not make the determination, in good faith, that the commission rate was reasonable in relation to the value of the Section 28(e) eligible products because the commission would incorporate a payment to the broker-dealer for the non-Section 28(e) services. Further, if research products or services that are eligible under Section 28(e)(3) have been simply copied, repackaged, or aggregated, the money manager must make a good faith determination that any additional commissions paid in respect of such copying, repackaging, or aggregation services are reasonable. Finally, where a broker-dealer also offers its research for an unbundled price, that price should inform the money manager as to its market value

[136] *Id.*

[137] *Id.* at 16006 n.13.

[138] 1998 OCIE Report, at 32–34.

[139] *Id.*

[140] *See* Proposing Release, Question 8.

[141] AmBankers; Bloomberg; BNY 1; CAPIS; CFA Institute; DOL; E*Trade; IAA; ICI; IMA; Interstate Group; ISITC; ISS; ITG; Mellon; Merrill; MFA; Morgan Stanley; NSCP; Rainier; Schwab; Seward & Kissel; SIA; STA; T. Rowe Price; UBS; Ward & Smith.

[142] Bloomberg; BNY 1; CAPIS; CFA Institute; DOL; E*Trade; IAA; ICI; IMA; Interstate Group; ISITC; ISS; ITG; Mellon; Merrill; Rainier; Seward & Kissel; SIA; T. Rowe Price. The remaining eight commenters endorsed the concept of mixed use with little discussion. AmBankers; MFA; Morgan Stanley; NSCP; Schwab; STA; UBS; Ward & Smith.

[143] Bloomberg; E*Trade; IAA; Merrill; SIA.

[144] ASIR 1; BNY 1; IAA; ICI; ISS; Mellon; Seward & Kissel.

[145] BNY 1; CAPIS; IAA; ICI; IMA; Interstate Group; ISITC; ITG; Mellon; Merrill; Morgan Stanley; Rainier; SIA; T. Rowe Price.

[146] As noted above, this interpretation replaces Sections II and III of the 1986 Release.

[147] 1986 Release, 51 FR at 16006. The Commission may further address the documentation of mixed-use items at a later time.

[148] In allocating costs for a particular product or service, a money manager should make a good faith, fact-based analysis of how it and its employees use the product or service. It may be reasonable for the money manager to infer relative costs from relative benefits to the firm or its clients. Relevant factors might include, for example, the amount of time the product or service is used for eligible purposes versus non-eligible purposes, the relative utility (measured by objective metrics) to the firm of the eligible versus non-eligible uses, and the extent to which the product is redundant with other products employed by the firm for the same purpose.

[149] As we noted in 1986, ''[a] money manager should consider the full range and quality of a broker's services in placing brokerage including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness to the money manager. * * * [T]he determinative factor is not the lowest possible commission cost but whether the transaction represents the best qualitative execution for the managed account.'' 1986 Release, 51 FR at 16011. *See also supra* note 6.

[150] *See* House Comm. on Interstate and Foreign Commerce, Securities Acts Amendments of 1975, H.R. No. 94–123, at 95 (1975). The report states that: ''It is, of course, expected that money managers paying brokers an amount [of commissions] which is based upon the quality and reliability of the broker's services including the availability and value of research, would stand ready and be required to demonstrate that such expenditures were bona fide.'' *See also* 1986 Release, 51 FR at 16006–16007.

[151] If the money manager seeks the protection of the safe harbor, he or she should take care to analyze whether products and services provided by a broker-dealer and used in connection with advised accounts satisfy the eligibility and use standards for the safe harbor.

[152] Rule 12b–1(h) under the Investment Company Act prohibits funds from using brokerage to pay for distribution. *See* Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004).

and help the manager make its good faith determination.

H. Third-Party Research

The Proposing Release asked whether the Commission's discussion of third-party research offered sufficient guidance in this area.[153] Regarding third-party research, several commenters expressly endorsed the Commission's view that independent research providers should be accorded equal treatment with proprietary research providers.[154] None of the commenters disputed this point. Accordingly, we reiterate our views on this issue below.

Third-party research arrangements can benefit advised accounts by providing greater breadth and depth of research. First, these arrangements can provide money managers with the ability to choose from a broad array of independent research products and services. Second, the manager can use third-party arrangements to obtain specialized research that is particularly beneficial to the advised accounts. We believe that the safe harbor encompasses third-party research and proprietary research on equal terms.

I. Client Commission Arrangements Under Section 28(e)

The Proposing Release asked whether the Commission's discussion of arrangements under Section 28(e) offered sufficient guidance in this area.[155] We received a substantial number of comments on industry practices related to client commission arrangements under Section 28(e).[156] Based on these comments and for the reasons discussed below, we are modifying our interpretation of ''provided by'' and ''effecting'' under Section 28(e).[157] In order to determine whether our guidance requires further clarification, we are soliciting additional comment on our revised interpretation of the safe harbor with respect to client commission arrangements under Section 28(e).

Twenty-four commenters addressed arrangements under Section 28(e).[158] Although some commenters supported the Commission's guidance with respect to Section 28(e) arrangements,[159] others expressed concern that the proposal (and, in particular, the requirement that introducing broker-dealers must perform certain minimum functions in order to ''provide'' research under the safe harbor) could have unwarranted and harmful policy consequences, such as reducing independent research and increasing the costs that the clients of money managers pay for brokerage and research.[160] Some of the commenters that objected to the proposed approach on this issue stated that some introducing broker-dealers that facilitate access to valuable research may not satisfy the minimum requirements that the Release would impose, and may have to discontinue operations. They recommended that the Commission eliminate the minimum requirements or modify them so that introducing broker-dealers can more easily satisfy them. In addition, several commenters asked the Commission to consider a broader interpretation of the ''provided by'' concept under Section 28(e).[161] These commenters argued that Section 28(e) arrangements have become more complex and less transparent than if broker-dealers were permitted to engage in these arrangements unencumbered by the requirement that the broker ''effecting'' the transaction also must be ''providing'' the research. Both groups of commenters recommended that the Commission interpret Section 28(e) to allow money managers the maximum flexibility to seek best execution and, separately, obtain good research, by permitting a broker to be responsible for execution and another party to be responsible for providing eligible research.

In addition, several commenters noted that the United Kingdom's regulatory efforts in this area allow money managers to use client commissions to pay separately for trade execution by the broker-dealer that can provide the best execution and ask the executing broker-dealer to allocate a portion of the commission directly to an independent research provider or allocate a portion of the commission to a pool of ''credits'' maintained by the broker-dealer and from which the broker-dealer, at the direction of the money manager, may pay independent research providers, without requiring that the executing broker-dealer be legally responsible for the research.[162] As noted above, some commenters believed that Section 28(e) arrangements in the United States reflect a market inefficiency if the manager seeks to use client commissions to pay for research under Section 28(e) and uses this middle-man to access independent research providers.

These comments highlight the considerable variety of arrangements under Section 28(e) that the industry has developed to seek to obtain the benefits that inure to investors from best execution on orders for advised accounts and providing money managers with both third-party and proprietary brokerage and research products and services of value to the advised accounts. Based on the additional information regarding current industry practices provided by these comments and consideration of congressional intent behind Section 28(e), we are revising our interpretation of the safe harbor to address the industry's innovative Section 28(e) arrangements and permit the industry to flexibly structure arrangements that are consistent with the statute and best serve investors. We are soliciting additional comment on client commission arrangements under the safe harbor because of the many variations and complexity of these arrangements. In particular, we solicit comment on whether this guidance is sufficient to address this area.

[153] *See* Proposing Release, Question 5.

[154] AmBankers; Bloomberg; BNY 1; Investorside.

[155] *See* Proposing Release, Question 5.

[156] BNY 1; Bloomberg; CL King; Commission Direct; CAPIS; E*Trade; EuroIRP; Instinet; Interstate Group; IAA; ICI; IMA; JP Morgan 1 and JP Morgan 2; Mellon; Merrill; Morgan Stanley; NSCP; Reuters; Riedel; SIA; STA; T. Rowe Price; UBS; George 1, George 2, and George 3.

[157] 157 Section 28(e)(1) states in relevant part: ''No person * * * shall be deemed to have acted unlawfully or to have breached a fiduciary duty * * * solely by reason of his having caused the account to pay a member of an exchange, broker, or dealer an amount of commission for *effecting* a securities transaction in excess of the amount of commission another member of an exchange, broker, or dealer would have charged for effecting that transaction, if such person determined in good faith that such amount of commission was reasonable in relation to the value of the brokerage and research services *provided by such member, broker, or dealer*, viewed in terms of either that particular transaction or his overall responsibilities with respect to the accounts as to which he exercises investment discretion.'' 15 U.S.C. 78bb(e)(1) (emphasis added).

[158] BNY 1; Bloomberg; CL King; Commission Direct; CAPIS; E*Trade; EuroIRP; Instinet; Interstate Group; IAA; ICI; IMA; JP Morgan 1 and JP Morgan 2; Mellon; Merrill; Morgan Stanley; NSCP; Reuters; Riedel; SIA; STA; T. Rowe Price; UBS; George 1, George 2, and George 3.

[159] BNY 1; George 2; Interstate; Reuters.

[160] Bloomberg; CAPIS; E*Trade; EuroIRP; ICI; Instinet; IMA; NSCP; JP Morgan 1; Riedel; STA; SIA; Merrill; Morgan Stanley. These commenters noted that investors' costs could increase if introducing broker-dealers must add staff and/or trading desks to fulfill the minimum requirements and raise their fees accordingly. Implicit transaction costs could also increase if these broker-dealers build trade execution capabilities so that they satisfy the four minimum criteria but are inexpert at execution.

[161] Commission Direct; EuroIRP; IMA; T. Rowe Price.

[162] Commission Direct; EroIRP; IMA; JP Morgan 1. In addition the SIA expressed concern over cross-border harmonization, noting that the Commission's four minimum functions for introducing broker-dealers may impose stricter requirements than those in place in the U.K. with respect to client commission arrangements.

1. Statutory Linkage Between ''Provided by'' and ''Effecting''

Section 28(e) requires that the broker-dealer providing the research also be involved in effecting the trade.[163] The statutory linkage of the ''provided by'' and ''effecting'' elements in Section 28(e) was principally intended to preclude the practice of paying ''give-ups.'' [164] Specifically, when brokerage commissions were fixed before 1975, a ''give-up'' was a payment to another broker-dealer of a portion of the commission required to be charged by the executing broker-dealer.[165] A principal concern regarding ''give-ups'' was that managers used them to direct client commissions to broker-dealers in exchange for providing services that benefited the money manager but had no benefit for his clients—such as to reward broker-dealers for distribution or for steering clients to the manager. The broker-dealer receiving the give-up may have had no role in the transaction generating the commission, and it may not even have known where or when the trade was executed. Because the portion of the commission ''given up'' is a charge on client accounts and because the broker-dealer receiving the ''give-up'' did nothing in connection with the securities trade to benefit investors, the Commission found that these arrangements violated the securities laws.[166] In enacting Section 28(e), Congress addressed the issue of give-ups by indicating that the provision did not apply when the money manager made payment to one broker-dealer for the services performed by another broker-dealer.[167] In the 1986 Release, the Commission departed from a strict interpretation of the ''provided by'' provision when it concluded that payment of a part of a commission to a broker-dealer who is a ''normal and legitimate correspondent'' of the executing or clearing broker-dealer would not necessarily be a ''give-up,'' outside the protection of Section 28(e).[168] We believe that both the legislative history and the Commission's prior interpretations in this area reflect an effort to safeguard against money managers and broker-dealers using Section 28(e) arrangements as mechanisms for the manager to use client commissions to make concealed payments to a broker-dealer that did not provide any services to benefit the advised accounts.

As noted above, the industry has developed many types of Section 28(e) arrangements. Some investment managers today use these arrangements to execute trades with one broker-dealer and obtain research and other services from a different broker-dealer. In some Section 28(e) arrangements, the introducing broker-dealer accepts orders from its customers and then may execute the trade and provide research, while a second broker-dealer clears and settles the transaction. In other arrangements, an introducing broker-dealer facilitates access to research and has little, if any, role in accepting customer orders or in executing, clearing, or settling any portion of the trade. Rather, another broker-dealer (often the clearing broker) executes, clears, and settles the trade, receiving a portion of the commission for its services. In some instances, the introducing broker is unaware of the daily trading activity of its customers because the orders are sent by the money manager directly (and only) to the clearing broker-dealer.[169] In addition, several commenters endorsed arrangements similar to those that have developed in the United Kingdom, in which money managers direct broker-dealers to collect and pool client commissions that may have been generated from orders executed at that broker-dealer, and periodically direct the broker-dealer to pay for research that the money manager has determined is valuable.[170]

As discussed above, the legislative history behind the linkage created between the ''provided by'' and ''effecting'' statutory language in Section 28(e) indicates that Congress was concerned that the safe harbor ''would be asserted as a shield behind which the give-ups and reciprocal practices which were so notorious during the late 1960's could be reinstituted.'' [171] Since passage of the safe harbor in the 1970's, specialization and innovation in the financial industry have resulted in the functional separation of execution and research. Thus, efficient execution venues provide good, low-cost execution while research providers offer valuable research ideas that can benefit managed accounts. We believe that this separation of functions is beneficial to the money managers' clients, and Section 28(e) arrangements that promote functional allocation of these services are not the same as ''give-ups.''

2. ''Effecting'' Transactions

Section 28(e) arrangements typically involve clearing agreements pursuant to

[163] 15 U.S.C. 78bb(e).

[164] In enacting Section 28(e), Congress described give-ups as a ''regrettable chapter in the history of the securities industry and the limited definition of fiduciary responsibility added to the law by this bill in no way permits its return.'' Joint Explanatory Statement of the Comm. of Conference, Securities Act Amendments of 1975, H.R. Conf. Rep. No. 94–229, at 108 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321, 339.

[165] Give-ups took, several forms, but typically occurred when a mutual fund (or its money manager or underwriter) directed an executing broker-dealer to pay a portion of a commission payment to another broker-dealer that was a member of the same exchange as the executing broker-dealer. The give-up often was payment for other services (that may have been unrelated to the trade) provided to the fund (or its adviser or underwriter) by the give-up recipient. *See* Division of Market Regulation, U.S. Securities and Exchange Commission, Market 2000: an Examination of Current Equity Market Developments (Jan. 1994), 1994 SEC LEXIS at 32–33 (citing Special Study, H.R. Doc. No. 88–95, pt. 2, at 316–317 and pt. 4, at 213–14). This type of give-up produced a conflict of interest for the adviser ''between the interest of fund shareholders in lower commission charges and the interest of mutual fund advisers and underwriters in stimulating the sale of additional shares through directing a split of commission charges.'' Special Study, H.R. Doc. No. 88–95, pt. 2, at 318.

[166] *See, e.g., Provident Management Corp.*, 44 SEC 442, 445–47 (Dec. 1, 1970) (finding violations of the antifraud provisions of the federal securities laws where unaffiliated broker-dealers who participated with the fund's officers, adviser, and affiliated broker-dealer in a reciprocal arrangement in which fund transactions were placed with unaffiliated broker-dealer in exchange for payment to affiliated broker-dealer of ''clearance commissions'' on unrelated transactions for which affiliated broker-dealer performed no function).

The Commission has found it a violation of the antifraud provisions of the securities laws to interpose an unnecessary party in a transaction, resulting in payment to the interposed party, and an additional cost to the fiduciary account. *See Delaware Management Co.*, 43 SEC 392 (1967) (interpositioning broker between adviser and market maker caused adviser to pay unnecessary brokerage costs and violated the adviser's duty of best execution).

[167] Joint Explanatory Statement of the Comm. of Conference, Securities Acts Amendments of 1975, H.R. Conf. Rep. No. 94–229, at 109 (1975), *reprinted in* 1975 U.S.C.C.A.N. 321. *See also* 1986 Release, 51 FR at 16007; 1976 Release, 41 FR at 13679.

[168] 1986 Release, 51 FR at 16007 (''Section 28(e) was not intended to exclude from its coverage the payment of commissions made in good faith to an introducing broker for execution and clearing services performed in whole or in part by the introducing broker's normal and legitimate correspondent.''); 1976 Release, 41 FR at 13678–79 (Where ''fudiciaries * * * [ask] the broker, retained to effect a transaction for the account of a beneficiary, to ''give up'' part of the commission negotiated by the broker and the fiduciary to another broker designated by the fiduciary for whom the executing or clearing broker is not a normal and legitimate correspondent[,] * * * [t]he Commission does not believe that Section 28(e) would apply.''

[169] The 1986 Release suggested that protection of Section 28(e) would not be lost merely because the money manager by-passed the order desk of the introducing broker and called his orders directly into the clearing broker. 1986 Release, 51 FR at 16007.

[170] Commission Direct; EuroIRP; IMA; JP Morgan 1; T. Rowe Price.

[171] Joint Explanatory Statement of the Committee of Conference, Securities Acts Amendments of 1975, H.R. Conf. Rep. 94–229, at 108 (1975), *reprinted* in 1975 U.S.C.C.A.N. 321, 339.

SRO rules.[172] These SRO rules require that introducing and clearing firms contractually agree to allocate enumerated functions, but do not mandate how the functions should be divided (*i.e.*, they do not specify the functions that must be done by the introducing broker-dealer or clearing broker-dealer).[173] The Commission has stated that, under Section 28(e), it contemplates that in correspondent relationships, an ''introducing broker-dealer would be engaged in securities activities of a more extensive nature than merely the receipt of commissions paid to [them] by other broker-dealers for 'research services' provided to money managers.'' [174] The Proposing Release identified four minimum criteria that an introducing broker-dealer must satisfy in order to be ''effecting'' transactions.

Based on the comments received, which are discussed above, we recognize the benefit to investors of money managers being able to functionally separate trade execution from access to valuable research. At the same time, we believe that the statutory term ''effecting'' requires that, in order for the money manager to use the safe harbor, a broker-dealer that is ''effecting'' the trade must perform at least one of four minimum functions and take steps to see that the other functions have been reasonably allocated to one or another of the broker-dealers in the arrangement in a manner that is fully consistent with their obligations under SRO and Commission rules.[175] The four functions are: (1) Taking financial responsibility for all customer trades until the clearing broker-dealer has received payment (or securities), *i.e.*, one of the broker-dealers in the arrangement must be at risk for the customer's failure to pay; (2) making and/or maintaining records relating to customer trades required by Commission and SRO rules, including blotters and memoranda of orders; (3) monitoring and responding to customer comments concerning the trading process; and (4) generally monitoring trades and settlements.[176] In addition, of course, a broker-dealer is effecting securities transactions if it is executing, clearing, or settling the trade.

3. Research Services Must Be ''Provided by'' the Broker-Dealer

Section 28(e) requires that the broker-dealer receiving commissions for ''effecting'' transactions must ''provide'' the brokerage or research services. The Commission has interpreted this to permit money managers to use client commissions to pay for research produced by someone other than the executing broker-dealer, in certain circumstances (referred to as ''third-party research'').[177] The Commission also has clarified that research provided in third-party arrangements is eligible under Section 28(e) even if the money manager participates in selecting the research services or products that the broker-dealer will provide.[178] In addition, the Commission has stated that the third party also may send the research directly to the broker-dealer's customer.[179] In the Proposing Release, the Commission restated its previous view that the broker-dealer must have the legal obligation to pay for the research in order to be considered ''providing'' the brokerage and research services under Section 28(e).[180] We continue to believe that a broker-dealer that is legally obligated to pay for research is ''providing'' research under the safe harbor. In addition, as stated above, based on the legislative history of Section 28(e), the comments received in response to the Proposing Release, and the benefits to investors of flexibility in these arrangements, we are modifying our interpretation of ''provided by.'' [181]

We believe that the safe harbor was not meant to allow money managers to use Section 28(e) arrangements to conceal the payment of client commissions to intermediaries (including broker-dealers) that provide benefits only to the money manager. In particular, we interpret Section 28(e) to be available as a safe harbor for the money manager in situations where broker-dealers use a money manager's client commissions to pay for eligible research and brokerage for which such broker-dealer is not directly obligated to pay if such broker-dealer pays the research preparer directly and takes steps to assure itself that the client commissions that the manager directs it to use to pay for such services are used only for eligible brokerage and research. Accordingly, for purposes of Section 28(e), we believe that the following attributes will help determine whether the broker-dealer that is effecting transactions for the advised accounts has satisfied the ''provided by'' element, and the Section 28(e) safe harbor is

[172] *See, e.g.*, NYSE Rule 382, ''Carrying Agreements,'' 2 NYSE Guide ¶ 2382, Rule 382; NASD Rule 3230, ''Clearing Agreements''; NASD Rules of Fair Practice, Section 47, Article III; American Stock Exchange Rule 400 (mirrors the provisions of NYSE Rule 382(b)).

[173] For example, NYSE Rule 382 specifies that each fully-disclosed clearing agreement between SRO members shall allocate to the respective member the following functions: (i) opening, approving, and monitoring of accounts; (ii) extension of credit; (iii) maintenance of books and records; (iv) receipt and delivery of funds and securities; (v) safeguarding of funds and securities; (vi) confirmations and statements; (vii) acceptance of orders and execution of transactions. NYSE Rule 382(b). Further, the clearing broker must provide annually to the introducing broker-dealer a list of reports to assist the introducing broker to supervise and monitor its customer accounts and to fulfill its responsibilities under the agreement as well as deliver, and retain a copy of, those reports that the introducing broker requests. NYSE Rule 382(e)(1) and (2).

[174] 1986 Release, 51 FR at 16007, quoting Data Exchange Securities, No-Action Letter (Apr. 20, 1981).

[175] Introducing and clearing brokers still remain subject to all applicable securities laws and regulations and SRO rules. For instance, nothing in this release changes in any way the applicability of anti-money laundering laws and regulations applicable to an introducing broker or a clearing broker. *See, e.g.*, Currency and Foreign Transactions Reporting Act of 1970 (''Bank Secrecy Act''), [31 U.S.C. 5311 *et seq.*] (as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''USA Patriot Act''), Pub. L. No. 107–56, sec. 314, 326, 115 Stat. 272); Treasury regulations adopted under the Bank Secrecy Act [31 CFR Part 103]; Exchange Act Rule 17a–8 [17 CFR 240.17a–8]; NYSE Rule 445; NASD Rule 3011. This interpretation also does not alter the introducing broker and the clearing broker's supervisory obligations. *See, e.g.*, Exchange Act Section 15(b)(4)(E) [15 U.S.C. 78o(b)(4)(E)]; NYSE Rules 342 and 405; NASD Rules 3010, 3012, and 3013. This interpretation also does not alter a broker-dealer's best execution obligation to its customers. *See, e.g.*, NASD Rule 2320; NASD Notice to Members 01–22 (Apr. 2001).

[176] *See* 1986 Release, 51 FR at 16007, citing SEI Financial Services Co., No-Action Letter (Dec. 15, 1983), in which the introducing broker in a correspondent relationship performed these functions.

In particular, one of the broker-dealers to the Section 28(e) arrangement must be aware of and monitor daily trading activity of customers even where the money manager sends orders directly to (and only to) the clearing broker.

[177] *See* 1976 Release, 41 FR at 13679 (Section 28(e) ''might, under appropriate circumstances, be applicable to situations where a broker provides a money manager with research produced by third parties''). *See also* 1986 Release, 51 FR at 16007 (''Although the legislative history of Section 28(e) includes a strong statement that commission dollars may be paid only to the broker-dealer that 'provides' both the execution and research services and that the section does not authorize the resumption of 'give-ups,' it seems unlikely that Congress intended to forbid certain common practices that were then considered permissible and whose elimination would be anti-competitive.''); III Report, 19 SEC Docket at 932 (broker need not produce research services ''in house'').

[178] Exchange Act Release No. 17371 (Dec. 12, 1980), 45 FR 83707, 83714 n.54 (Dec. 19, 1980) (''Papilsky Release''). *See* 1986 Release, 51 FR at 16007. In the Papilsky Release, the Commission addressed Section 28(e) and third-party research in the context of defining ''bona fide research'' for purposes of NASD rules that relate to obtaining research in a fixed-price offering.

[179] Papilsky Release, 45 FR at 83714 n.54. *See* 1986 Release, 51 FR at 16007.

[180] *See* 1986 Release, 51 FR at 16007; III Report, 19 SEC Docket at 932.

[181] As noted above, this Release replaces Sections II and III of the 1986 Release, which include the ''provided by'' interpretation. *See* text accompanying note 68.

available to a money manager:[182] (i) the broker-dealer pays the research preparer directly; (ii) the broker-dealer reviews the description of the services to be paid for with client commissions under the safe harbor for red flags that indicate the services are not within Section 28(e) and agrees with the money manager to use client commissions only to pay for those items that reasonably fall within the safe harbor;[183] and (iii) the broker-dealer develops and maintains procedures so that research payments are documented and paid for promptly.[184]

4. Legal Obligations of Parties to Section 28(e) Arrangements

The Proposing Release stated that parties to arrangements under Section 28(e) must determine whether they are contributing to a violation of law, including whether the involvement of other parties is appropriate.[185] Commenters expressed concern that this statement imposed heightened responsibility on money managers and broker-dealers.[186] To clarify, the Commission intends only to remind parties to Section 28(e) arrangements that, under existing law, money managers may be subject to liability under federal securities laws, ERISA, and state law, and broker-dealers may be subject to liability if they aid and abet another person's violation of a provision of the securities laws.[187] For example, if a broker-dealer knows that a money manager has represented to its clients that he will operate solely within Section 28(e),[188] and the adviser asks the broker-dealer to pay for office furniture and computer terminals, which under this release are not eligible under the safe harbor, the broker-dealer may risk aiding and abetting liability.

IV. Request for Comments

The Commission will consider further comment on evolving developments in connection with industry practices with respect to client commission arrangements under the safe harbor identified in Section III.I of this Release to evaluate whether additional guidance might be appropriate in the future. Based on any comments received, the Commission may, but need not, supplement the guidance in this Release in the future.

V. Implementation

The Proposing Release asked whether the Commission should allow market participants some period of time to implement the interpretation, and requested examples of potential implementation issues.[189] Fifteen commenters requested that the Commission establish a grace period for industry participants to implement the Commission's interpretative guidance of between three months[190] to at least one year.[191] Several commenters urged the Commission to issue the interpretation without any phase-in period.[192] Several of these commenters suggested that the Commission should delay the effectiveness of its final interpretive guidance in order to allow existing annual contracts among money managers and broker-dealers to expire[193] or to review their arrangements in light of the Commission's final interpretation[194]; others indicated that an implementation period is important to accommodate significant operational changes in the industry, including any changes necessitated in the agreements among money managers and broker dealers.[195]

Since participants have relied on the Commission's prior interpretations, the Commission believes that they should be entitled to continue to rely on them for a period of time. We believe that, considering the views expressed in the comment letters, an appropriate period for market participants to continue to rely on the Commission's prior interpretations is six months. The interpretation set forth in this Release is effective immediately upon its publication in the **Federal Register**, on July 24, 2006. Market participants may continue to rely on the Commission's prior interpretations for six months following the publication of this Release in the **Federal Register**, that is, until January 24, 2007.

List of Subjects in 17 CFR Part 241

Securities.

[182] In Section 28(e) arrangements involving multiple broker-dealers, at least one of the broker-dealers (but not necessarily all) must satisfy the requirements for ''effecting'' transactions and ''providing'' research.

[183] In all Section 28(e) arrangements, including those in which the broker-dealer is legally obligated to pay for the research, the broker-dealer may be subject to liability for aiding and abetting violations by money managers where the broker-dealer pays for services that are not within Section 28(e). *See e.g., Portfolio Advisory Services, LLC, and Cedd L. Moses,* Advisers Act Release No. 2038, 77 SEC Docket 2759–31 (June 20, 2002); *Dawson-Samberg Capital Management, Inc. and Judith A. Mack,* Advisers Act Release No. 1889, 54 SEC 786 (Aug. 3, 2000); *Founders Asset Management LLC and Bjorn K. Borgen,* Advisers Act Release No. 1879, 54 SEC 762 (June 15, 2000); *Marvin & Palmer Associates, Inc., et al.*, Advisers Act Release No. 1841, 70 SEC Docket 1643 (Sept. 30, 1999); *Republic New York Sec. Corp. and James Edward Sweeney,* Exchange Act Release No. 41036, 53 SEC 1283 (Feb. 10, 1999); *SEC* v. *Sweeney Capital Management, Inc.,* Litigation Release No. 15664, 66 SEC Docket 1613 (Mar. 10, 1998), 1999 U.S. Dist. LEXIS 22298 (1999) (order granting permanent injunction and other relief); *Renaissance Capital Advisers, Inc.,* Advisers Act Release No. 1688, 66 SEC Docket 408 (Dec. 22, 1997); *Oakwood Counselors, Inc.,* Advisers Act Release No. 1614, 63 SEC Docket 2034 (Feb. 11, 1997); *SEC* v. *Galleon Capital Mgmt.,* Litigation Release No. 14315, 57 SEC Docket 2593 (Nov. 1, 1994).

[184] A broker-dealer would need to satisfy the ''effecting'' and ''provided by'' elements of Section 28(e) only where the money manager seeks to operate within the safe harbor. If the money manager is operating in part outside of the safe harbor, the broker-dealer would need to satisfy the ''effecting'' and ''provided by'' elements only with respect to the portion of the money manager's business for which the manager seeks to operate within the safe harbor.

Prompt payment is relevant to the determination of whether the broker-dealer has ''provided'' research because it assures that the research and the payment are linked, thereby preserving the statutory language requiring that the broker-dealer that ''effects'' the transactions for the advised accounts ''provides'' the research.

[185] Exchange Act Release No. 52635 (Oct. 19, 2005), 70 FR 61700 (Oct. 25, 2005).

[186] BNY 1; IAA; ICI; Mellon; NSCP; T.Rowe Price.

[187] *See, e.g., supra,* notes 28–31 and accompanying text; Exchange Act § 15(b)(4)(iv)(E) and Advisers Act § 203(e)(6); III Report, 19 SEC Docket at 933 (Where brokers and money managers were aware that an intermediary was providing research to money managers in exchange for directing brokerage to the intermediary's designated brokers, but brokers had limited participation in providing the research, ''those involved should have realized that the arrangement was not permitted by Section 28(e) * * *. [B]rokers should have been alerted to the possibility of conduct which contravened applicable fiduciary principles and the federal securities laws.''). *See also* Exchange Act Release No. 11629 (Sept. 3, 1975), (''A broker which causes or assists an institution to violate a duty to the investor may be aiding and abetting a fraudulent or deceptive act or practice.''); 1976 Release, 41 FR at 13679 (''[N]or may money managers, under the authority of Section 28(e), direct brokers employed by them to make 'give up' payments * * *. [B]rokers should recognize that their compliance with any direction or suggestion by a fiduciary which would appear to involve a violation of the fiduciary's duty to its beneficiaries could implicate them in a course of conduct violating the anti-fraud provisions of the federal securities laws.'').

[188] Advisers that are not required to operate within the safe harbor may voluntarily choose to do so, and may represent to their clients that they do so. However, if an adviser that represents to its clients that he will operate within Section 28(e) and fails to do so, the representation is false and the conduct may be a violation of Section 206 of the Advisers Act and Section 10(b) of the Exchange Act and Rule 10b–5. Advisers to mutual funds and ERISA plans must operate within the safe harbor with respect to those clients because of Section 17(e) of the Investment Company Act or ERISA. *See supra* notes 30–31 and accompanying text.

[189] Proposing Release, Question 10.

[190] T. Rowe Price.

[191] CAPIS; IAA; IMA; Mellon; Merrill; NSCP; Seward & Kissel; SIA; UBS. Three commenters recommended six months. BNY 1; George 2; ITG. Two commenters suggested that the Commission provide the industry an unspecified ''reasonable'' period of time within which to comply with the Commission's interpretation. Charles River; E*Trade.

[192] Investorside; Reuters.

[193] CAPIS; IAA; Mellon; Merrill; NSCP; Seward & Kissel.

[194] BNY 1; ITG.

[195] SIA; UBS.

Amendments to the Code of Federal Regulations

■ For the reasons set out in the preamble, the Commission is amending Title 17, chapter II of the Code of Federal Regulations as set forth below:

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

Part 241 is amended by adding Release No. 34–54165 and the release date of July 18, 2006 to the list of interpretive releases.

Dated: July 18, 2006.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 06–6410 Filed 7–21–06; 8:45 am]

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Federal Register

Monday,
July 24, 2006

Part V

Securities and Exchange Commission

17 CFR Part 202

Amendments to the Informal and Other Procedures; Public Company Accounting Oversight Board Budget Approval Process; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33–8724; 34–54168]

Amendments to the Informal and Other Procedures; Public Company Accounting Oversight Board Budget Approval Process

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is amending its Informal and Other Procedures to add a rule that facilitates Commission review and approval of the budget and accounting support fee for the Public Company Accounting Oversight Board (''PCAOB'' or ''Board''), which is required by the Sarbanes-Oxley Act of 2002.

DATES: *Effective Date:* August 23, 2006. Transition Dates: The PCAOB must comply with the timetable in § 202.11(c) and utilize a comprehensive strategic plan with respect to its budget and budget and justification no later than its budget submissions for 2008; *provided however* that the PCAOB and Commission shall use their best efforts to substantially comply with the timetable in § 202.11(c) for the PCAOB budget submission for 2007. This transition provision does not constitute a waiver of the requirement in section 109(b) of the Sarbanes-Oxley Act of 2002 that the PCAOB adopt a budget not less than one month prior to the commencement of its 2007 fiscal year.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns, Chief Counsel, or Melanie S. Jacobsen, Senior Special Counsel, at (202) 551–5300, Office of the Chief Accountant, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending its Informal and Other Procedures [1] to add new Rule 11 related to the Commission's review and approval of the PCAOB budget and accounting support fee.

I. Background

The Sarbanes-Oxley Act of 2002 (the ''Act'') established the PCAOB to oversee the audits of public companies that are subject to the securities laws, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. While the PCAOB is a private, nonprofit corporation,[2] it operates under the statutory oversight and enforcement authority of the Commission.[3]

In particular, the funding and budgeting functions of the PCAOB are subject to the express statutory requirement of approval by the Commission. Pursuant to section 109 of the Act, the Commission is required to approve the PCAOB budget for each fiscal year and the annual accounting support fee that supports the PCAOB's operations.[4]

This statutory allocation of responsibility to the PCAOB, to formulate budgets and accounting support fees in the first instance,[5] and to the Commission, to review and approve them,[6] is designed to assure effective governmental oversight of the budgetary process of the PCAOB. It contemplates a procedure through which (1) an annual determination may be made each year of the appropriate level of PCAOB revenues and expenditures; (2) budget priorities may be established; and (3) information may be furnished in a timely manner to the Commission, and thence to the Congress, the executive branch, and the public, in a manner that will assist the PCAOB in discharging its duties.

The early experience of the PCAOB and the Commission with adoption and approval of annual budgets has revealed the need for a more formal procedure, in particular to establish a clear timetable for each successive step in a more organized budget process. Both the PCAOB and the Commission have expressed a desire to better organize and routinize the annual budget making function. The goal of the new procedures is to improve the timeliness and transparency of the budget process and thereby promote high quality decision making. This rule is designed to establish such a process.

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[1] 17 CFR 202, *et seq.*

[2] Sections 101(a) and (b) of the Act; 15 U.S.C. 7211(a) and (b).

[3] The Act vests the Commission with oversight duties and responsibilities, including the duties to appoint the members of the PCAOB, approve PCAOB rules and professional standards for them to take effect, and act as an appellate authority for PCAOB enforcement actions and disputes regarding inspection reports. The Commission also, among other things, may amend existing PCAOB rules, assign additional tasks to the PCAOB as appropriate, oversee the PCAOB's exercise of certain assigned powers and duties, and limit the PCAOB's activities and remove PCAOB members. *See* sections 101, 104, 105, 107, and 109 of the Act; 15 U.S.C. 7211, 7214, 7215, 7217 and 7219.

[4] Section 109(b) of the Act, 15 U.S.C. 7219(b), which states, in part:

The Board * * * shall * * * establish a budget for each fiscal year, which shall be reviewed and approved according to * * * [its] internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains. * * * The budget shall be subject to approval of the Commission. * * *

Section 109(c)(1) of the Act, 15 U.S.C. 7219(c)(1), which states, in part:

The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed) * * * shall be payable from annual accounting support fees, in accordance with subsections (d) * * *. Accounting support fees and other receipts of the Board * * * shall not be considered public monies of the United States.

Section 109(d)(1) of the Act, 15 U.S.C. 7219(d)(1), which states, in part:

The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board.

Section 109(d)(2) of the Act, 15 U.S.C. 7219(d)(2), which states, in part:

The rules of the Board * * * shall provide for the equitable allocation, assessment, and collection by the Board * * * of the fee established * * * among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

Section 109(g) of the Act, 15 U.S.C. 7219(g), which states, in part:

Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board—shall be allocated among and payable by each issuer (or each issuer in a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

PCAOB Rule 7100, approved by the Commission in Release No. 34–48278 (August 1, 2003), provides a formula for computation of the annual accounting support fee. It states, in part: ''The Board shall calculate an accounting support fee each year. The accounting support fee shall equal the budget of the Board, as approved by the Commission, less the sum of all registration fees and annual fees received during the preceding calendar year from public accounting firms, pursuant to section 102(f) of the Act—.''

PCAOB Rule 7101, approved by the Commission in Release No. 34–48278 (August 1, 2003), identifies four classes of issuers and provides for the allocation of the support fee among those issuers.

[5] *See* section 109(b) of the Act, supra, and section 101(f) of the Act, 15 U.S.C. 7211(f), which states, in part:

* * * the Board shall have the power, subject to section 107—* * *

(4) To appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries and other compensation (at a level that is comparable to private sector regulatory, accounting, technical, supervisory, or other staff or management positions). * * *

See also sections 101(c)(7) of the Act, 15 U.S.C. 7211(c)(7).

[6] To perform this budget oversight and approval function, the Commission, among other things, assesses the PCAOB's funding priorities and competing demands for PCAOB resources. In addition, the Commission considers whether the PCAOB's administrative and financial management are appropriate, whether improved coordinating mechanisms should be developed, and whether unnecessary burdens are placed on the public.

II. Discussion

The budget process described below is designed to codify a thorough and deliberative process for both the PCAOB's preparation and the Commission's review of PCAOB budgets. While it is recognized that circumstances might occur that lead the Commission and PCAOB to agree to vary the process from time to time, the Commission expects that it and the PCAOB will follow the practices in the rule to the fullest extent practicable. The Commission also may waive any of the requirements set forth in this rule if circumstances warrant.[7]

References to the ''PCAOB'' in either this release or the rule are not intended to require a vote or other official action by the members of the Board. Rather, the Commission expects that actions under the rule will be performed as authorized in the Act and the PCAOB's bylaws.[8]

A. Timetable

The rule contains a timetable that is designed to allow for a more meaningful dialogue between the PCAOB and the Commission regarding the content of each budget. The events and dates set forth in the timetable refer to the year immediately preceding the budget year.[9]

The first item in the timetable calls for the PCAOB, by March 15th, to provide the Commission with a narrative description of its program issues and outlook for the budget year. This narrative is to contain a discussion of the significant factors that the PCAOB anticipates may impact its resource needs in the budget year. The second step is for the Commission, after consideration of the PCAOB narrative, to provide the PCAOB with budgetary guidance and economic assumptions by April 30th. The nature and extent of guidance and assumptions may vary from year to year and may include general information about the securities markets, the accounting profession, and other factors impacting the range of budget resources that, in the opinion of the Commission, are needed by the PCAOB to carry out its statutory responsibilities.

The timetable calls for the PCAOB to provide the Commission each fiscal year with a preliminary budget for the next fiscal year, and with a justification for that preliminary budget, on or before the end of July. The new rule states that the budget and budget justification should include, among other things, a detailed budget plan, analyses of the PCAOB's programs and what the PCAOB expects to accomplish in the coming budget year, and a discussion of how the performance of the programs detailed in the budget will lead to both the accomplishment of the PCAOB's long-term strategic goals and the fulfillment of the PCAOB's duties and responsibilities under the Act.

The timetable allows three months following the submission of the preliminary budget and budget justification, August through October, for the Commission to analyze the PCAOB's background materials and the documentation for its budget, and for the Commission and the PCAOB to discuss the PCAOB's programs, assumptions, projected expenditures and receipts, and other information in or relevant to the preliminary budget and the budget justification. By the end of this three month period, the timetable calls for the Commission to ''passback'' the budget to the PCAOB with suggested revisions and the Commission's preliminary views on the budget.

As required by section 109 of the Act, the timetable provides for the PCAOB to approve its final budget before the end of the next month, which would be November 30. As a result of the thorough process preceding the PCAOB's approval, the PCAOB should be in a position to submit its final budget to the Commission immediately after the PCAOB approves it. This should permit the Commission, which would be familiar with the budget based on the review of the preliminary budget and the budget justification and communications with the PCAOB, to vote whether to approve the PCAOB budget and the accounting support fee on or before December 23rd of each year.

In the course of reviewing prior PCAOB budgets, SEC Commissioners and staff have met with PCAOB Board members and staff to discuss matters related to the budget and the Commission understands that PCAOB Board members and staff will continue to make themselves available for such meetings. In addition, to the extent determined appropriate, the Commission may ask the PCAOB to participate in meetings of the Commission to discuss matters related to the budget and the PCAOB has expressed its willingness, if requested by the Commission, to participate in such meetings.

B. Contents of the Budget and Budget Justification

As noted above, the rule provides for the preliminary budget, the budget submitted for Commission approval, and the accompanying budget justifications to include comprehensive explanations of the PCAOB's budget plan, past and projected performance, and strategic goals. Under the rule, the budget justification includes a ''performance budget'' for the budget year, which, among other things, details what the PCAOB plans to accomplish, organized by strategic goal, and a description of the resources, means and strategies needed to accomplish those targets. The performance budget also would contain the performance targets for the current year and the previous year[10] and describe the resources, means and strategies needed to accomplish those targets.

To facilitate analyses of the PCAOB's progress in meeting its goals and any trends in its performance and financial operations, the rule provides for each budget to include, among other information, projected, and to the extent available actual, expenditures and receipts for the budget year, the current year and the previous year (for a total of three years).[11] The new rule also states that the budget will include beginning-of-year and end-of-year headcounts for each program area. In addition, to facilitate the Commission's analysis and approval of the budget, the rule indicates that the Commission expects the budget and budget justification either to be consistent with or to explain any deviations from the guidance and economic assumptions previously provided by the Commission.

The new rule allows the PCAOB to include in its budget and accounting support fee amounts that are necessary to build a reserve not to exceed the obligations expected to be incurred during the first five months immediately following the budget year, in order to provide that the delays in the billing and collection of the accounting support

[7] In addition, the Commission and PCAOB may assess whether changes to the rule are appropriate after the completion of one or more budget cycles.

[8] The PCAOB's bylaws are available on the PCAOB web site: *http://www.pcaobus.org/*.

[9] The PCAOB has a calendar-year fiscal year. If the PCAOB changes its fiscal year to end on a date other than December 31, the Commission would interpret the timetable so that the dates would be adjusted accordingly. For example, the narrative discussion of the PCAOB's program issues and outlook for a fiscal year would be due on or before the fifteenth day of the third month of the preceding PCAOB fiscal year.

[10] For example, if the budget year is 2009, the current year (in which the 2009 budget is being prepared) would be 2008, and the previous year would be 2007. The Commission also recognizes that, until the PCAOB publishes a comprehensive strategic plan, an increased number of performance targets may be described in more qualitative than quantitative terms.

[11] Projected and actual expenditures include salary, benefits, relocation and similar benefits. The Commission will review such expenses to assess whether they are consistent with statutory criteria.

fee that are inherent in the statute, and significant unforeseen events, should not threaten the liquidity of the organization. The funds in that reserve, however, may be used only in accordance with the budget for that following fiscal year or a supplemental budget, as approved by the Commission.

If the Commission has not approved a budget for a PCAOB fiscal year before the beginning of that fiscal year, the rule provides that the PCAOB may spend funds from its reserve and continue to incur obligations as if the last PCAOB budget approved by the Commission were continuing in effect for the new fiscal year.

C. Commission-Approved Budgets

The statutory requirement that the Commission approve the PCAOB budget, contained in section 109 of the Act, is consistent with the general oversight responsibility with which the Commission is charged in section 107. These responsibilities for the budget and operations of the PCAOB require the ability to promote changes in the PCAOB budget when the Commission believes those changes are necessary or appropriate. The rule makes clear, therefore, that while the Commission may not directly change the budget, it may make its approval of a budget conditional on changes to amounts and other aspects of the budget. The PCAOB, in turn, will have the opportunity to consider the proposed changes and to vote again for final approval with or without the changes. To prevent the possibility of missed deadlines, if differences have not been resolved by December 23 then the terms of the most recent conditional approval would become the final budget.

The budget approval requirement is also made more meaningful by limiting the PCAOB's ability to incur expenses and obligations to the general terms of the Commission-approved budget. The rule makes clear that the PCAOB may not spend in a budget year more than the overall expenditure amount specified in the Commission-approved budget and may not transfer more than $1,000,000 into or out of any program area without prior Commission approval of a supplemental budget. The rule also makes clear that, once a budget is approved by the Commission, the PCAOB cannot use its resources in a manner that is not fairly implied from the approved budget. For example, without Commission approval, the PCAOB may not create a new program to perform functions that are not included in that budget, or eliminate a program that is described in that budget.

D. Supplemental Budgets

The new rule provides procedures for the PCAOB to seek Commission approval either to spend amounts in excess of, or contrary to, the spending limitations set forth in the rule. In these cases, the new rule provides for the PCAOB to submit a supplemental budget to the Commission.[12] The supplemental budget is to describe, among other things, the events or circumstances necessitating the supplemental budget request, why the request should not or can not be postponed until the next regular annual budget process, and the proposed source for the funds, including any offsets to be made in other programs and activities.

E. Records

Under section 107(a) of the Act,[13] the Commission may adopt rules requiring the PCAOB to make, keep, and furnish to the Commission such records and reports as the Commission prescribes as necessary or appropriate in the public interest.[14] In addition, all records of the PCAOB are subject to reasonable examinations by the representatives of the Commission as the Commission deems necessary or appropriate in the public interest, or the protection of investors, or otherwise in furtherance of the purposes of the Act.[15] Pursuant to this authority, as well as the authority inherent in its duty to approve the PCAOB budget, the new rule requires that the PCAOB maintain, and make available to the Commission upon request, a strategic plan and other records in reasonable detail that support each budget and budget justification.

In addition, the rule requires that the PCAOB prepare a report of its spending and staffing levels for each quarter, comparing those levels to the levels in the Commission approved budget. Within 30 business days after the end of the quarter, the PCAOB is required to provide a copy of that report to the Commission.

F. Publication of Budget

Under the new rule, the interchange between the Commission and the PCAOB on budget matters would begin with the PCAOB providing a narrative description of its program issues and outlook in March and conclude with the Commission vote in December. After the PCAOB provides the Commission with a description of program issues and outlook, the Commission and PCAOB together will discuss ideas and consider initial recommendations and proposals before the PCAOB approves its final budget in November. During these initial discussions, neither organization will publish the PCAOB's budget, budget justification, supplemental budget, or any underlying materials not otherwise intended for public distribution, until the time the budget is approved by the PCAOB and submitted to the Commission for approval.[16] Once the PCAOB submits its budget to the Commission, the rule provides for public disclosure, subject to any applicable exemption under the Freedom of Information Act,[17] of the PCAOB budget and budget justification, including the PCAOB's ''performance budget'' for the budget year.

G. Definitions

The rule defines certain terms that may arise in the discussion of budget matters. The definitions are generally consistent with Office of Management and Budget guidelines but have been adapted to apply to a private organization with the character and functions of the PCAOB.[18]

III. Administrative Procedure Act, Regulatory Flexibility Act, and Paperwork Reduction Act

The Commission finds, in accordance with section 533(b)(3)(A) of the Administrative Procedure Act (''APA''),[19] that this revision relates solely to agency organization, procedure or practice. It is, therefore, not subject to the provisions of the APA requiring notice and opportunity for public comment. The Regulatory Flexibility Act,[20] therefore, does not apply. Similarly, because these rules relate to ''agency organization, procedure or practice that does not substantially affect the rights or obligations of non-

[12] If there is an urgent need for the PCAOB to obtain approval of a supplemental budget, the Commission may act by duty officer or other means to expedite the approval process.

[13] 15 U.S.C. 7217(a), which provides that sections 17(a)(1) and 17(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''), 15 U.S.C. 78q(a)(1) and 78q(b)(1), shall apply to the PCAOB as fully as if the PCAOB were a ''registered securities association.''

[14] Section 17(a)(1) of the Exchange Act, 15 U.S.C. 78q(a)(1).

[15] Section 17(b)(1) of the Exchange Act, 15 U.S.C. 78q(b)(1).

[16] This limitation does not restrict individual PCAOB members from generally commenting on their individual views of the funding requirements of the organization or the status of the Board's deliberations, either before or after the PCAOB adopts its budget.

[17] Certain exemptions under the Freedom of Information Act (''FOIA''), including the exemption for confidential financial information, may apply to some of the information provided to the Commission.

[18] *See generally*, Office of Management and Budget Circular No. A–11, at ¶ 20.3 (June 2005).

[19] 5 U.S.C. 553(b)(3)(A).

[20] 5 U.S.C. 601 *et seq.*

agency parties,'' the Commission is not soliciting comments for purposes of the Small Business Regulatory Enforcement Fairness Act.[21] The rules do not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended.[22]

IV. Costs and Benefits of the Amendments

Taken as a whole, the Commission's rules of practice, such as Informal and Other Procedures, create governmental review and remedial processes. That is, they are procedural and administrative in nature. The benefits are the familiar benefits of due process: notice, opportunity to be heard, efficiency, and fairness. These benefits are particularly applicable to the current amendments because the timetable, procedural steps, and materials that are to be made available for Commission review should provide for a more meaningful dialogue between the Commission and the PCAOB and enhance the efficiency and fairness of the budget approval process. In addition, the PCAOB should benefit by beginning each fiscal year with an approved budget, rather than operating for the first few months of the year without such a budget.

In general, the costs of the procedures in the Commission's rules of practice, including Informal and other Procedures, fall largely on the Commission. In this instance, the Act already requires the PCAOB each year to prepare and submit a budget to the Commission for approval. While we anticipate that in the coming years the PCAOB will devote more resources to the preparation of its budget, many of the cost increases in this area are inherent in the maturing nature of the organization and are not attributed solely to the adoption of the amendments. The implementation of a more detailed budget process and the preparation of the materials that would be submitted under the amendments, including quarterly updates on spending and staffing levels, are fundamental to the effective management of a mature organization. Further, conducting the budget preparation process over the period set forth in the new rule should make it a more efficient and effective process.

As noted, the amendments set forth in this release relate to internal agency management, increase the efficiency of the Commission's approval process, and promote timely and meaningful communications between the Commission and the PCAOB.

V. Effect on Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act of 1933[23] and Section 3(f) of the Exchange Act[24] require us, when engaging in rulemaking that requires us to consider or determine whether an act is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[25] 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.

The amendments are intended to facilitate the Commission's process for approving the PCAOB budget. The amendments increase the efficiency of the Commission's approval process. The rule applies only to the PCAOB, which is an organization established by Congress in the Act, and therefore the Commission does not expect the rule to have an anti-competitive effect. Since there will be an increase in efficiency, there will not be any adverse impacts on capital formation.

VI. Statutory Basis and Text of Amendments

These amendments to the Informal and Other Procedures are being adopted pursuant to statutory authority granted to the Commission, including section 19(a) of the Securities Act of 1933, sections 17 and 23(a) of the Securities Exchange Act of 1934 and sections 3(a) and 101 through 109 of the Sarbanes-Oxley Act of 2002.

List of Subjects in 17 CFR Part 202

Administrative practice and procedure, Securities.

Text of the Amendment

■ For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

■ 1. The general authority citation for part 202 is revised to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, 80b–11, 7202 and 7211 *et seq.*, unless otherwise noted.

* * * * *

■ 2. Add § 202.11 to read as follows:

§ 202.11 Public Company Accounting Oversight Board budget approval process.

(a) *Purpose*. These procedures are established in connection with consideration and approval of the budget and the accounting support fee for the Public Company Accounting Oversight Board (PCAOB). Actions attributed to the PCAOB in this section shall be performed as authorized by the Sarbanes-Oxley Act of 2002 and the PCAOB's bylaws.

(b) *Definitions*. For the purposes of this section, the following definitions shall apply:

(1) *Budget category* means a grouping of similar expenditures within the PCAOB's budget. Budget categories shall include, among others: personnel, training, recruiting and relocation expenses, information technology, consulting and professional fees, travel, administrative expenses, lease costs and related expenses, and capital improvements of facilities.

(2) *Budget justification* means the justification for each annual budget, prepared in concise and specific terms, covering all of the PCAOB's programs and activities, and including, among other things as may be requested by the Commission:

(i) A performance budget for the budget year;

(ii) An analysis of the PCAOB's budget, including a tabular presentation that identifies the budgetary resources required for each program area (with a breakout of resources by budget category); a description of the budgetary resources identified in the budget in the context of the PCAOB's programs and activities; and an explanation of the analysis used to determine the resources needed to accomplish each program and strategic goal that demonstrates that reasonable opportunities for making more efficient and effective use of resources have been explored;

(iii) A description of the relationship between the results or outcomes the PCAOB expects to achieve (as discussed in the PCAOB's strategic plan) and the resources requested in the budget;

(iv) Assumptions underlying the calculation of the working capital reserve as permitted in paragraph (d)(3) of this section and assumptions underlying PCAOB estimates, including work years, program outputs, base compensation levels and proposed compensation increases, and costs of inputs such as materials or contract costs;

(v) A discussion of any models used to develop PCAOB estimates;

(vi) Detailed funding levels for education, training, and travel of the PCAOB workforce;

[21] 5 U.S.C. 804(3)(C).

[22] 44 U.S.C. 3501 *et seq.*

[23] 15 U.S.C. 77b(b).

[24] 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78w(a)(2).

(vii) Information sufficient for the Commission to assess current and proposed capital projects and information technology projects; and

(viii) A statement that the PCAOB has considered relative costs and benefits in formulating the programs, projects and activities described in the budget.

(3) *Budget year* means the PCAOB fiscal year that is the subject of the budget prepared and submitted by the PCAOB to the Commission for approval.

(4) *Current year* means the PCAOB fiscal year that precedes the budget year, and is the year in which the PCAOB prepares the budget.

(5) *Performance budget* means a budget that presents what the PCAOB proposes to accomplish in the budget year and what resources these proposals will require, and that serves as the primary basis for the justification of the budget submitted to the Commission for approval. The performance budget includes:

(i) A description of what the PCAOB plans to accomplish, organized by strategic goal;

(ii) Background on what the PCAOB has accomplished, organized by strategic goal;

(iii) Analyses of the strategies the PCAOB uses to influence strategic outcomes, including whether those strategies could be improved and, if so, how they could be improved;

(iv) Analyses of the programs that contribute to each goal and their relative roles and effectiveness;

(v) Performance targets for the budget year and the current year and how the PCAOB expects to achieve those targets, as well as actual performance levels achieved in the year immediately preceding the current year;

(vi) The budgetary resources the PCAOB is requesting to achieve those targets;

(vii) Descriptions of the operations, processes, staff skills, information and other technologies, human resources, capital assets, and other resources to be used in achieving the PCAOB's performance goals; and

(viii) Descriptions of the programs, policies, and management, regulatory, and other initiatives and approaches to be used in achieving the PCAOB's performance goals.

(6) *Preliminary budget* means the draft budget submitted for initial consideration by the Commission, which shall be a complete or substantially complete budget for the budget year, and which is accompanied by a budget justification.

(7) *Program area* means the array of the budgeted amounts and other budget-related data according to the major purpose served, such as registration, inspection, standard-setting, enforcement, and administration.

(8) *Receipts* means collections that result from issuers' payments of accounting support fees; public accounting firms' payment of registration fees and fees associated with annual reports; interest income; and other sources of revenue.

(9) *Strategic plan* means the PCAOB's overarching plan for accomplishing its strategic goals, including forecasts for the current and four following years; estimates of the effect that reasonably foreseeable changes impacting the auditing profession and securities markets could have on program levels; and a discussion of the impact that program levels and changes in methods of program delivery, including advances in technology, could have on program operations and administration.

(10) *Supplemental budget* means a budget or amendment thereto submitted to the Commission for approval subsequent to Commission approval of the budget for the budget year, when:

(i) There is a need for additional funds in a program area;

(ii) Resources are to be applied in a manner not fairly implied in the Commission-approved budget and budget justification, such as when programs are created to perform functions that are not, or to perform functions in a way that is not, fairly implied from the Commission-approved budget and budget justification; or

(iii) Programs described in the Commission-approved budget and budget justification are to be eliminated.

(c) *Timetable*. The timetable for preparation and submission of the annual budget is as follows:

Date	Event
On or before March 15	PCAOB provides a narrative of its program issues and outlook for the budget year.
On or before April 30	Commission provides economic assumptions and general budgetary guidance to the PCAOB.
On or before July 31	PCAOB submits preliminary budget and budget justification for Commission review.
August–October	Consultation between Commission and PCAOB; Commission staff conducts review of PCAOB preliminary budget, budget justification and related information.
On or before October 31	Commission passback of budget to the PCAOB with proposed revisions.
On or before November 30	PCAOB adopts budget and submits it, along with the budget justification, to the Commission.
On or before December 23	Commission votes on the PCAOB budget.

(d) *Contents of budget*. (1) To facilitate Commission review and approval, each budget (including each preliminary budget and budget submitted for Commission approval) shall:

(i) Be accompanied by a budget justification.

(ii) Include information for the budget year, the current year, and the year immediately preceding the current year, regarding actual or projected spending by program area, receipts, debt, and employment levels.

(iii) Be consistent with, or explain any deviations from, the economic assumptions and budgetary guidance provided by the Commission.

(iv) Include statements of PCAOB programs, initiatives and strategies for the budget year.

(v) Earmark each amount for a specific budget category within a program area.

(vi) Include planned beginning-of-year and end-of-year headcounts for each program area.

(2) Each budget submitted for Commission approval shall be consistent with the preliminary budget and any revisions proposed by the Commission when the budget was passed from the Commission back to the PCAOB or explain any changes from the preliminary budget and/or such proposed revisions.

(3) In addition to amounts needed to fund disbursements during the budget year, a budget may reflect receipts in amounts needed to fund expected disbursements during a period not to exceed the first five months of the fiscal year immediately following the budget year (the working capital reserve), provided such amounts shall be disbursed only as specified in the following year's budget or in a supplemental budget approved by the Commission.

(4) In approving the budget the Commission may not change the amounts earmarked for programs, program areas, or activities, or any other aspects of the budget; provided, that if

the budget is conditionally rather than finally approved, then the Commission may transmit to the Board such proposed changes as are consistent with the preliminary budget and any revisions previously proposed by the Commission when it passed the budget back to the PCAOB. No proposed reduction or increase may be greater than that included in the preliminary budget and any revisions previously proposed by the Commission when it passed the budget back to the PCAOB.

(5) In the event the budget is conditionally approved by the Commission, the PCAOB shall have the opportunity to consider the changes proposed by the Commission and to vote again for final approval of the budget as amended. If this iterative process has not resolved differences between the Commission and the PCAOB by December 23, then the terms of the most recent conditional approval shall become final, and the budget shall be deemed finally approved.

(e) *Limitation on spending*. (1) The PCAOB shall not spend in a budget year more than the amount specified in the Commission-approved PCAOB budget for that year, regardless of the source of the funds, unless such expenses have been approved by the Commission through a supplemental budget request.

(2) Funds may be disbursed by the PCAOB only in accordance with the Commission approved budget, *provided however*, during the budget year the PCAOB may transfer amounts totaling not more than $1,000,000 into or out of each program area without prior Commission approval. Further, the PCAOB shall not:

(i) Apply its resources in a manner not fairly implied in the Commission-approved budget and budget justification, such as to create programs to perform functions that are not, or to perform functions in a way that is not, fairly implied from the Commission-approved budget and budget justification, or

(ii) Eliminate programs described in the Commission-approved budget and budget justification.

(3) In the event that the Commission has not approved a budget for a PCAOB fiscal year before the beginning of that fiscal year, the PCAOB may spend funds from the reserve and continue to incur obligations as if the PCAOB budget or supplemental budget most recently approved by the Commission were continuing in effect for that fiscal year.

(f) *Supplemental budget*. (1) The PCAOB may submit to the Commission a request for approval of a supplemental budget subsequent to Commission approval of the budget for the budget year in order to spend any amounts in excess of, or contrary to, the limitations described in paragraphs (e)(1) and (e)(2) of this section.

(2) To facilitate Commission review and approval, a supplemental budget shall include:

(i) Detailed information regarding the impact of the supplemental budget on each affected program area, including costs by cost category, project or activity;

(ii) A statement regarding how the supplemental budget facilitates the strategic and policy goals of the PCAOB;

(iii) Information indicating why the amount was not included in the budget for the current year, including a description of any subsequent and unforeseen events or circumstances necessitating the supplemental budget request;

(iv) Information indicating why the request should not or cannot be postponed until the next regular annual budget process; and

(v) The proposed source for the funds, including any offsets to be made elsewhere in the PCAOB's programs and activities.

(g) *Maintenance of records; reports*. (1) The PCAOB shall maintain, and make available to the Commission or Commission staff upon request, a strategic plan and records in reasonable detail that support each preliminary budget, budget, budget justification, supplemental budget and other report or communication in compliance with this section, including past and projected receipts, outlays, obligations, and employment levels.

(2) The PCAOB is required to maintain and, within 30 business days after the end of each fiscal quarter, to furnish to the Commission a report of its spending and staffing levels for the quarter just ended, comparing those levels to the levels in the Commission approved budget.

(h) *Publication of budget*. (1) Following submission of the PCAOB-approved budget to the Commission, such budget and budget justification, subject to any applicable exemption under the Freedom of Information Act, shall be made available to the public. Neither the Commission nor the PCAOB shall publish a preliminary budget, budget, budget justification, or any underlying materials in connection therewith, until such time as the budget is approved by the PCAOB and submitted to the Commission for its approval.

(2) Supplemental budgets shall be made public, following approval by the PCAOB and submission to the Commission, in the same manner as described in paragraph (h)(1) of this section.

(3) The Commission-approved budget shall be made available to the public at the time of such approval.

(i) *Waivers of rule provisions*. The Commission, in its discretion, may waive compliance with any provision of this § 202.11.

Dated: July 18, 2006.

By the Commission.

Nancy Morris,

Secretary.

[FR Doc. 06–6409 Filed 7–21–06; 8:45 am]

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Part VI

Department of Agriculture

Agriculture Marketing Service

7 CFR Parts 56 and 70

Updating Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–02–003]

RIN 0581–AC25

Updating Administrative Requirements for Voluntary Shell Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the administrative requirements in the regulations governing the voluntary shell egg, poultry, and rabbit grading programs. The amendments update the administrative requirements and make minor, nonsubstantive changes for clarity and uniformity of style. This improves operational efficiency of the grading programs by making the administrative requirements more accurate, clear, consistent, and easier to use.

DATES: *Effective Date:* August 23, 2006.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, Standardization Branch, (202) 720–3506.

SUPPLEMENTARY INFORMATION:

Background

Voluntary shell egg, poultry, and rabbit grading programs are provided for under the Agricultural Marketing Act of 1946, as amended, and are offered on a fee-for-service basis. The programs operate under the regulations in 7 CFR part 56 (Voluntary Grading of Shell Eggs) and 7 CFR part 70 (Voluntary Grading of Poultry Products and Rabbit Products).

Supervisory personnel at national, regional, and State levels are responsible for overall operation of these grading programs and implementation of the regulations. Historically, graders were licensed in either shell egg grading or poultry grading, some also in rabbit grading, and they would use only one of the regulations. Today, graders are increasingly cross-utilized for both shell egg and poultry grading, and use both 7 CFR parts 56 and 70.

Both regulations have been in effect since the 1950s and have been amended from time to time as requirements have changed.

While each regulation has its own commodity-specific requirements, both regulations have the same or similar administrative requirements. A review of the administrative requirements identified general editorial or housekeeping changes that were needed. These changes enable program staff at all levels to implement the administrative requirements of both regulations consistently, uniformly, easily, and fairly. The amendments do not change how the administrative requirements are administered, how the commodity-specific requirements are implemented, or the responsibilities of program users.

The amendments make the administrative requirements more accurate, easier to implement, and easier to follow.

For example:

- References to the official U.S. Standards, Grades, and Weight Classes for Shell Eggs and the official U.S. Classes, Standards, and Grades for Poultry and Rabbits reflect that they are no longer in the Code of Federal Regulations.
- Punctuation, grammar, capitalization, abbreviations, legal phrases, terms, format, and style are consistent with current regulatory documents, the U.S. Government Printing Office Style Manual, and the Federal Register Document Drafting Handbook. Pronouns used are gender-neutral, consistent with current writing style.
- Redesignated sections make requirements easier to locate in the regulations.
- Sections about nondiscrimination and political activity for Federal employees reflect current requirements.
- Editing of Agency names and displays of control numbers assigned to information collection requirements by the Office of Management and Budget saves space and avoids the repetitive use of certain numbers and words.
- ''Poultry Programs'' correctly identifies the organization.
- ''Electronic means'' correctly reflects current technology.
- ''Agricultural Marketing Service or AMS'' is added for consistency with other Agency regulations.
- Duplicate sections are removed.
- Inconsistencies in the wording of headings and sections common to both regulations are harmonized, where feasible and practical, to assist program staff at all levels.
- Administrative requirements that have historically been implemented in both grading programs, but are found in only one of the regulations, are added to the regulation where they are not specified.

Proposed Rule and Comments

A proposed rule was published in the **Federal Register** (71 FR 2168, January 13, 2006). During the 30 day comment period that ended February 13, the agency received one comment. The commenter expressed concern that comments could not be accepted electronically. The agency determined that the address provided was incomplete. A correction was published in the **Federal Register** (70 FR 4056, January 25). Other concerns expressed by the commenter were not pertinent to the rule or were outside the scope of the regulations being revised.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

The purpose of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The Small Business Administration (SBA) (13 CFR 121.201) defines small entities that produce and process poultry as those whose annual number of employees is less than 500, and defines small entities that produce and process chicken eggs as those whose annual receipts are less than $9,000,000. Approximately 625,500 egg laying hens are needed to produce enough eggs to gross $9,000,000.

There are about 376 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the SBA. These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

Pursuant to requirements set forth in the RFA, the AMS has considered the economic impact of this rule on small entities. This rule is editorial and housekeeping in nature. It affects administrative requirements by updating language and references that are outdated. It harmonizes the administrative content of both regulations. It does not change how the administrative requirements are administered, how commodity-specific requirements are implemented, or the responsibilities of program users. Accordingly, AMS has determined that provisions of this rule do not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has previously approved the information collection and recordkeeping requirements included in this rule, and there are no new requirements. The assigned OMB control numbers are 0581–0127 and 0581–0128.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7, Code of Federal Regulations, parts 56 and 70 are amended as follows:

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 56.1 [Amended]

■ 2. Section § 56.1 amended as follows:
■ A. Remove the definition of Service.
■ B. Revise the introductory text and the definitions of *Act*, *Applicant*, *Department*, *Grader*, *Grading certificate*, *Official plant* or *official establishment*, *Origin grading*, *Regulations*, and *Sampling*, in alphabetical order, as set forth below.
■ C. Add the definitions of *Acceptable*, *Identify*, *Shell egg grading service*, *State supervisor* or *Federal-State supervisor*, and *United States Standards for Quality of Individual Shell Eggs*, in alphabetical order, as set forth below.
■ D. Alphabetize the definitions of *Administrator* and *Agricultural Marketing Service.*
■ E. Amend the definition of *Administrator* by removing the words ''Agricultural Marketing Service of the Department'' and adding ''AMS'' in their place and removing the word ''his'' and adding ''the Administrator's'' in its place.
■ F. Amend the definition of *Grading* or *grading service* by removing the word ''Service'' and adding ''AMS'' in its place at the end of paragraph (1).
■ G. Amend the definition of *Holiday* or *legal holiday* by removing the words ''shall mean'' and adding ''means'' in their place.
■ H. Amend the definition of *Secretary* by removing the word ''his'' and adding ''the Secretary's'' in its place.

The additions and revisions, in alphabetical order, read as follows:

§ 56.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the terms shall have the following meaning:

Acceptable means suitable for the purpose intended by the AMS.

Act means the applicable provisions of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621 *et seq.*), or any other act of Congress conferring like authority.

* * * * *

Applicant means any interested person who requests any grading service.

* * * * *

Department means the United States Department of Agriculture (USDA).

* * * * *

Grader means any Federal or State employee or the employee of a local jurisdiction or cooperating agency to whom a license has been issued by the Secretary to investigate and certify in accordance with the regulations in this part, the class, quality, quantity, or condition of products.

* * * * *

Grading certificate means a statement, either written or printed, issued by a grader pursuant to the Act and the regulations in this part, relative to the class, quantity, quality, or condition of products.

* * * * *

Identify means to apply official identification to products or the containers thereof.

* * * * *

Official plant or *official establishment* means one or more buildings or parts thereof comprising a single plant in which the facilities and methods of operation therein have been approved by the Administrator as suitable and adequate for grading service and in which grading is carried on in accordance with the regulations in this part.

* * * * *

Origin grading means a grading made on a lot of eggs at a plant where the eggs are graded and packed.

* * * * *

Regulations means the provisions in this entire part and such United States standards, grades, and weight classes as may be in effect at the time grading is performed.

Sampling means the act of taking samples of any product for grading or certification.

* * * * *

Shell egg grading service means the personnel who are actively engaged in the administration, application, and direction of shell egg grading programs and services pursuant to the regulations in this part.

* * * * *

State supervisor or *Federal-State supervisor* means any authorized and designated individual who is in charge of the shell egg grading service in a State.

United States Standards for Quality of Individual Shell Eggs means the official U.S. Standards, Grades, and Weight Classes for Shell Eggs (AMS 56) that are maintained by and available from Poultry Programs, AMS.

■ 3. The undesignated center heading preceding § 56.3 is revised to read as follows:

General

§ 56.3 [Amended]

■ 4. Section 56.3 is amended by:
■ A. Removing paragraph designation (a).
■ B. Removing paragraph (b).
■ C. Adding the words ''the regulations in'' immediately after the words ''Act and'' in the first sentence.
■ D. Removing the words ''Agricultural Marketing Service'' and adding ''AMS'' in their place in the last sentence.

■ 5. The undesignated center heading preceding § 56.4 is removed.

§ 56.4 [Amended]

■ 6. In § 56.4, paragraph (a) is amended in the first sentence by adding the words ''for Shell Eggs'' after ''Classes'' and removing the words ''as contained in subpart C of this part.''

■ 7. The section heading for § 56.5 is revised to read as follows:

§ 56.5 Accessibility of product.

* * * * *

§ 56.6 [Amended]

■ 8. Section 56.6 is amended in the first sentence by removing the word ''applicable'' and adding ''responsible'' in its place and adding the words ''in accordance with instructions issued by the Administrator'' immediately following the word ''rendered'' in the second sentence.

■ 9. Section 56.7 is added to read as follows:

§ 56.7 Nondiscrimination.

The conduct of all services and the licensing of graders under these regulations shall be accomplished without discrimination as to race, color, national origin, sex, religion, age, disability, political beliefs, sexual orientation, or marital or family status.

■ 10. Section 56.9 is revised to read as follows:

§ 56.9 OMB control number.

(a) *Purpose.* The collecting of information requirements in this part has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0128.

(b) *Display.*

SECTIONS WHERE INFORMATION COLLECTION REQUIREMENTS ARE IDENTIFIED AND DESCRIBED

56.3(a)	56.24	56.52(b)(3)(ii)
56.4(a)	56.25	56.54(b)(1)
56.10(a)	56.26	56.54(b)(3)(ii)
56.11	56.30	56.56(a)
56.12	56.31(a)	56.57
56.17(b)	56.35(b)	56.58
56.18	56.35(c)	56.60
56.21(a)	56.37	56.62
56.21(b)	56.52(a)(l)	56.76(f)(7)
56.21(c)	56.52(a)(4)	56.76(h)
56.23	56.52(b)(1)	

■ 11. The undesignated center heading preceding § 56.10 is revised to read as follows:

Licensed and Authorized Graders

* * * * *

■ 12. Section 56.10 is revised to read as follows:

§ 56.10 Who may be licensed and authorized.

(a) Any person who is a Federal or State employee, the employee of a local jurisdiction, or the employee of a cooperating agency possessing proper qualifications as determined by an examination for competency and who is to perform grading service under this part, may be licensed by the Secretary as a grader.

(b) All licenses issued by the Secretary shall be countersigned by the officer in charge of the shell egg grading service of the AMS or any other designated officer.

(c) Any person, who is employed at any official plant and possesses proper qualifications, as determined by the Administrator, may be authorized to candle and grade eggs on the basis of the ''U.S. Standards for Quality of Individual Shell Eggs,'' with respect to eggs purchased from producers or eggs to be packaged with official identification. In addition, such authorization may be granted to any qualified person to act as a ''quality assurance inspector'' in the packaging and grade labeling of products. No person to whom such authorization is granted shall have authority to issue any grading certificates, grading memoranda, or other official documents; and all eggs which are graded by any such person shall thereafter be check graded by a grader.

■ 13. Section 56.11 is revised to read as follows:

§ 56.11 Financial interest of graders.

Graders shall not render service on any product in which they are financially interested.

■ 14. Section 56.12 is revised to read as follows:

§ 56.12 Suspension of license; revocation.

Pending final action by the Secretary, any person authorized to countersign a license to perform grading service may, whenever such action is deemed necessary to assure that any grading service is properly performed, suspend any license to perform grading service issued pursuant to this part, by giving notice of such suspension or revocation to the respective licensee, accompanied by a statement of the reasons therefor. Within 7 days after the receipt of the aforesaid notice and statement of reasons, the licensee may file an appeal in writing with the Secretary, supported by any argument or evidence that the licensee may wish to offer as to why their license should not be further suspended or revoked. After the expiration of the aforesaid 7-day period and consideration of such argument and evidence, the Secretary will take such action as deemed appropriate with respect to such suspension or revocation. When no appeal is filed within the prescribed 7 days, the license to perform grading service is revoked.

■ 15. Section 56.13 is revised to read as follows:

§ 56.13 Cancellation of license.

Upon termination of the services of a licensed grader, the grader's license shall be immediately surrendered for cancellation.

§ 56.14 [Amended]

■ 16. Section 56.14 is amended by removing the word ''he'' and adding ''the licensee'' in its place.

■ 17. Section 56.15 is revised to read as follows:

§ 56.15 Political activity.

Federal graders may participate in certain political activities, including management of and participation in political campaigns, in accordance with AMS policy. Graders are subject to these rules while they are on leave with or without pay, including furlough; however the rules do not apply to cooperative employees not under Federal supervision and intermittent employees on the days they perform no service. Willful violations of the political activity rules will constitute grounds for removal from the AMS.

■ 18. Section 56.16 is revised to read as follows:

§ 56.16 Identification.

Graders shall have in their possession at all times, and present upon request while on duty, the means of identification furnished to them by the Department.

§ 56.17 Equipment and facilities for graders.

■ 19. In § 56.17, the section heading is revised as set forth above and the introductory text and paragraph (b) are revised to read as follows:

Equipment and facilities to be furnished by the applicant for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

* * * * *

(b) Furnished office space, a desk, and file or storage cabinets (equipped with a satisfactory locking device) suitable for the security and storage of official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the national supervisor.

■ 20. Section 56.19 is added immediately following § 56.18 and before the undesignated center heading to read as follows:

§ 56.19 Prerequisites to grading.

Grading of products shall be rendered pursuant to the regulations in this part

and under such conditions and in accordance with such methods as may be prescribed or approved by the Administrator.

■ 21. The undesignated center heading preceding § 56.20 is revised to read as follows:

Application for Grading Service

■ 22. Section 56.20 is revised to read as follows:

§ 56.20 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to any authorized agent of the United States, any State, county, municipality, or common carrier.

§ 56.21 [Amended]

■ 23. In § 56.21, paragraph (a) is amended by removing the words ''basis may'' and adding ''basis shall'' in their place and paragraph (b) is amended in the second sentence by adding the words '', or at the AMS Web site.'' after ''office.''

■ 24. Section 56.22 is revised to read as follows:

§ 56.22 Filing of application.

An application for grading service shall be regarded as filed only when made pursuant to the regulations in this part.

■ 25. Section 56.24 is revised to read as follows:

§ 56.24 Rejection of application

(a) An application for grading service may be rejected by the Administrator:

(1) Whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available;

(2) Whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act;

(3) Where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant is currently denied the benefits of the Act or was responsible in whole or in part for the current denial of the benefits of the Act to any person;

(4) Where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain grading services;

(5) Whenever the applicant, after an initial survey has been made in accordance with the regulations, fails to bring the grading facilities and equipment into compliance with the regulations within a reasonable period of time;

(6) Notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service;

(7) When it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government; or

(8) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after the receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

■ 26. Section 56.25 is revised to read as follows:

§ 56.25 Withdrawal of Application.

An application for grading service may be withdrawn by the applicant at any time before the service is performed upon payment by the applicant, of all expenses incurred by the AMS in connection with such application.

§ 56.27 [Amended]

■ 27. Section 56.27 is amended by adding the words ''and subject to the availability of qualified graders'' immediately after ''practicable.''

■ 28. Section 56.28 is printed twice in the 2006 Code of Federal Regulations. The first copy should be removed.

■ 29. Section 56.29 is added to read as follows:

§ 56.29 Suspension or withdrawal of plant approval for correctable cause.

(a) Any plant approval given pursuant to the regulations in this part may be suspended by the Administrator for:

(1) Failure to maintain grading facilities and equipment in a satisfactory state of repair, sanitation, or cleanliness;

(2) The use of operating procedures which are not in accordance with the regulations in this part; or

(3) Alterations of grading facilities or equipment which have not been approved in accordance with the regulations in this part.

(b) Whenever it is feasible to do so, written notice in advance of a suspension shall be given to the person concerned and shall specify a reasonable period of time in which corrective action must be taken. If advance written notice is not given, the suspension action shall be promptly confirmed in writing and the reasons therefor shall be stated, except in instances where the person has already corrected the deficiency. Such service, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader can be made available. During such period of suspension, grading service shall not be rendered. However, the other provisions of the regulations pertaining to providing grading service on a resident basis will remain in effect unless such service is terminated in accordance with the provisions of this part.

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall initiate withdrawal action pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plant, the plant approval shall also become terminated and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the AMS, either be destroyed or the official identification completely obliterated or sealed in a manner acceptable to the AMS.

(d) In any case where grading service is withdrawn under this section, the person concerned may thereafter apply for grading service as provided in §§ 56.20 through 56.29 of these regulations.

■ 30. The undesignated center heading preceding § 56.30 is removed.

■ 31. Section 56.30 is revised to read as follows:

§ 56.30 Application for grading service in official plants; approval.

Any person desiring to process and pack products in a plant under grading service must receive approval of such plant and facilities as an official plant prior to the rendition of such service. An application for grading service to be rendered in an official plant shall be

approved according to the following procedure: When application has been filed for grading service, as aforesaid, the State supervisor or the supervisor's assistant shall examine the grading office, facilities, and equipment and specify any facility or equipment modifications needed for the service. When the plant survey has been completed and approved in accordance with the regulations in this part, service may be installed.

■ 32. The undesignated center heading preceding § 56.31 is revised to read as follows:

Reports

■ 33. Section 56.31 is revised to read as follows:

§ 56.31 Report of grading work.

Reports of grading work performed within official plants shall be forwarded to the Administrator by the grader in a manner as may be specified by the Administrator.

§ 56.32 [Redesignated as § 56.38]

■ 34. Section 56.32 is redesignated as § 56.38 and a new § 56.32 is added to read as follows:

§ 56.32 Information to be furnished to graders.

The applicant for grading service shall furnish to the grader rendering such service such information as may be required for the purposes of this part.

■ 35. Section 56.33 is added immediately following § 56.32 and before the undesignated center heading to read as follows:

§ 56.33 Report of Violations

Each grader shall report, in the manner prescribed by the Administrator, all violations of and noncompliance with the Act and the regulations in this part of which such grader has knowledge.

§ 56.35 [Amended]

■ 36. In § 56.35, paragraph (c) is amended in the first sentence by removing the words ''with the labeling on'' and adding ''on the labeling of'' in their place.

■ 37. The section heading of § 56.36 is revised to read as follows:

§ 56.36 Form of grademark and information required.

* * * * *

§ 56.45 Payment of fees and charges.

■ 38. In § 56.45, the section heading is revised as set forth above and paragraph (b) is revised to read as follows:

* * * * *

(b) Fees and charges for any grading service shall, unless otherwise required pursuant to paragraph (c) of this section, be paid by check, draft, or money order payable to the Agricultural Marketing Service and remitted promptly to the AMS.

* * * * *

§ 56.46 [Amended]

■ 39. In § 56.46, paragraph (c) is amended by removing the word ''Supervisor'' and adding ''supervisor'' in its place.

§ 56.49 [Amended]

■ 40. In § 56.49, the first sentence is amended by removing the word ''service'' the first time it appears and adding ''AMS'' in its place.

§ 56.52 Charges for continuous grading performed on a resident basis.

■ 41. In § 56.52, the heading is revised as set forth above and paragraph (a) is amended by removing the words ''Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as ''the AMS'')'' and adding ''AMS'' in their place.

§ 56.54 [Amended]

■ 42. In § 56.54, paragraph (a) is amended in the first sentence by removing the words ''Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as ''AMS'')'' and adding ''AMS'' in their place and paragraph (b)(5) is amended by removing the words ''part 55 or.''

■ 43. Section 56.55 is revised to read as follows:

§ 56.55 Forms.

■ Grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

■ 44. Section 56.56 is revised to read as follows:

§ 56.56 Issuance.

(a) *Resident grading basis.* Certificates will be issued only upon request therefor by the applicant or the AMS. When requested, a grader shall issue a certificate covering product graded by such grader. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible for certification based on personal examination of the product or official grading records.

(b) *Other than resident grading.* Each grader shall, in person or by the grader's authorized agent, issue a grading certificate covering each product graded by such grader. A grader's name may be signed on a grading certificate by a person other than the grader, if such person has been designated as the authorized agent of such grader by the national supervisor: *Provided,* That the certificate is prepared from an official memorandum of grading signed by the grader: *And provided further,* That a notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign both the agent's name and the grader's name, *e.g.,* ''John Doe by Mary Roe.''

§ 56.57 Disposition.

■ 45. In § 56.57, the section heading is revised as set forth above and in the first sentence the words ''person designated by him'' are removed and ''the applicant's designee'' are added in their place.

§ 56.61 [Amended]

■ 46. In § 56.61, paragraph (b) is amended by adding the words ''determination of the'' immediately following ''with the'' and adding the words ''with the regional director'' immediately following ''request''.

■ 47. In § 56.64, paragraph (a) is revised to read as follows:

§ 56.64 Who shall perform the appeal.

(a) An appeal grading or review of a decision requested under § 56.61(a) shall be made by the grader's immediate supervisor, or by one or more licensed graders assigned by the immediate supervisor.

* * * * *

■ 48. In § 56.65, paragraphs (a) and (b) are revised to read as follows:

§ 56.65 Procedures for appeal gradings.

(a) The appeal sample shall consist of product taken from the original sample container plus an equal number of samples selected at random.

(b) When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in § 56.4(b).

* * * * *

§ 56.66 [Amended]

■ 49. Section 56.66 is amended in the fourth sentence by removing the words ''grade mark'' and adding ''grademark'' in their place.

■ 50. A new undesignated center heading is added following § 56.66 to read as follows:

Denial of Service

■ 51. Sections 56.68 through 56.74 are added to read as follows:

§ 56.68 Debarment.

The acts or practices set forth in §§ 56.69 through 56.74, or the causing thereof, may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H) shall be applicable to such debarment action.

§ 56.69 Misrepresentation, deceptive, or fraudulent act or practice.

Any willful misrepresentation or any deceptive or fraudulent act or practice found to be made or committed by any person in connection with:

(a) The making or filing of an application for any grading service, appeal, or regrading service;

(b) The making of the product accessible for sampling or grading;

(c) The making, issuing, or using or attempting to issue or use any grading certificate, symbol, stamp, label, seal, or identification authorized pursuant to the regulations in this part;

(d) The use of the terms ''United States'' or ''U.S.'' in conjunction with the grade of the product;

(e) The use of any of the aforesaid terms or any official stamp, symbol, label, seal, or identification in the labeling or advertising of any product.

§ 56.70 Use of facsimile forms.

Using or attempting to use a form which simulates in whole or in part any certificate, symbol, stamp, label, seal or identification authorized to be issued or used under the regulations in this part.

§ 56.71 Willful violation of the regulations.

Any willful violation of the regulations in this part or the Act.

§ 56.72 Interfering with a grader or employee of the AMS.

Any interference with or obstruction or any attempted interference or obstruction of or assault upon any graders, licensees, or employees of the AMS in the performance of their duties. The giving or offering, directly or indirectly, of any money, loan, gift, or anything of value to an employee of the AMS or the making or offering of any contribution to or in any way supplementing the salary, compensation or expenses of an employee of the AMS or the offering or entering into a private contract or agreement with an employee of the AMS for any services to be rendered while employed by the AMS.

§ 56.73 Misleading labeling.

The use of the terms ''Government Graded'', ''Federal-State Graded'', or terms of similar import in the labeling or advertising of any product without stating in the label or advertisement the U.S. grade of the product as determined by an authorized grader.

§ 56.74 Miscellaneous.

The existence of any of the conditions set forth in § 56.24 constituting the basis for the rejection of an application for grading service.

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

■ 52. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 53. The undesignated center heading preceding § 70.1 is revised to read as follows:

Definitions

§ 70.1 [Amended]

■ 54. Section 70.1 is amended as follows:

■ A. Remove the definition of *Service.*

■ B. Revise the section heading, the introductory text, and the definitions of *Chief of the Grading Branch and National supervisor.*

■ C. Add the definitions of *Agricultural Marketing Service, Interested party, Sampling, United States Classes, Standards, and Grades for Poultry,* and *United States Classes, Standards, and Grades for Rabbits,* in alphabetical order, as set forth below.

■ D. Amend the definition of *Acceptable* by removing the words ''and acceptable to the Service'' and adding ''by the AMS'' in their place.

■ E. Amend the definition of *Administrator* by removing the words ''Agricultural Marketing Service of the Department'' and adding ''AMS'' in their place and removing the word ''his'' and adding ''the Administrator's'' in its place.

■ F. Amend the definition of *Class* by adding the words ''or species'' after ''kind''.

■ G. Amend the definition of *Department* by adding the word ''(USDA)'' after ''Agriculture.''

■ H. Amend the definition of *Grading certificate* by adding the words ''Act and the'' after ''pursuant to the.''

■ I. Amend the definition *Holiday* or *Legal Holiday* by removing the words ''Legal Holiday shall mean'' and adding ''legal holiday means'' in their place.

■ J. Amend the definition of *Secretary* by removing the word ''his'' and adding ''the Secretary's'' in its place.

■ The additions and revisions, in alphabetical order, read as follows:

§ 70.1 Meaning of words and terms defined.

For the purpose of the regulations in this part, words in the singular shall be deemed to import the plural and vice versa, as the case may demand. Unless the context otherwise requires, the terms shall have the following meaning:

* * * * *

Agricultural Marketing Service or *AMS* means the Agricultural Marketing Service of the Department.

* * * * *

Chief of the Grading Branch means Chief of the Grading Branch, Poultry Programs, AMS.

* * * * *

Interested party means any person financially interested in a transaction involving any grading service.

* * * * *

National supervisor means the officer in charge of the poultry grading service of the AMS, and other employees of the Department as may be designated by the national supervisor.

* * * * *

Sampling means the act of taking samples of any product for grading or certification.

* * * * *

United States Classes, Standards, and Grades for Poultry means the official U.S. Classes, Standards, and Grades for Poultry (AMS 70.200 *et seq.*) that are maintained by and available from Poultry Programs, AMS.

United States Classes, Standards, and Grades for Rabbits means the official U.S. Classes, Standards, and Grades for Rabbits (AMS 70.300 *et seq.*) that are maintained by and available from Poultry Programs, AMS.

§ 70.2 [Amended]

■ 55. In § 70.2, paragraph (c) is amended by removing the word ''Grade'' and adding ''grade'' in its place.

■ 56. An undesignated center heading is added preceding § 70.3 to read as follows:

General

■ 57. Section 70.3 is revised to read as follows:

§ 70.3 Administration.

The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the enforcement or administration of the provisions of the

Act and the regulations in this part. The Administrator is authorized to waive for limited periods any particular provisions of the regulations in this part to permit experimentation so that new procedures, equipment, grading, and processing techniques may be tested to facilitate definite improvements and at the same time to determine full compliance with the spirit and intent of the regulations in this part. The AMS and its officers and employees shall not be liable in damages through acts of commission or omission in the administration of this part.

■ 58. Section 70.5 is revised to read as follows:

§ 70.5 Nondiscrimination.

The conduct of all services and the licensing of graders under these regulations shall be accomplished without regard to race, color, national origin, religion, age, sex, disability, political beliefs, sexual orientation, or marital or family status.

■ 59. Section 70.6 is revised to read as follows:

§ 70.6 OMB control number.

(a) *Purpose.* The collecting of information requirements in this part has been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0127.

(b) *Display.*

SECTIONS WHERE INFORMATION COLLECTION REQUIREMENTS ARE IDENTIFIED AND DESCRIBED

70.3	70.36	70.76(b)(3)(ii)
70.4(a)	70.38(c)	70.77(a)(1)
70.5	70.38(d)	70.77(a)(4)
70.18	70.39	70.77(b)(1)
70.20(a)	70.40	70.77(b)(3)(ii)
70.22	70.50	70.91(a)
70.31(a)	70.61	70.91(c)
70.31(b)	70.62	70.92
70.34	70.73	70.101
70.35	70.76(b)(1)	70.102

■ 60. Section § 70.8 is added to read as follows:

§ 70.8 Other applicable regulations.

Compliance with the regulations in this part shall not excuse failure to comply with any other Federal, or any State, or municipal applicable laws or regulations.

■ 61. The undesignated center heading preceding § 70.10 is removed.

■ 62. The section heading for § 70.10 is revised to read as follows:

§ 70.10 Basis of grading service.

* * * * *

§ 70.10 [Amended]

■ 63. Section 70.10 is amended by:

■ A. Designating the undesignated text as paragraph (a).

■ B. Revising the words ''classes,'' ''standards'' and ''grades'' in the second sentence to read as ''Classes,'' ''Standards'' and ''Grades,'' respectfully.

■ C. Removing the words ''as contained in subparts B and C of this part'' in the second sentence and adding the words ''for Poultry and Rabbits'' in their place.

■ 64. Section 70.13 is revised to read as follows:

§ 70.13 Ready-to-cook poultry and rabbits and specified poultry food products.

(a) Ready-to-cook poultry or rabbit carcasses or parts or specified poultry food products may be graded only if they have been inspected and certified by the poultry inspection service of the Department, or inspected and passed by any other inspection system which is acceptable to the Department.

(b) Only when ready-to-cook poultry carcasses, parts, poultry food products, including those used in preparing raw poultry food products, have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, and when poultry food products have been prepared under the supervision of a grader, when necessary the individual container, carcass, part, or poultry food product be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products, when necessary, shall be done on a sample basis in accordance with a plan prescribed by the Administrator.

(c) Only when ready-to-cook rabbit carcasses or parts have been graded on an individual basis by a grader or by an authorized person pursuant to § 70.20(c) and thereafter checkgraded by a grader, may the container or the individual carcass or part be identified with the appropriate official letter grademark. Checkgrading shall be accomplished in accordance with a statistical sampling plan prescribed by the Administrator. Grading with respect to quality factors for freezing defects and appearance of the finished products may be done on a sample basis in accordance with a plan prescribed by the Administrator.

§ 70.14 [Amended]

■ 65. In § 70.14, the words ''U.S. Department of Agriculture'' are removed and ''Department'' is added in their place.

■ 66. Section 70.15 is revised to read as follows:

§ 70.15 Equipment and facilities for graders.

Equipment and facilities to be furnished by the applicant for use of graders in performing service on a resident basis shall include, but not be limited to, the following:

(a)(1) An accurate metal stem thermometer.

(2) A drill with a steel bit to drill holes in frozen product for inserting the metal thermometer stem to determine temperature.

(3) Scales graduated in tenths of a pound or less for weighing carcasses, parts, or products individually in containers up to 100 pounds, and test weights for such scales.

(4) Scales graduated in one-pound graduation or less for weighing bulk containers of poultry and test weights for such scales.

(b) Furnished office space, a desk, and file or storage cabinets (equipped with a satisfactory locking device) suitable for the security and storage of official supplies, and other facilities and equipment as may otherwise be required. Such space and equipment must meet the approval of the national supervisor.

■ 67. The undesignated center heading preceding § 70.20 is revised to read as follows:

Licensed and Authorized Graders

§ 70.20 Who may be licensed and authorized.

■ 68. In § 70.20, the section heading is revised as set forth above and paragraph (b) is amended by removing the words ''Agricultural Marketing Service'' and adding ''AMS'' in their place.

§ 70.21 [Amended]

■ 69. Section 70.21 is amended by:

■ A. Removing the words ''he deems such action'' in the first sentence and adding ''such action is deemed'' in their place.

■ B. Removing the words ''he may wish to offer as to why his'' in the second sentence and adding ''the licensee may wish to offer as to why the'' in their place.

■ C. Removing the words ''he deems'' in the third sentence and adding ''deemed'' in their place.

■ 70. Section 70.22 is revised to read as follows:

§ 70.22 Surrender of license.

Each license which is suspended or revoked shall immediately be surrendered by the licensee to the office

of grading servicing the area in which the license is located.

■ 71. Section 70.23 is revised to read as follows:

§ 70.23 Identification.

Graders shall have in their possession at all times, and present upon request while on duty, the means of identification furnished to them by the Department.

■ 72. Section 70.24 is revised to read as follows:

§ 70.24 Financial interest of graders.

Graders shall not render service on any product in which they are financially interested.

■ 73. Section 70.25 is revised to read as follows:

§ 70.25 Political activity.

Federal graders may participate in certain political activities, including management and participation in political campaigns in accordance with AMS policy. Graders are subject to these rules while they are on leave with or without pay, including furlough; however, the rules do not apply to cooperative employees not under Federal supervision and intermittent employees on the days they perform no service. Willful violations of the political activity rules will constitute grounds for removal from the AMS.

■ 74. Section 70.26 is added immediately following § 70.25 and before the undesignated center heading to read as follows:

§ 70.26 Cancellation of license.

Upon termination of the services of a licensed grader, the grader's license shall be immediately surrendered for cancellation.

■ 75. Section 70.30 is revised to read as follows:

§ 70.30 Who may obtain grading service.

An application for grading service may be made by any interested person, including, but not being limited to any authorized agent of the United States, any State, county, municipality, or common carrier.

§ 70.31 [Amended]

■ 76. In § 70.31, paragraph (a) is amended by removing the words ''basis may'' and adding ''basis shall'' in their place and removing the word ''telegraph'' and adding ''any electronic means'' in its place.

§ 70.34 [Amended]

■ 77. Section 70.34 is amended in the third sentence by removing the word ''his'' and adding ''the supervisor's'' in its place.

■ 78. Section 70.35 is revised to read as follows:

§ 70.35 Rejection of application.

(a) Any application for grading service may be rejected by the Administrator:

(1) Whenever the applicant fails to meet the requirements of the regulations prescribing the conditions under which the service is made available;

(2) Whenever the product is owned by or located on the premises of a person currently denied the benefits of the Act;

(3) Where any individual holding office or a responsible position with or having a substantial financial interest or share in the applicant, is currently denied the benefits of the Act, or was responsible in whole or in part for the current denial of the benefits of the Act to any person;

(4) Where the Administrator determines that the application is an attempt on the part of a person currently denied the benefits of the Act to obtain grading service;

(5) Whenever the applicant, after an initial survey has been made in accordance with § 70.34, fails to bring the grading facilities and equipment into compliance with the regulations within a reasonable period of time; or

(6) Notwithstanding any prior approval whenever, before inauguration of service, the applicant fails to fulfill commitments concerning the inauguration of the service.

(7) When it appears that to perform the services specified in this part would not be to the best interests of the public welfare or of the Government;

(8) When it appears to the Administrator that prior commitments of the Department necessitate rejection of the application.

(b) Each such applicant shall be promptly notified by registered mail of the reasons for the rejection. A written petition for reconsideration of such rejection may be filed by the applicant with the Administrator if postmarked or delivered within 10 days after receipt of notice of the rejection. Such petition shall state specifically the errors alleged to have been made by the Administrator in rejecting the application. Within 20 days following the receipt of such a petition for reconsideration, the Administrator shall approve the application or notify the applicant by registered mail of the reasons for the rejection thereof.

■ 79. Section 70.36 is revised to read as follows:

§ 70.36 Withdrawal of Application.

An application for grading service may be withdrawn by the applicant at any time before the service is performed upon payment by the applicant, of all expenses incurred by the AMS in connection with such application.

■ 80. In § 70.38, paragraph (c) is revised to read as follows:

§ 70.38 Suspension or withdrawal of plant approval for correctable cause.

* * * * *

(c) If the grading facilities or methods of operation are not brought into compliance within a reasonable period of time as specified by the Administrator, the Administrator shall initiate withdrawal action pursuant to the Rules of Practice Governing Formal Adjudicatory Proceedings and Grading Service (7 CFR part 1, subpart H), and the operator shall be afforded an opportunity for an oral hearing upon the operator's written request in accordance with such Rules of Practice, with respect to the merits or validity of the withdrawal action, but any suspension shall continue in effect pending the outcome of such hearing unless otherwise ordered by the Administrator. Upon withdrawal of grading service in an official plant, the plant approval shall also become terminated, and all labels, seals, tags, or packaging material bearing official identification shall, under the supervision of a person designated by the AMS, either be destroyed, or the official identification completely obliterated, or sealed in a manner acceptable to the AMS.

* * * * *

■ 81. Section 70.39 is added immediately following § 70.38 and before the undesignated center heading to read as follows:

§ 70.39 Form of application.

Each application for grading or sampling a specified lot of any product shall include such information as may be required by the Administrator in regard to the product and the premises where such product is to be graded or sampled.

■ 82. Section 70.40 is revised to read as follows:

§ 70.40 Debarment.

The acts or practices set forth in §§ 70.41 through 70.46, or the causing thereof, may be deemed sufficient cause for the debarment by the Administrator of any person, including any agents, officers, subsidiaries, or affiliates of such person, from all benefits of the act for a specified period. The Rules of Practice Governing Formal Adjudicatory Proceedings (7 CFR part 1, subpart H)

shall be applicable to such debarment action.

§ 70.41 Misrepresentation, deceptive, or fraudulent act or practice.

■ 83. In § 70.41, the section heading is revised as set forth above and paragraph (b) is amended by adding the words ''sampling or'' after ''for.''

§ 70.44 [Amended]

■ 84. Section 70.44 is amended in the first sentence by removing the word ''his'' and adding ''such employees'' in its place.

■ 85. Section 70.56 is added immediately following § 70.55 and before the undesignated center heading to read as follows:

§ 70.56 Grading requirements of poultry and rabbits identified with official identification.

(a) Poultry and rabbit products to be identified with the grademarks illustrated in § 70.51 must be individually graded by a grader or by authorized personnel pursuant to § 70.20 and thereafter checkgraded by a grader.

(b) Poultry and rabbit products not graded in accordance with paragraph (a) of this section may be officially graded on a sample basis and the shipping containers may be identified with grademarks which contain the words ''Sample Graded'' and which are approved by the Administrator.

■ 86. Section 70.60 is revised to read as follows:

§ 70.60 Report of grading work.

Reports of grading work performed within official plants shall be forwarded to the Administrator by the grader in a manner as may be specified by the Administrator.

■ 87. Section 70.62 is revised to read as follows:

§ 70.62 Report of violations.

Each grader shall report, in the manner prescribed by the Administrator, all violations and noncompliances under the Act and the regulations in this part of which such grader has knowledge.

§ 70.70 [Amended]

■ 88. In § 70.70, paragraph (b) is amended by removing the words ''Agricultural Marketing Service'' and adding ''AMS'' in their place and by removing the word ''Service'' and adding ''AMS'' in its place.

§ 70.71 [Amended]

■ 89. In § 70.71, paragraph (c) is amended by removing the word ''Supervisor'' and adding ''supervisor'' in its place.

§ 70.72 Fees for appeal grading or review of a grader's decision.

■ 90. Section 70.72 is amended by:

■ A. Revising the section heading as set forth above.

■ B. Removing the words ''or examination'' both times they appear.

■ C. Removing the words ''will be borne'' and adding ''shall be borne'' in their place.

§ 70.75 [Amended]

■ 90a. In § 70.75 in the first sentence remove the word ''Service'' and add ''AMS'' in its place.

§ 70.76 [Amended]

■ 91. In § 70.76, paragraph (a) is amended by removing the words ''the Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as ''AMS'')'' and adding ''AMS'' in their place.

§ 70.77 [Amended]

■ 92. In § 70.77, paragraph (a) is amended by removing the words ''Agricultural Marketing Service, U.S. Department of Agriculture (hereinafter referred to as ''AMS'')'' and adding ''AMS'' in their place.

■ 93. The undesignated center heading preceding § 70.80 is removed.

§ 70.80 [Amended]

■ 94. The section heading for § 70.80 is removed and the undesignated text is designated as paragraph (b) of § 70.10.

§ 70.81 [Removed]

■ 95. Section 70.81 is removed.

■ 96. Section 70.90 is revised to read as follows:

§ 70.90 Forms.

Grading certificates and sampling report forms (including appeal grading certificates and regrading certificates) shall be issued on forms approved by the Administrator.

■ 97. Section 70.91 is revised to read as follows:

§ 70.91 Issuance.

(a) *Resident grading basis.* Certificates will be issued only upon a request therefor by the applicant or the AMS. When requested, a grader shall issue a certificate covering product graded by such grader. In addition, a grader may issue a grading certificate covering product graded in whole or in part by another grader when the grader has knowledge that the product is eligible for certification based on personal examination of the product or official grading records.

(b) *Other than resident grading.* Each grader shall, in person or by an authorized agent, issue a grading certificate covering each product graded by such grader. A grader's name may be signed on a grading certificate by a person other than the grader if such person has been designated as the authorized agent of such grader by the national supervisor: *Provided*, That the certificate is prepared from an official memorandum of grading signed by the grader: *And provided further*, That a notarized power of attorney authorizing such signature has been issued to such person by the grader and is on file in the office of grading. In such case, the authorized agent shall sign both the agents name and the grader's name, *e.g.*, ''John Doe by Mary Roe.''

■ 98. Section 70.92 is revised to read as follows:

§ 70.92 Disposition.

The original and a copy of each grading certificate, issued pursuant to §§ 70.90 through 70.93, and not to exceed two additional copies thereof if requested by the applicant prior to issuance shall, immediately upon issuance, be delivered or mailed to the applicant or the applicant's designee. Other copies shall be filed and retained in accordance with the disposition schedule for grading program records.

■ 99. Section 70.93 is added immediately following § 70.92 and before the undesignated center heading to read as follows:

§ 70.93 Advance information.

Upon request of an applicant, all or part of the contents of any grading certificate issued to such applicant may be telephoned or transmitted by any electronic means to the applicant, or to the applicant's designee, at the applicant's expense.

■ 100. In § 70.104, paragraph (a) is revised to read as follows:

§ 70.104 Who shall perform the appeal.

(a) An appeal grading or review of a decision requested under § 70.101(a) shall be made by the grader's immediate supervisor or by one or more licensed graders assigned by the immediate supervisor.

* * * * *

■ 101. In § 70.105, paragraphs (a) and (b) are revised to read as follows:

§ 70.105 Procedures for appeal gradings.

(a) The appeal sample shall consist of product taken from the original sample container plus an equal number of containers selected at random.

(b) When the original samples are not available or have been altered, such as the removal of undergrades, the appeal sample size for the lot shall consist of double the samples required in § 70.80.

* * * * *

Dated: June 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–6159 Filed 7–21–06; 8:45 am]

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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.

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Fetus Farming Prohibition Act of 2006 (July 19, 2006; 120 Stat. 570)

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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90–139	(869–056–00186–0)	44.00	Oct. 1, 2005
140–155	(869–056–00187–8)	25.00	Oct. 1, 2005
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2005, through April 1, 2006. The CFR volume issued as of April 1, 2004 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2004, through July 1, 2005. The CFR volume issued as of July 1, 2004 should be retained.

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